

**PLANNING COMMISSION MEETING
CITY OF WIXOM
49045 PONTIAC TRAIL
WEDNESDAY, NOVEMBER 5, 2008 – 7:30 PM**

Chairman Day called the meeting to order at 7:32 pm.

The Pledge to the Flag was given.

PRESENT:

William Day, Chairman
Jim Crowley
Kurt Gottschall
Cory Lupinacci
William Henning

CITY CONSULTANT:

Carmine Avantini, LSL

CITY STAFF:

John R. Lipchik, Building Official

RECORDING SECRETARY:

Jennifer Garrett

ABSENT:

Phillip Carter (excused)
James Maher (unexcused)
Guy York (unexcused)
Nick Kennedy (excused)

There being a quorum, the meeting was declared in session.

CHANGES OR ADDITIONS TO THE AGENDA:

There were no changes or additions made to tonight's agenda.

APPROVAL OF MINUTES:

October 6, 2008 Regular

MOTION and second by Mr. Lupinacci and Mr. Crowley to approve the October 6, 2008 Regular minutes as presented.

VOTE:

MOTION CARRIED

CORRESPONDENCE:

There was no correspondence received for tonight's meeting.

CALL TO THE PUBLIC:

Recording Secretary, Jennifer Garrett, read the Rules of Conduct.

Chairman Day asked if there was anyone from the public that would like to address the commission at this time. There being no comments from the public, the Call to the Public was closed at 7:35 pm.

CONSENT AGENDA:

SET A PUBLIC HEARING DATE FOR SPECIAL USE # 08-011: DART CONTAINER, 500 HOGSBACK ROAD, MASON, MI 48854: The applicant is seeking special use approval for outside

storage of empty racks. The Wixom Municipal Code, Section 18.09.020 requires special use approval from the Planning Commission for this request. The property is located at 46930 Liberty and zoned M-1, Light Industrial. The tax parcel number is 22-09-151-019.

MOTION and second by Mr. Gottschall and Mr. Lupinacci to set a public hearing date for Special Use #08-011 for the next regularly scheduled meeting of December 1, 2008.

Mr. Lipchik stated what we would like to do is present this at our workshop on November 24, 2008.

Chairman Day asked if he wanted to have the public hearing on November 24, 2008 or just have it presented then, and Mr. Lipchik replied yes.

MOTION and second by Mr. Gottschall and Mr. Lupinacci to set a public hearing date for Special Use #08-011 for the workshop meeting on November 24, 2008.

VOTE:

MOTION CARRIED

UNFINISHED BUSINESS:

PUBLIC HEARING FOR SPECIAL USE #07-007: WIXOM FUEL STOP, 29330 WIXOM ROAD, WIXOM, MI 48393: The applicant is seeking special use approval for outside storage of trucks and trailers. The Wixom Municipal Code, Section 18.09.020 requires special use approval from the Planning Commission for this request. The property is located at 29330 Wixom Road and zoned M-1, Light Industrial. The tax parcel number is 22-08-100-045.

Mr. Avantini stated the commissioners should have a letter dated November 3, 2008; and as you may recall you have seen a different application than this one for this particular property. As we went through and met with the applicant and looked at the previous reviews that were conducted at the ZBA and at the Planning Commission level it frankly was getting to the point where it was very convoluted, complicated and unmanageable. So what we did is we told the applicant to tell us what you are looking for, file a new application, let's take a look at the site, let's see what the real issues are and let's synthesize it down to something that is manageable because we were just getting way off track with this particular site. So we went out to the site, looked at the landscaping, looked at what was proposed and actually made some recommendations to him. The site is much neater than in the past; it is very neat actually. Most of the trucks that are stored in the back on a more permanent basis are very new. They are leased and the applicant can explain what company they came from.

Mr. Avantini stated what we did was made a series of recommendations to them that they met on the plan. First of all from the front of the property, and remember this is zoned M-1. It is not a commercially zoned property but is zoned manufacturing. So from the front of the property the site is neat, well kept, and it is well landscaped at the front. So the primary concern we had was the back of the site and where the primary truck storage was going to occur. They have paved a good portion of the site including what we call parcel two on the plan which was previously the parcel in question for storage. They have put a crushed asphalt surface down. They do have concrete and pavement for the bulk of parcel one. If you were to pick a point where it becomes just a gravel area if you look on your plan it would basically be that piece that kind of juts out at the back of the site. So what we recommended to them were a couple of things. One is to only park trailers on the gravel part of the site. Even though they have pretty new tractor trailers in there if there were ever any liquids to leak it would go onto the concrete or the paved area and not into the dirt/gravel area and plus the whole weight issue. So the only thing we recommended they store back there would be the trailers themselves, and then any of the actual vehicles would be parked on a paved surface.

Mr. Avantini stated the other thing we recommended, and they did a couple of things with landscaping. First of all they have a 15-foot wide landscape area that they added to the front of parcel two (the storage area), and they are going to be planting evergreen trees along there to provide a screen for the trucks that would be located there. That was really the key issue with the storage there; that it be fully screened and not be visible. It is set back pretty far and with the evergreen screen in there, we think that would be an appropriate treatment. One of the other issues was that some of the landscaping provided (at least on the north side) is on the adjacent property. The applicant has agreed as a condition of approval that if that landscaping which is sufficient for screening if that was ever removed at any point in time they would put the buffer in that is necessary to screen that property line so you won't be able to see it from the adjacent site; but at this point there isn't anything that is visible from the adjacent site. It is fully screened.

Mr. Avantini stated as for the southern property line, they own (and he forgets how many feet would be to the south) so that is their property. There is pretty heavy vegetation along that property line, and they have agreed to keep it there; they are not going to remove it. If at any point in time they didn't get fully screened back there they have agreed to put whatever plantings in that are necessary in order to provide the screening, and we feel that it is satisfactory as long as we have it in writing because this is a special land use and we can't keep control over that. If that weren't complied with you always have the ability to hold a public hearing and to pull the special land use if needed.

Mr. Avantini stated with all of that being said we think they have done a nice job with the site. It is a neat clean site. They have met in our opinion the intent of the screening requirements that are outlined in the zoning ordinance, and we are recommending that you approve the new special land use request which basically will allow them to do truck storage on parcel two conditioned upon the Fire Department reviewing the proposed layout and circulation. We think they are going to be okay. There is plenty of room back there, and we don't see where they are going to have a problem with that. Overall we think they have done a good job on the site and have met on their plan the conditions we were looking for. He offered to answer any questions, commenting that he had gone over it fairly quickly and hadn't gone into the details on the specific requirements because we do have a pretty hefty agenda.

Mr. Henning stated he did tour the facility out there and had two questions. He asked if the concrete pad that sits in parcel one right now is from an existing building that was removed from that area because it did not look like it was new concrete.

Mr. Lipchik told him that was part of an old tank farm that the applicant had removed a number of years ago. It was actually a loading pad.

Mr. Henning asked if there is no underground storage of tanks right there, and Mr. Lipchik replied no there is not.

Mr. Henning said he noticed that there are only two drains in that area. He asked with the berm you are talking the 12 inch curb you want to have removed if there were 12-inch curbs there for any type of water retention or liquid retention.

Mr. Lipchik answered no and said that was placed in there to help facilitate keeping trucks out of that parcel.

Mr. Henning stated another question he had was with there only being two existing drains there and it reaches 256 feet to the road. It is pretty much bermed on all the other areas where you can see a five foot berm in the back and a three foot berm on either side as well as on the east side. He asked if there are any risks to have high level water in that area.

Mr. Lipchik stated we had HRC, our consulting engineers; take a look at this; and the drainage that is in place facilitates the whole site.

Mr. Henning said he did notice also on the south side it says the existing chain link fence with barb wire on it. He noted that fence does not exist and asked if that was correct.

Mr. Lipchik stated he thinks the wires have been removed, and he thinks parts of the fence still remain entangled in the vegetation.

Mr. Henning stated the only one that he did see was on the east side near the back of the lot and also on the north side which is in the front. This area would not be fenced in. He asked if that was correct, and Mr. Avantini replied yes.

Mr. Henning then asked if there was any risk of vandalism or theft.

Mr. Avantini stated actually we have had discussions with the Police Department, and there has been no problems at all on that site. That was one of the big concerns we had. He is not sure (and the applicant can answer) but he is not sure if they have cameras back there also. He thought maybe they did or they are going to put them in.

Mr. Lipchik commented there are probably more video surveillance cameras in that gas station than there are in the rest of the entire City, and it is also extremely well lit. To reiterate what Mr. Avantini said there has never been an incident there of any kind other than a little bit of gasoline theft.

Mr. Gottschall stated you said parcel two was he used the word paved and also used the words crushed asphalt. Going back through a review letter from October 1, 2007 he thinks Mr. Nesbitt was here at that time. There was concern from HRC at that time and also from your firm that the crushed asphalt would not likely stand up over time with the type of activity carried out on the site. He too has surveyed the site and found even today standing water in several places out there on parcel two, and a majority of parcel two he would not call it paved by any structure of the imagination. It may have some crushed asphalt there, but it is not paved and is the same for the back of parcel one. So he has some concerns about the surface there that goes beyond not only the maintenance and durability but also the ability to mark the property. He sees references to fire lanes and whatnot on the site plan, and he is wondering how the circulation is going to be marked out with what exists out there today.

Mr. Avantini stated the reason we had mentioned that is we really didn't have a lot of experience with the crushed asphalt, and Mike Darga looked at it and he felt the same way. It is what it is. In the traditional sense we think of a concrete or regular asphalt surface, but it is certainly more durable (the gravel to the rear of the property) is more durable than that. He guesses the point is that one of the things is you have an option. You have the ability to place a condition. If you felt strongly about that being paved that is a condition you could place on it. What you may want to do is consider a time frame. You have like three years down the road to make that a permanently paved surface if you are going to continue to use it for truck parking or whatever. That would be one of the options you could look at. In the short term it seems to be durable enough to handle the tractor trailers. It would be the long term that would be a concern.

Chairman Day asked how about the marking issue that Mr. Gottschall mentioned.

Mr. Avantini stated they would have to have a lot more trucks in there than they have been putting back there in order to make that an issue. There is so much space back there, and really only a fraction of it from what he has seen is even being used right now. So they would have to have a significant increase in the level of activity to make that an issue. But once again if that does become the case if they have a lot

more vehicles back there than that would be the trigger point at which you would want it paved and marked because he doesn't know that you could mark it currently.

Mr. Gottschall stated if he recalls correctly when we first approved this it was for a limited number of vehicles and it is a pretty expanding piece of property back there and is used minimally. So he is really curious as to why there is a necessity to go into parcel two at this time. He is further concerned that he thinks we are being asked to validate what has become common practice already. Even as we sit here right now there are two semis, a flat bed trailer and a cab parked on parcel two. He can't remember the last time he drove by that property and didn't see overnight or trucks parked in parcel two. So they have been doing it and it is a track record and this is the entrance to our City. We are worried about billboards on the freeway yet we are going to allow a semi parking lot less than a quarter of a mile from the entrance to the City. So he thinks there are a lot of concerns here, not only the pavement but the screening. There are holes in the screening. On the south side of the property there are a couple of trees there and there are a lot of holes in between the trees. There is not sufficient screening on that side of the property so he thinks we are really being asked to rush into something here and we don't have an accurate picture. He doesn't know what is going to be stored in those trailers. It is a fuel station where there are potential problems. If we can't police where the trucks are being parked today and they are being parked outside of where they were granted permission for them in the past, how are we going to police them allowing people to sleep in these cabs? He thinks it is the wrong solution so he has multiple concerns.

Mr. Avantini stated that was our original concern when this was dealt with years ago. Our concern was that it not become a truck stop because that is a different defined use in the ordinance. We didn't have a problem with the storage of vehicles; it was the truck stop aspect of it. He would say that would have to be a condition, but more than that it doesn't even have to be a condition because it is not an allowable use. So what he is requesting is truck storage, not the overnight parking of tractor trailers.

Mr. Gottschall said he understands what he is requesting. It is a matter of enforcing it, and how do we know what is in the trailers?

Mr. Avantini stated that is something the applicant can answer. Obviously you have questions for him, and he is here.

Eddie Osman, 29330 Wixom Road, Wixom, MI 48393, stated the first thing he would like to say is thank you for taking the time to listen to the stuff he would like to answer.

He said as Mr. Gottschall was asking if this is going to be overnight sleeping, no there will not be. He has been at this location for close to about 13 years and spends more time over there than he does at home, but over there he has never had any problems. In parcel number two for this same company he has leased to for eight or nine years and he has never had anyone slept overnight. In parcel number one (the one he is asking for to keep it) there is not going to be overnight because at night we are not going allow it. It is during the day that we are asking for where if someone comes up there and wants to buy a sandwich, a pop or waiting for a phone call to tell him which way to go or sometimes like for truckers the sites they have to deliver to they have to wait for a particular time and ask if they can wait half an hour here and he says go ahead. It is not only that too. He has next door to him Wendy's and they do not allow truckers to drive over their property because of the drainage storm system underground that could get damaged. So a lot of them have been parking to go grab a sandwich from Wendy's and come back, and that has never caused any problems. He is not talking that it is going to be overnight because he would not allow it. He has been paying taxes on this property and maintaining this property and keeping it the most clean that he can do; and he has a letter of recommendation from the next door property owner, Quadrants, saying he has no problem whatsoever with someone parking on the property next to him and that he is fine with it.

He doesn't let people park over there for more than an hour or two, but the only reason he is asking for that is because he is already paying taxes for this property and why not have some use to it?

Mr. Osman went on to say but for him to put asphalt like what he can show that he built on part of parcel two, he paid over \$52,000 only to asphalt that side over there. The reason he did it is not because he is making any money off of letting this company park there. He is making off of them what he is selling fuel, and if he doesn't let him store their trailers in the back they wouldn't be pumping any fuel from him. That is his biggest account, and that is the only biggest account he has right now left especially with the economy and construction. So that is why he went through all the work he did by keeping it fixed and put that asphalt, concrete and drainage like you checked out. He is sure you went over there and saw how much of an improvement that has been done to this site. He always tries to upgrade. Every year he comes up with something new to improve and make it look the best.

Mr. Osman stated if you are going to be looking through the screening, on Wixom Road it is 45 mph and he doesn't think anyone is going to be looking to the right or left. The second thing is the berm he has on the front of Wixom Road as you see on the site plan is over four and a half feet high. So it is very hard for you to look all the way, and there is a building that is half of the size of the parcel two that is covering the screening. He is not next to any residential; he is next to a company that has trailers stored all the way in the back.

He told the commissioners if they have any questions please he would love to answer because he needs their help to get approved. The other thing like Mr. Avantini mentioned (and he would like to thank him for all the comments because it was great and he spoke better than him) is these trailers are brand new. These trucks every year are exchanged because they lease them for one year, and this company is not just in the State of Michigan. It is worldwide, and the only reason they are staying with him pumping fuel is because of the storage he gives them in the back. He doesn't know what else to say. With fire safety the Fire Department pumps gas every year and does a fire inspection every year, and they looked at this and said it is perfect with no problems whatsoever. He would do anything he can, but to pave parcel number one he wouldn't be able to do that because it is over \$150,000 and there is no benefit for him whatsoever. He will try to do the screening; he will do that and agree to keep it clean.

He added that the security system is one of the best and he keeps the most lighting in that location and doesn't want people to come off the highway and park over there. This place he keeps it the most nicest, cleanest and organized. He doesn't want someone coming in and asking "Say, can I park overnight?" He is going to tell them "No, I'm sorry." That is why we have the curb to have one entrance and one exit. So we can see who is coming. At night for example we hardly have any business. It doesn't hardly cover our electric bill, but we keep open for like security guards. So we don't let any of those truckers come in the back. We have cameras. If you come to the store and look we have a 21-inch TV with six cameras pointed to the back. So if the cashier saw someone walk to the back they tell them they cannot park there. There are nine signs saying that there is no parking whatsoever, and there are signs for a towing company from Wixom Towing saying we'll tow you on the spot at your own expense if you park over there. That is what he is trying to explain. He understands where Mr. Gottschall is coming from with it being close to the highway. There are no other truck stops like rest areas for truckers. That doesn't happen, and it will never happen and he is willing to have this in writing saying it is not going to happen. He loves this place and keeps it the most cleanest and nicest, and you can ask anyone in the City of Wixom and they will tell you what kind of service we have over there and how we keep that place clean and organized. He said thank you for your understanding and please if you have any questions he will be more than happy to answer them to the best of his knowledge.

Mr. Gottschall stated he did have a question and just wanted to make sure we are talking about the same thing here. He said Mr. Osman made a reference to having leased out parcel two and asked if he meant parcel one.

Mr. Osman said he was sorry; yes, parcel one.

Mr. Gottschall stated you also made a statement about not being able to afford to pave parcel one and asked if he meant parcel two, and Mr. Osman replied yes.

Mr. Gottschall said there is a lot of property back there and told Mr. Osman you made the statement about you pay taxes on it and why shouldn't you be able to use it. Even directly behind the station on parcel one there is a lot of room there and most of the activity (your trucks and trailers) are back on the unpaved area way in the back, and there is a lot of room that is still unused. Why do you want to use the second parcel when you have all this vacant on the parcel you have been approved for?

Mr. Osman stated this company is the one he leases that spot for them. He respects his word in telling them that is the space he is giving them, "That is the space I am giving you." They have asked him a million times to rent the rest of the space and he said "No, that is all I can give you." He is not going to let some other truckers come up and park over there in the spaces he is already having rent paid for. He is not going to let someone else park over there, so he respects his word with these people by keeping that spot for them. The oil change back there, watch over there and don't let anyone park. The police are over there 24 hours, and you can ask the Police Chief that there wasn't even one incident there.

Mr. Gottschall stated he was wondering. You spend a lot of time out there admittedly. Why are you allowing trucks to park on parcel two right now overnight? Not trailers, trucks. He asked why that is going on right now.

Mr. Osman stated there is one trailer parked over there, and that is a blue and white one and that is a guy who works on the weekends. He asked if he had seen some other trailers there.

Mr. Gottschall stated we can get in the car right now and see one parked all the way up in front along the curb. There are two in the back, and then you will see another trailer in the back. Yesterday as he pulled in to get gas and as he was sitting there a flatbed came in, looped around, went back and parked. He got out, came into the station and left and he left his truck there. It is day after day after day, and you say you spend a lot of time there. He is just very concerned that this has become a common practice, and we are just being asked to validate it at this point.

Mr. Osman asked if he saw someone park this truck over there and leave, and Mr. Gottschall stated yes. He walked into the station and got whatever he had and was picked up and left.

When Mr. Osman asked what time that was Mr. Gottschall told him it was around 3:30 in the afternoon. It was a flatbed that had all kinds of plastic pipes on it. But be that as it may, that is not an uncommon occurrence, which is the point he is making. We could get in the car right now and see it. We don't need to go over one truck, but it happens all the time over there. You have been approved for one thing. You say that you get all your money or a bunch of money for the fuel sales from the company who leases the one spot that you don't share with anyone else, but now we got other people for the other spot. He is having a hard time understanding why.

Mr. Osman asked Mr. Gottschall to put himself in his position. He has a property that he just put like crushed asphalt, fixed it, repaired it, kept it the cleanest that he could, paying taxes on it every year; and he has no way he can use it to make it more convenient for his customers. He has less than a mile (almost

about half a mile) from him a new gas station that just opened, and at Alpha Tech they have many trailers and trucks that have been parked there where people have been parking for days, people leaving their cars at the hotels. You can check this one out, and he can get you letters from that hotel over there telling you how many problems he had with about six or seven trailers parked there. He never lets that happen at his place so he said it is more convenient. He is going to put screening and spend about \$10,000 to \$15,000 and he has already spent \$10,000 before and spent \$52,000 on this one, and he is sure that he is not getting his money back but he is trying to build a relationship with this trucking company here.

Mr. Lupinacci told Mr. Osman first of all thank you very much for your presentation, and he does believe he keeps his property (particularly as it faces Wixom Road) in very nice condition. He would just like to have a better understanding of his intention because he is missing one point. That is that it sounds from his explanation that his intention is to use the back parcel two for a very transient short-term activity associated with the trailers, but if that is the case then why would he need such a large amount of space showing 12 trailer spaces if it truly is a very short term.

Mr. Osman stated he would be more than happy to have it in writing that the maximum all the time is three or four. His architect said as long as you are going to draw it put what exactly can fit, but he told him maybe he needs three or four and maybe five sometimes. He said we can organize it only on the plan like that, but it doesn't mean that he can use it. For example he has 32 pumps at this gas station. It doesn't mean that he is going to use the whole 32 pumps, but he has the space for it because you never know. Like at the lunch time hours, those 32 pumps are used; but 23 hours out of the 24 hours it is not being used. It is the same thing with the back. He puts it in case, and that will never happen; but he is looking for three or four or maximum of five.

Mr. Lupinacci stated one additional question. You heard a concern raised about standing water which would indicate that the surface does not have either proper grading or proper drainage. So obviously the concern that is raised is that over time the situation will worsen where the surface (the crushed asphalt) will degrade to the point that it is rutted. There is more standing water, and all of a sudden this is not a well kept area but rather it is something that is causing concerns relative to the condition, the appearance and all of that. He asked if he has taken into account maybe a plan over time to upgrade the surface so as to prevent a degraded condition like ruts, standing water and all of that.

Mr. Osman said he just got an idea and he is sure it will make you happy. If you check with Metro Sweep Company, this company he has a contract with them for the last three years. Every month they come out and sweep that whole area. Every year at least once or twice they come out and vacuum all the drainage from any dirt. He can add as a condition if you would like and if it will make you happy that where any conditions come up (like water build up or anything like that) he will grade it, fix it and have it 100% done the proper way. He can add that condition in writing that he will do that. So if at any time Mr. Lipchik comes out and says it is a safety issue in the back in less than 24 hours he will have a company over there come out and fix it in the spring and summer time.

Chairman Day asked if there were any other questions for the applicant. He then asked if there was anyone from the public that would like to address this case. There being no comments from the public, the public hearing for Special Use #07-007 was closed at 8:11 pm.

Chairman Day stated personally he understands Mr. Gottschall's concern about being asked to ratify something that is already a fact. In a way it is like you are rewarding someone for not following the rules, and that is a concern with him too; but he does understand that Mr. Osman has been a long term business citizen of the community and appreciates hearing from the City about the lack of problems they have had at that site and the good relationship they apparently have with Mr. Osman over the years. Frankly, he would be inclined to approve the special use.

MOTION and second by Mr. Lupinacci and Mr. Crowley to approve Special Use #07-007, Wixom Fuel Stop, 26330 Wixom Road, Wixom MI, allowing the outside storage of trucks and trailers at their site which is zoned M-1, conditioned upon Fire Department review regarding the proposed layout and circulation pattern.

ROLL CALL VOTE:

YEAS (3)	Day, Crowley, Lupinacci
NAYS (2)	Gottschall, Henning
ABSENT (4)	Carter, Kennedy, Maher, York

MOTION PASSED

NEW BUSINESS:

PUBLIC HEARING FOR SPECIAL USE #08-009: PUCKMASTERS, CHAD ZAMLER, 23077 GREENFIELD, SOUTHFIELD, MI 48075: The applicant is seeking special use approval to operate an indoor hockey training facility in an existing 14,250 square foot unit. The Wixom Municipal Code, Section 18.09.020 requires from the Planning Commission for this request. The property is located at 50950 Century Court and zoned M-1, Light Industrial. The tax parcel number is 22-06-101-060.

Mr. Avantini stated you should have a letter dated October 30, 2008 for the Puckmasters Hockey training facility which is located on Century Court. They are locating in an existing building in an industrial complex, and what this is is a hockey training facility and we have worked for some time with the applicant on this. Our primary concern when we first looked at this was (and he thinks the big issue with these types of facilities is almost always) parking, and our concern is not that there isn't enough parking on that site with the adjacent buildings. Our concern was that the peak hours for the parking didn't match up with peak hours for the other uses in that specific area with the other buildings which is why we had two previous reviews where we brought that up and asked for more information. We got a wealth of information in it and still had some issues with it and some questions on it, but we felt with our recommendation we could lock it into the number of people that would be using the facility at any given point in time and that would be able to keep some level of control over it. Frankly if they do have a problem with parking it is going to be up to the owners of the business complex there to deal with the other tenants that aren't happy with the situation.

Mr. Avantini stated one of the other issues that came up on this is the distance from. There is a special land use requirement having to do with the distance from a major thoroughfare, from a road. They do exceed that distance. As he recalls in here it has to be closer than 800 feet, so even if you were to approve this special use it would have to be conditioned upon them obtaining a variance from that particular requirement. The way we set the ordinance up we went back and forth on special use. In order for you to be able to waive any of the requirements for the special use (the specific standards in the ordinance) the ordinance has to specifically give you the ability to grant variances from those standards. It is kind of different than a regular variance because in a regular variance you have to prove practical difficulty like you can't reasonably use the property and so forth. When you are looking at a variance with specific standards you have to look at the physical components of the building, the physical components of the site and what you are looking to accomplish. The reason we wrote that distance requirement in there is we didn't want huge traffic generators locating at the back of industrial parks and generating during hours when tractor trailers would be going in and out of the complex. We didn't want to have the passenger vehicles creating a difficult time for them to get in and out, so that is why we wrote that standard in there.

Mr. Avantini stated one of the things when we looked at this site is we looked at their peak hours which are generally in the evening hours when folks are out of work and so forth. This would have to get

approved by the ZBA and that would be something that we would comment on to them and any comments that you would have if you were to approve this conditionally your comments would also be passed onto the ZBA but that was our primary concern when we wrote that and at least the way the application has been filed we don't see that being a problem, of course they have indicated a maximum of capacity of 20 to 25 and so we want to make sure that we do have a limit on that or a cap on that so if they needed to do more than that then they would have to come back to you to get an amended special land use permit.

Mr. Avantini commented there was a lot he was throwing at the commissioners. It is a fairly lengthy letter and what he would like to do is break right to the special land use review and recommendation for approval. The conditions we would place on this are:

1. The use of the building shall be for a hockey training facility only.
2. The applicant shall limit activities and number of participants in the building to that presented in the application and as determined by the Planning Commission. The maximum capacity anticipated is between 20 and 25 participants at one time.
3. The applicant shall further limit the number of participants during business hours (9am to 5pm) so as to not cause parking and circulation conflicts with the adjacent buildings and truck traffic in the development.
4. The applicant shall make assurances that parking and standing do not encroach upon the adjacent users of the development. This may be accomplished by the posting of signs or other means.
5. The Fire Department must approve the circulation route associated with the proposed use.
6. A variance to Section 18.09.040.J.2 must be granted by the ZBA since the proposed use is not located within 800 feet of a major thoroughfare.
7. Parking or standing on Century Court during normal business hours shall be prohibited.
8. A revised site plan must be submitted within 30 days noting the conditions of this approval and including all proposed site modifications such as the new sidewalk.

Mr. Avantini stated there was one thing he would like to add too just as a side note. As we looked at the ordinance with that 800 foot requirement and thought about the special land use specific standards, one of the things we might want to think about. We are already looking at, as we mentioned after we adopt an ordinance and start working with it, there are fine-tuning amendments we come forward with usually within six months or a year. One of the things we might want to do is, instead of calling them variances from the special land use standards in the ordinance, he thinks we should call them waivers much like we do with the planned unit development and maybe clarify that the standards are different from traditional variance standards because he doesn't want them to be confused and doesn't want it to look like we are setting a precedent when granting a variance when in fact what we are granting (potentially the ZBA would be granting) is a totally different animal and something that was never intended to be a true variance. So we may want to fine-tune our wording on that just to make sure that is clear so we don't have problems with other variance requests in the future.

He then offered to answer any other questions.

Chairman Day stated on item number two you talk about maximum capacity limited to 20 to 25 participants, but then in item three you just suggest further limitation to the number of participants without giving any guidance or any specificity as to how much more they should be limited in order to levitate any potential parking or conflict with adjacent businesses. Personally he thinks we are not doing ourselves or the applicant any favors by not being specific in terms of what kind of limitation we think is appropriate.

Mr. Avantini agreed and said that is one reason he is hoping someone from Puckmasters is here tonight. That has been one of our big challenges with this. Not that we have had a real big problem with what

they are proposing, but it has been getting the specific information (not so much from the landlord or the developer of the property). We have been getting a lot of information from Puckmasters, but it has been real general information so he is glad someone is here because he thinks that is something we need more feedback on from them in terms of what they anticipate because we didn't have enough really to lock into that to be honest.

Andrew Moiseev, 818 West Eleven Mile Road, Royal Oak, MI stated he is the architect for the project; and **Scott Savoie**, 50950 Century Court, Wixom, MI, 48393 stated he is from Puckmasters.

Mr. Moiseev stated we prepared a quick site plan and showed the commission where we are located. As you heard we are asking for a special land use request for a commercial recreation facility which is for personal and small group hockey training. In the documents you can see it is a relatively low intensity use. The use of the site, most of the classes will be in the evening and weekends. The facility is a membership facility without drop-in so people come and use the facility on an appointment basis. The experience of other Puckmasters facilities throughout North America tells us that parking requirements are for 20 to 25 cars which is easily available on the site during business hours with the other facilities that we interviewed to discuss how many people they have employed.

Chairman Day asked if when he says they will be fine with the number of parking spaces he is saying he doesn't think there is any need to limit the number of participants between the hours of 9 am to 5 pm.

Mr. Moiseev stated we don't think so; and he thinks the business' model is such that we are not going to have masses of people, children and adults coming in. It is for personal and small group instruction.

When Mr. Lupinacci asked what his hours of operation are going to be Mr. Savoie stated Monday we are closed. Tuesday through Thursday we are typically open from 2 pm to 9 pm. Friday we are planning on opening from like 10 am to 9 pm, Saturday 9 am to 9 pm, and Sundays 1 pm to 9 pm; but we can certainly change or modify those hours as needed. A typical Puckmasters facility really doesn't open up for training until 4 pm or 5 pm but they have personnel in the building preparing for the sessions and hockey training.

Chairman Day asked if this is like a franchise, and Mr. Moiseev answered yes it is out of British Columbia.

Chairman Day asked how many Puckmaster facilities there are, and Mr. Moiseev stated this will make about 23 of them.

Chairman Day asked if this is the only one in the metro Detroit area, and Mr. Moiseev replied yes it is the first one. There is one in Cleveland. There are two in Chicago, and a new one is coming in Kalamazoo. It is a unique service. There is really nothing like this in the metro area. There are a couple competitors, but they are kind of on a smaller scale and really don't offer the full service we do. We feel it is going to be a great thing for the City.

Mr. Lupinacci noted that on the issue of the hours of operation it was mentioned they would be closing at 9 pm, but yet on their special use application they indicated it would be open until midnight.

Mr. Moiseev told him no, we would not be open until midnight. Our current planning hours are to close at 9 pm because really we are training kids.

Mr. Lupinacci said he understands. He just wanted to ask about that because it did seem unusual that they would be open until midnight.

Mr. Moiseev stated we are not planning to do that.

Chairman Day said to Mr. Avantini that he takes it that the parking situation is still unresolved as far he is concerned.

Mr. Avantini indicated he thinks given the hours they are proposing, he is relatively familiar with different of recreation facilities like this athletic facility; and generally when you think about it on the surface most people are working during the day, and weekends are not where you have the conflict with the tractor trailers. It is generally during the business hours. So based on the explanation that has been given and the hours they proposed he would say that makes sense. It is reasonable. He doesn't think they are going to have a problem with the traffic, but he thinks if we do put the limitation in terms of the number (the 25 as the top number) he thinks that would give us enough to keep that under control. He really doesn't think that all of sudden they are going to have tons of people going there during the day. It just doesn't make sense, and he has never seen a facility where that has happened during the weekday.

Chairman Day said he takes it from that that he would be comfortable with eliminating number three as a condition, and Mr. Avantini replied yes.

Mr. Avantini asked the applicant if he has a problem with the limit of 20 to 25 participants at a time.

Mr. Moiseev asked if we can clarify when that is, during 9 am to 5 pm. He thinks that was Mr. Avantini's intent.

Chairman Day said the intent was 20 to 25 at anytime.

Mr. Avantini stated yes. If you have 26 or 27 people no one is going to complain, but if all of a sudden we find out you have a tournament going there. He knows that is not the intent, but if you had a tournament going and you had 100 vehicles there at any given time. If there is a special event you can always come to the City and work that out, but he thinks the goal here is just to not have that be a regular thing. So if you had a limit of 25 participants he thinks that would do the trick. That would solve the concerns we have about too many vehicles going in there, and frankly he thinks the ZBA would want to have that type of control on it too if they were to grant the waiver for the 800 foot requirement.

Mr. Moiseev asked if he is talking about all day long as opposed to just during normal business hours; and Mr. Avantini replied yes, we are talking about at any point in time.

Chairman Day asked if that is a problem; and Mr. Moiseev said no, he didn't think so. Their intention is personalized training one on one.

Mr. Crowley commented that kind of just looking around the building itself and counting basically what he would consider the primary spots for the building it would be about 20 parking spots anyway.

Mr. Moiseev advised there are actually about 35 or 36 parking spots there.

Mr. Crowley remarked that you start pushing 25 to 30 people with his experience with his two boys going to the training facility and if most people are like him probably a lot of them are going to dump and run and then come back and pick them up in a couple hours. To him this is an ideal use, and he is excited to see another use like this. For some reason it appears to be one of the areas that is actually kind of immune to this economy downturn. They are still getting the money out of us parents somehow.

Chairman Day asked if there were any other questions for the applicant. He then asked if there was anyone from the audience that would like to address this case. There being no comments from the audience, the public hearing for Special Use #08-009 was closed at 8:35 pm.

MOTION and second by Mr. Gottschall and Mr. Lupinacci to approve Special Use #08-009, Puckmasters, contingent upon compliance with the summary items one through eight, excluding item there, as provided by LSL's October 30, 2008 review letter with the necessity for a variance being granted to Section 18.09.040.J.2 by the Zoning Board of appeals and that the hours of operation will be from 9 am to 9 pm as opposed to 9 am to 12 am as listed on the application.

VOTE:

MOTION CARRIED

PUBLIC HEARING FOR SPECIAL USE #08-010: TRANSFLO WIXOM TERMINAL, SCOTT LADD, 30350 WIXOM ROAD, WIXOM, MI 48393: The applicant is seeking special use approval for outside storage in order to conduct bulk trans-loading of commodities from truck to railcar. The Wixom Municipal Code, Section 18.09.020 requires approval from the Planning Commission for this request. The property is located at 30350 Wixom Road and zoned M-1, Light Industrial. The tax parcel number is 22-05-151-014.

Mr. Avantini stated you should have a letter dated October 29, 2008 and the formal request is outside storage in order to conduct bulk trans-loading of commodities from truck to railcar. It is a molten sulfur material that is being transferred, and obviously the applicants are here to talk more about that particular material which he knows very little about. He said what he would like to do is go through some of the concerns we had; and it is important to keep in mind too that when we do a review like this we base it on the information that is presented, and there are certain questions that are raised that we don't always have any information for. It is up to the applicants to be able to show or to prove that the concerns have been taken care of.

Mr. Avantini stated the first concern we had is that the proposed operation could negatively impact existing residential coming from the northeast and the recreational facility which is the Total Sports facility to the north. It is only 400 feet from the Total Sports complex and one third of a mile from the Hillside Apartment complex to the northeast. Possible safety issues and nuisance impacts including odor and air emissions should be more closely analyzed by qualified professionals. We really didn't feel like in terms of the actual activity, the material and so forth we didn't feel comfortable as planners that we knew enough about it or even had the ability to begin to independently evaluate what they are presenting; and he thinks that was kind of the key issue that you as a planning commission should consider. He said if there is a thought that maybe it is possible this is an appropriate use you might want to have someone (an independent consultant with some expertise in this particular area) give you a review. Not that they aren't telling you the truth, but just as you do on other projects you have an independent planning consultant and engineer give you feedback. So that may be a possibility here.

Mr. Avantini stated as it is proposed, 150 rail cars a year is anticipated. This works out to be about three rail cars a week. We did find out, however, the response from the applicant is confusing since under A2 it is noted that this amount is based on business demands and some seasonality under the business. Under A8 it states that 150 cars per year on a steady rate with no seasonal variations is expected. So we want to make sure we have a good handle on what the actual demand is going to be and the activity, and then in fact it doesn't change from that.

Mr. Avantini stated the next issue is that the proposed trans-loading of molten sulfur, which is a hazardous material, may not be an operation intended for M-1 light industrial district. He thinks it is important to note that although this is a railroad line it still is M-1 and zoned M-1, and we are concerned

that this use in the proximity to the residential and recreational uses may have negative impact on those uses. So that is a concern we have.

Mr. Avantini stated the next point is a due and due. Once again we mention that due to the nature of the use we have indicated in the letter that you may want to have an outside expert look at this and give you some feedback. Now we do also need to have feedback and comment from the Fire Department and the Department of Public Works regarding emergency response measures related to this use including water, proximity to high tension distribution lines and other combustible sources and also the truck access to the site. Those are things they may want to look at. Once again in one of the standards here it not involve uses, activities, processes, materials and so forth that will be detrimental to natural environment, public, health, safety and welfare; and we do have concerns that this is a hazardous material and there is the potential. Although it may not be a great potential, there is a potential for an accident or for there to be a problem.

Mr. Avantini stated going to the specific standards, the first one is that the site shall be located in the M-2 district or on an M-1 site that abuts the M-2 districts but does not adjoin a non industrial district. We don't feel this condition has been met because it is located in an M-1 district that abuts M-1 and VCA zoned property. So once again due to the proximity of the surrounding uses there are safety and nuisance concerns with the proposed operation.

Mr. Avantini stated the next one is that the site shall be located at a minimum of 800 feet from any residential district and 300 feet from any other non industrial district. We have indicated that while the proposed operation may meet these dimensional requirements the site itself does not because remember obviously the site extends far beyond the actual location of this proposed facility. The next one is the operation shall be subject to appropriate measures to control the type of processes to prevent noxious results or nuisances in accordance with Section 18.12.130. They did provide a material safety data sheet, and the information that has been provided and other documentation they have given verifying these conditions should be reviewed by someone who has more expertise than we have in this particular issue.

Mr. Avantini stated based on the analysis we are recommending that the special land use be denied for the following reasons:

1. The specific special land use conditions of Section 18.09.040.A cannot be met.
 - a. The site is not located in the M-2 District or in an M-1 District that abuts an M-2 District.
 - b. The site adjoins the VCA District, which is a non-industrial district.
 - c. The site is located closer than 800 feet from a residential district (RM-1 District to the northeast).
 - d. The site is located closer than 300 feet from a non-industrial district (VCA District to the north).
 - e. The proposed operation should be reviewed by a qualified professional to determine if the requirements of Section 18.12.130 have been met.
2. The proposed use is not compatible with the goals, objectives and policies of the City of Wixom Master Plan. This type of use involving hazardous materials is intended for a Heavy Industrial District where operations could have a significant impact on surrounding properties.
3. The proposed use does not promote the intent of the M-1 Light Industrial District since the use of hazardous materials could be detrimental to surrounding districts including the VCA District to the north and the RM-1 Multiple Family District to the northeast.
4. The proposed operation is not compatible with the existing surrounding light industrial uses, the recreation facility (Total Sports) to the north or the residential development (Hillside Apartments) to the northeast.

Mr. Avantini stated with that he would be happy to answer questions related to their letter. If you have questions about the operation or materials obviously he doesn't think he can help with that.

Just as a matter of clarification for his own understanding, Mr. Lupinacci stated the material in question has been defined as DOT Class 9 hazardous material which is described as being hazardous because of its elevated temperature. He asked if that was Mr. Avantini's understanding as well.

Mr. Avantini replied yes that is his understanding, but once again he is not the expert.

Mr. Lupinacci said he appreciates that. His reason for posing that question is that in doing a review of material safety data sheet it sounds as if there are substantially more hazards to be considered beyond that of the elevated temperature, so he is assuming those are questions to pose to the applicant.

Mr. Avantini told him yes definitely.

Mr. Lipchik added that you will note in the Fire Department review they said a conditional approval provided information were provided to them. He spoke with the Fire Chief today, and that information has not been received.

Jane Barnes, 30350 Wixom Road, Wixom, MI 48393, stated she is the director of health, safety and environmental for Transflo. She would like to address a couple of the issues and really just give you an overview of who we are as Transflo CSX, what we do, give you a better understanding of the chemical makeup of the commodity, what we have done in business over the last 30 years and over 20 years specifically at this location and specifically on how we transfer the material or propose to transfer it so you can have a clear understanding and hopefully address some of the issues Mr. Avantini raised today.

She indicated Transflo is owned by CSX Corp. and a sister company to the railroad. One of our core business principles is "right results right way" and being fact-based. Our core view is we need to have a place for employees that can come to work safely and return home in the same condition they are. That is our primary focus. The secondary is the community we all work in and do business in, and then lastly would be in the environmental. So she is tasked with that from a company and corporate standpoint. It is very important for us. We are the industry leader in bulk trans-loading. We started over 30 years ago and have really invented so many of the transfer processes and specialized equipment that allows us to offer this service to customers that are not the big customers that can afford a rail-based receiving facility. So we allow them to ship and benefit and stay in business by being able to receive product and transferring it to get it to their final destination using an environmentally friendly process (the rail) that is cost attractive to be able to be competitive in this market nowadays.

We have been at this particular location for over 20 years doing the same process, trans-loading bulk chemicals from one mode of transportation to the other. That is what we do, and that is all we do. We have a lot of history, and in those 20-plus years we have never had an incident of a reportable release to the environment; and the Fire Department comes out every year and inspects us of training for our employees, not just from chemical hazardous materials but what you do in the event of a storm or an electrical fire within in the building. We are held to standards by DOT, the American Railroad Association, Federal Railroad Administration, EPA, the Michigan DEQ and any other regulatory agencies that can come our way. Our goal is not to be regulated because we have to but to be up ahead of what we need to do.

So that is actually how we got here. We had this opportunity come to us for the molten sulfur and so she was speaking with the Fire inspector. She called him and said we have this opportunity. We wanted to let you know we are looking at doing this. So we came up for a meeting, and they suggested that we

needed to go through the special use permit because it was classified as a DOT hazardous material. It is a solid material that at ambient temperature it is a solid. It is used in pharmaceutical development for sulfur drugs, fertilizers, rubber production, sulfuric acid. So it is used in a wide variety of uses for the final thing, but in order for them to cost effectively and easily move the product it is much easier to contain it and move it in the liquid form. So they melt it to 150 degrees and that is why they are shipping it hot, and that is why it has to be placarded on the trucks or on the railcars going out so that there is a warning that it is hot to touch or hot if it were to release. The flashpoint on the material is around 450 degrees meaning that is the only time that if you were to have an ignition source that you could light the materials. It boils at 850 degrees so we are talking about a material that is not combustible.

Ms. Barnes knows it was mentioned about the high power lines, combustion and things like that. Our particular portion of our entire 15 acres is about 1,600 feet she believes from the residential area, and we are about 400 feet from the sports complex. So one of the things we do when there is an opportunity and these type of opportunities come to us is we go through a very comprehensive evaluation, commodity by commodity, no matter where of our 60-plus facilities we have. We handle a wide variety of commodities from food grade, flours, corn sweeteners and things like that to hazardous materials, hazardous waste, corrosives, combustibles gases and things like that. So we have that expertise involved.

She stated what we want to do is to do it primarily to protect our employees so we talk about air emissions, obnoxious odors. What we have done is designed a piece of equipment where we have a closed loop where you go from the truck to the railcar. Because this particular opportunity it is coming in in trucks hot, they then pump three truck loads into the railcar and then it will be released so we will have connections from a liquid line going into the top of the railcar and then we have the vapor line that goes through a high efficiency carbon scrubber to capture any odors or air emissions and then that is filtered through, sanitized and goes out the stack. So it is a closed loop. We also use double valves on all of our connections, and then that way you are not relying really on just one piece of equipment. In case there was a failure you have double valves you can shut off as well as the pump valve. So we really look at these opportunities from how we can protect the employees, the community and the environment and then the product quality as well.

Ms. Barnes stated our customer's product is very important for them. They can't have either cross contamination or sometimes they can't have air exposure, so we engineer out as much of that as possible. Where we are proposing to locate is where we currently transfer and have for over 20 years without any kind of release or concern to the environment. So she believes we can answer those questions and guesses part of it when we were looking or she was looking at the review was that we shouldn't be allowed to operate at this location because it is considered a heavy industrial when in reality we will still be trans-loading from railcars to trucks and vice versa. None of that will change. It is just the particular commodity now has to be heated and so because it has to be heated then we have to have it placarded and that is a DOT and EPA requirement. She said she believes we do meet the standards in the requirements. We are well within the distance described even throughout the entire property, but as far as noise we are much less noisy and only operate 6 am to 6 pm and not like the railroad that comes in and switches you at night or those kinds of operations. She thinks we are about 800 feet from the high power lines, and again it is not a combustible or flammable material so that should not be of any concern.

Ms. Barnes stated we do have the Fire Department which gave us the conditional approval with a requirement to have our fire hydrant tested, and they gave us a company that we needed to go through. We contacted them, and they referred us to a third party because ours is on a well and not City water so they will be there to monitor it and we are getting that set up now. The Fire Department has reviewed this and given their conditional approval on operating. They are comfortable with the commodity we are handling and our operations.

She offered to answer any questions and mentioned that we did hire (as a review of our operations to make sure we weren't missing anything or to answer any of your questions) a fire protection and chemical safety expert who was here with her tonight if you have any questions for him.

Chairman Day stated you said you have been doing trans-loading at this site for 20 years without any release of any material. He asked if there is any place that your company has experience with the trans-loading of molten sulfur.

Ms. Barnes stated yes our contract operator (Salvage Services) handles and operates a molten sulfur facility in Lake City, Florida and so they have the expertise in house. They do it on a bulk scale and have storage, and that is something too that she didn't mention. We are not storing any material on site, and we don't have storage tanks on site.

Chairman Day stated Mr. Avantini brought up the fact that there seemed to be some discrepancy between whether or not there were seasonal differences.

Ms. Barnes stated our business comes when someone has a product they need to ship and receive so sometimes the weather is depending on the production. This is coming from petroleum processing (a refinery), so it depends somewhat on their process. Some products, for example, aviation fuel, we do that for some of the small airports so we know that that's going to be seasonal and so that is a very seasonal product. Roundup is a pesticide they put on the fields so only certain times of the year. This product we are anticipating and we were told the contract is for 150 cars a year, but if business picks up and they can sell more then there could be more. So we would be willing if that is a concern that it is too many or you don't feel comfortable initially giving us more than that then with the understanding that we could come back to either the Fire Department or the appropriate department and say this is what they are seeing on the business front. Because we are not a production facility and don't manufacture we don't have those kinds of issues where you have fixed assets that stay with that one commodity for 20 years or whatever, and that is why we see business come and go depending on what is going on. When the plants close then all of a sudden business shifts. You have new opportunities that may be coming in or filling up with something else where we can utilize our business and really provide a service to the community and those that have manufacturing facilities or enable them to get it to so we can stay in business.

Chairman Day said he understands this molten sulfur will be coming into Wixom by way of tanker trucks. So if it is 150 railcars per year we are talking 450 tanker trucks per year, and Ms. Barnes replied yes.

Chairman Day asked where it is coming from, and Ms. Barnes answered Canada and said then they are going to consolidate it to be shipped out for various uses.

Mr. Lupinacci said thank you very much for your presentation and added that first he would like to just ask for clarification on two points and then he had a couple questions as well. He believed that she mentioned during her comments that the molten sulfur would be trans-loaded at a temperature of 150 degrees.

Ms. Barnes indicated if she said that she was sorry; it is 250 degrees.

Mr. Lupinacci commented 250 degrees is what he saw in the write up. The other point of clarification is she had mentioned a flashpoint of approximately 400 degrees, but the material safety sheet defined the flashpoint as undefined over 200 degrees.

Ms. Barnes stated that is for the DOT. She believed if you look a little closer on that it is an exact physical characteristic in a different section on page four on the material safety data sheet. They do that

because the DOT classification for combustible materials is anything from 140 to 200 degrees, and so she thinks that is why they probably did it that way.

Mr. Lupinacci said okay, obviously there is a big difference between 200 and 400 relative to operating at something that is already at 250 degrees. Two questions following up from that. In that same material safety data sheet it does raise the concern or the issue of hydrogen sulfide gas possibly being present in confined vapor spaces. He was wondering if that is something that could form within a confined space of a tanker car.

Ms. Barnes told him yes that is something that can happen. So that is why the concentrations are low but it potentially is there. So that is why we chose to do the closed loop and scrubber system in addition to the odor. Typically at other competitors that do this kind of trans-loading they just splash load, and what that means is they come in with a truck and don't do any of the bells and whistles we are talking about here. They put a hose up into a big dome opening (not the little inlet valve) and they just pump into it, releasing into the atmosphere. It is not a confined space. So the concentrations you are seeing in the MSDS is for those locations where people are right overhead and could get an impact when they open up the railcar or it is accumulated in that head space, but we are out in the open and so we chose though not to open just the entire dome lid. We have the vapor line and liquid line, and that is why we do the closed loop system. She believed they did supply a copy of the drawing of the unit just to give you an idea of what we were looking at.

Mr. Lupinacci stated you did, and nonetheless within some of the write ups that we saw we saw references to the potential fugitive vapors escaping.

Ms. Barnes stated that would be during the connections points where you may have a little bit of a release when double valve and disconnect, like you would your propane tank on your gas grill but not in any concentrations. One thing that we do for our employees (again for our assurances as well) is to have some personal air monitoring done, and we would be willing to do that and share our results with you.

Mr. Lupinacci stated his only concern he just wanted to ask about was, obviously the preeminent concerns are the safety issues; but when you get past the safety issue there are the aesthetic issues, and within one of the write-ups it refers to sulfur's distinctive pungent odor. Quite obviously that distinctive pungent odor could be something that might be objectionable to neighboring properties, and conceivably it could have an impact on the quality of life depending on the extent to which that is present. How could you address that concern?

Ms. Barnes said two ways. One is when it is heated. That is when you are going to get the pungent odor if it were just open to the atmosphere. That is why we are doing the high efficiency carbon filtration system connected through it so that you are not going to have that just being released into the atmosphere because part of ours is we are here for the long run, the long duration; and we have been in business and are good neighbors and want to continue to be good neighbors. We don't want to live next to a facility that releases obnoxious odors, and we wouldn't expect anyone else to do that. We are costly in our business. We are not the bottom of the road. People pay for our additional safety features and our quality that we offer, but to do this kind of operation what we believe is safe and is not offensive to the community as well as our employees because ours are right there doing the transfer. They are atop of the railcar. You saw the rack that has the walkway that lowers down so they can walk and do the connections right there on the railcar and the same with the trucks.

Mr. Lupinacci asked if it is her expectation that their employees will be wearing some sort of breathing apparatus during that process.

Ms. Barnes stated no, we don't believe the concentration. But one of the reasons, to answer, to get back to your point is to ensure that all of our estimations and information we have seen in the calculations from the air monitoring is to have them periodically be monitored to make sure they are not getting over the exposure limits.

Chairman Day asked if there were any other questions for the applicant. He then asked if there was anyone from the audience that would like to address this case.

Chad McCormick, 30475 Wixom Road, Wixom, MI 48393, stated he was here this evening on behalf of Mr. William Clark and the Quadrants Development Firm. He just wanted to voice their opposition with this sort of transfer. With sulfur we all know that it does smell, as was mentioned, as a pungent smell of rotten eggs. He wanted to let the commission know that Quadrants has been around for quite some time in Wixom and has taken great pride in developing the community, bringing businesses in. They would hate to see this sort of transfer come in here, this sort of chemical, and this sort of smell. He is not just buying that everything will be filtered, that there will be no smell emitted to the surrounding communities.

Chairman Day asked if there was anyone else from the audience that would like to address this case.

Fred Madsen Jr. stated he was representing Hillside Apartments, Stone Ridge Apartments and the Village Apartments and said we too would like to voice our opposition to the transfer of this material. The Planning Commission knows that there are quite a few apartments in the area just from Hillside east currently housing 2,425 apartment homes that currently house in excess of 4,700 people. If there were any spills or any odors that would affect the residents and their well-being and their quality of life that would cause us great financial costs if this made it where the people wanted to move. Then once that got around no one would want to reoccupy the apartments. We have a hard time doing business. They are just rentals, and we can't do anything to our business unless our places are full. Just like Transflo has been around for 20-plus years, we have been around for 35 years in the Wixom area and plan on staying for quite a long time and don't see us moving. He has done his own research with regards to this situation here, and he did talk to Fire Chief Roberts this morning who did share with him that he is not comfortable with this process and did share with him that the information that was requested has not been offered and has not been received by the Fire Department with regards to the water supply and testing. There is concern with the hazardous spills and what-have-you that he has there. He said you gentlemen went through with LSL and kind of covered everything and what had been written up here that we have our concerns with. One other thing with regards to the flashpoint and as a clarification. He did pull his own MSDS off the internet, and our flashpoints are a little but lower than what Transflo is saying. Ours is at 335 degrees. Again, the potential for spills, for hazards and things like that would affect our properties and our residents, which is our major concern.

Chairman Day asked if there was anyone else from the audience that would like to address this case.

Eva Sevey, 49361 Shafer Avenue, Wixom, MI 48393, stated she was here on behalf of Icom and just wanted to state her opposition in regards to the chemical storage. She said we are located actually west of Total Soccer so the location site will actually impact us. In talking with co-workers and the president of the company we feel that the storage of the materials would really, like you had mentioned the pungent smell, we are really concerned about that as well. We have been located here for 15 years and just the last ten years the City of Wixom has done such a great job in developing the community. She just doesn't feel this is the right thing for the community.

Chairman Day asked if there was anyone else from the audience that would like to address this case. There being no further comments from the audience, the public hearing for Special Use #08-010 was closed at 9:14 pm.

Chairman Day stated as he understands it there wouldn't be any actual storage, and Ms. Barnes replied no storage.

Chairman Day questioned if it was correct that this is before us because it has to be placarded as hazardous material, and Mr. Lipchik replied yes.

Chairman Day inquired if it were a non-toxic or non-hazardous material that had similar odor issues it wouldn't even come before us.

Mr. Lipchik stated that is true, if there were no odor issues.

Chairman Day stated there could be odor issues but that is not why it comes before us. It comes before us because of the toxicity and those hazardous material issues.

Mr. Lipchik indicated that is correct but said he might point out that at certain points something that wouldn't be deemed hazardous could still be hazardous. Powder in an enclosed area can be hazardous and can be explosive, so he just wanted to clarify that that wouldn't be the only reason.

Chairman Day said right, but we would never get to look at it.

Mr. Lipchik stated he thinks in the past you have looked at another operation down on the railroad that was asking for a special use approval that was denied on truck traffic action.

Chairman Day asked if that was the gravel operation, and Mr. Lipchik replied yes.

Chairman Day recalled that but said they are doing trans-loading there now and have been doing trans-loading there, and we have never had a trans-load operation come before us that he recalls; and Mr. Lipchik stated that is true.

Chairman Day remarked that he looks at the material safety data sheet and is certainly familiar with the pungent odor of sulfur, but one of the things the material safety data sheet points out is that the odor doesn't last long enough to really give you fair warning of the possible toxic effects. So he doesn't know that odor is what we really need to be concerned with here, especially given the closed loop system they are talking about using.

Mr. Lupinacci commented that he thought maybe what he was referencing is that it refers to fatigue that sets in relative to the smell, so it is not that the odor is not long lasting but rather that someone can perceive it.

Chairman Day said right, and he understands you can only perceive any odor for about 20 minutes.

Ms. Barnes thought it might be helpful and said we brought up a sample of the sulfur when it is solidified, and she would be happy to show that. It is only pungent when it is hot. If it is released it is going to solidify as soon as it hits ambient air, and so it makes clean up very easy; and we talked about before that we have double valving on both ends of the hoses so you are not going to have an uncontrolled release of a large volume.

Chairman Day stated so it is solid at ambient temperatures, and Ms. Barnes replied yes and added that is why you have to heat it to 250 degrees to get it to flow.

Just for his own understanding, Mr. Lupinacci said we were talking just now about the fact that the reason this is coming to us for review is because of its hazardous placard and if it was not so placarded or characterized we would not see it. In the event that a non-hazardous material was to be trans-loaded at the site but yet it was determined to be noxious or objectionable what would be the process for action at that point?

Mr. Avantini indicated we dealt with this as a use, and hazardous materials are classified as a special land use; and that is why this is before you. If it were not hazardous then the only thing he could think of is if there is anything under the performance standards. He would have to look at that, because he knows we deal with things like noise. There are performance standards in the ordinance that are intended to protect us from the really over the top type activities that are truly a nuisance. He would have to see if odor is in there. He knows noise is one of them but is not sure if odor would be one or not.

Mr. Lipchik stated that he believed in the preamble of the M-1 it actually states separation of the M-1 districts and M-2 from other districts because of noxious fumes, vibration and noise.

Mr. Crowley mentioned that he had a question about the traffic here. Someone did the quick math of 150 times three being 450 a year. He asked how many trucks are coming into the facility currently on a yearly basis.

Ms. Barnes said she believes we are handling currently about 500 railcars a year times three, so that would be 1,500; and part of it is our business goes up and down so we are not going to have necessarily an additional 150 railcars or 450 trucks.

Mr. Crowley commented maybe a 25% to 30% increase at this site. He doesn't know if that is perceived by anyone at the City or anything as a large increase or not; something outside of what the site could handle.

Mr. Avantini stated it all depends on the access. That was one of the questions we had, but in general that number of trucks you are talking about nine trucks per week. On the surface it doesn't appear to be a huge number. If they all came at once it would be but not if it is spread out over a week. When you multiply down and get 450 it sounds like a big number, but when you spread it out over a week it is really not a big number. He added that with the whole access and the road surface there are other factors to consider with that also.

A gentleman from the audience asked if he could make a comment, and Chairman Day reopened the public hearing.

Phil Goodman, 30350 Wixom Road, Wixom, MI 48393, stated he is with Transflo also. He said the expressway interchange on I-96 is being rebuilt right now, and by the time this project is supposed to start it should probably be completed. He doesn't see any reason why an incremental increase in traffic should be that big of a concern.

Chairman Day stated he personally doesn't really have a problem with the increase in truck traffic because frankly unlike the gravel situation where we were talking about bringing in a whole new operation, this is an ongoing operation where we are just talking about one aspect of it; and we could easily have that increase for some other kind of trans-loading that was going on that would go unnoticed

by any of us. So that really is not an issue for him. It is the public safety and public nuisance issue that concerns him here.

Just to clarify, Mr. Crowley stated his concern wasn't about traffic on Wixom Road. Obviously it was more specific to the infrastructure of the site itself.

Chairman Day said but again apparently the site is already doing this operation.

Mr. Goodman stated actually this site handled a lot more business in the past. Our business is way down compared to what it was just several years ago. We need to look at trying to find ways to keep our folks employed. He has been with this company for over 20 years and is continually impressed with the extent they go through to make sure they are looking out for the best interest of the environment, the community and of the employees.

Chairman Day closed the public hearing again.

Mr. Avantini stated that he guesses another question he thinks would be good to have answered would why this location versus other locations they might have, especially given because it is an existing Transflo operation. Are there other locations where this was considered? He thinks it would be good for us to hear some of the thought process and why this site was selected.

Ms. Barnes stated for us it really depends on where the customer wants to go. Trucking is very expensive for the long haul, so they wanted to find the closest location where it made sense for them economically to be able to use rail. One, we had to have a facility available. This size of business would not justify developing a green site with all the amenities of scale, building, maintenance building to store our equipment (especially in the winters up here) and those kinds of things. So we had to find one that was close to the customer with the shipping point and that is the way all of our business is. It has to be within a reasonable radius. Otherwise it is just not economically feasible.

Chairman Day asked where in Canada this is coming from, and Ms. Barnes replied Sarnia, Canada.

Chairman Day then asked if this is the closest point to Sarnia that they operate, and Ms. Barnes said she believed so.

Mr. Lupinacci stated one of the concerns raised by LSL was that perhaps we are going forward with undue haste, and there hasn't been a study of some of the potential nuisance impacts and maybe safety impacts that could be done by a qualified professional. Obviously we are stretching their capability beyond their competence area. He asked if that has been something that has been considered as a means of strengthening their position that this is neither an unsafe nor a nuisance issue.

Ms. Barnes replied yes sir. That is why we have hired Mr. Greg Rhodes. He is a fire protection and chemical safety expert and has a long history of dealing with railcar incidents, fire incidents and chemical safety. He was the director of chemical safety for CSX years ago and so has a lot of experience. So we thought was very knowledgeable about rail as well as chemicals, and so he has reviewed it as well. Now we didn't submit a report because it was unclear from the write-up whether they were asking the Fire Department to comment who we thought had made a decision based on waiting for the fire hydrant test results. Again we had to contract; but we had to contract with whom they told us, and then they referred us to a third party. So we are in the process of doing that, but if you need a report from Mr. Rhodes or anyone else you would select we would be happy to consider doing that.

Mr. Lupinacci said he would personally find that to be an addition to the information we have presently.

Chairman Day stated his feeling with regard to that is (and no offense to Mr. Rhodes but being in a business where people hire experts all the time) he would much more like to hear what the City's expert has to say than the applicant's expert; but it doesn't appear that the City believes there is anyone on staff or under contract with the City to offer that and would mean going out and finding another expert at some cost. He supposes what we could do is ask our consultants to find the expert and ask the applicant to pay for the report. That is one way of looking at this. His concern is he understands the concerns expressed by members of public, but he also understands there is a tendency to react emotionally to the idea of an agent that has the distinctive smell of sulfur and to react emotionally to the fact that this has to be placarded as a hazardous material. He doesn't want to see us acting on an emotional basis in a way that keeps business out of our City, and that is his concern. He is just not sure that we really have a factual basis to deny this so much as an emotional basis, and he thinks perhaps the way to go might be to postpone this if the applicant would be willing to pay the City to hire an expert to look at this to see if there is any hazard. The other option would be perhaps to approve it for a period of time and to come back before us if we find there are any problems.

Mr. Henning stated one thing that we are dealing with (and we live in the community as well) is the perception of this gas, sulfur itself or the toxicity of it. It is not in the M-1 or M-2 district, so it is not part of the ordinance that we have approved for it. It is near the VCA and is near apartments. It is near a sports center and is next to a facility that is vacant right now, and he thinks we are looking for new business in the community for that facility. One thing they are going to look at and say is that there is an area right over there next to us that is handling hazard materials. While he can certainly appreciate Transflo and everything they do for this and the safety of it, accidents do happen all the time; and we have to safeguard ourselves against that and also the perception that everyone else (we as community members) are supporting to say is this something we want in our community?

Chairman Day asked if he heard him say it is not in the M-1 district, and Mr. Henning told him it says it right here.

Mr. Gottschall stated it is, but it doesn't abut an M-2 district.

Mr. Crowley said he does like some of the comments about getting the outside expert in because part of his fear may still be on an emotional based thing but as someone who has spent plenty of hours and his children have spent plenty of hours at Total Sports over there 400 feet away from this thing. Right now it sounds he is hearing the right things with the containment system. If it does spill it solidifies and it all sounds good; but again he would like to hear it from an outside source, kind of telling him what the hazards might be to try to make him feel a little bit better, especially if he has to go back and talk to friends and neighbors whose kids all play there too and justify why we made the decision we made.

Chairman Day told Ms. Barnes the sense he was getting in listening to the comments was that this was not likely to be approved as it currently stands, and he expects she was hearing the same thing he was. He asked if Transflo would be willing to underwrite the cost of having the City hire an outside expert to look at this operation and give us an opinion as to its safety and suitability.

Ms. Barnes stated yes but said she guesses she has to say that with qualifications. She can't give an open ended check to say just go and do, so there will have to be some kind of budget there; and if it is over a certain amount she has to go get the blessing of the fleet.

Chairman Day suggested in that case perhaps the thing to do would be to postpone this item until such time as that can be done. He asked Mr. Avantini if he sees that as a reasonable way to handle this and if between him and Mr. Lipchik they could find the appropriate expert to look at this.

Mr. Avantini said sure, we can do some research and maybe she has some names of other folks that have done independent research of their work; but yes there are folks we can go to in order to find out about that. He added yes he thinks this is a good way to go because if you take action on this either way your decision is going to be suspect or challenged or whatever because you don't have complete information. At least if you have that independent opinion you have complete information and at least then you have done your due diligence to make a well-educated well-formed decision.

Ms. Barnes asked from a time frame standpoint because the business is available and if we miss the window of opportunity it is not going to be available.

Chairman Day told her our City administration and planning consultants are very good about working with business interests or applicants. He can't imagine there would be any delay at all. He would hope we could have this back by our next meeting.

Mr. Lipchik remarked he was not sure we could work that fast.

Chairman Day stated he would think within a couple of months. He would hope we could do this.

Mr. Lipchik stated quite possibly within a couple to three months because by the time we have a scope of what we are looking for out to a third party and then the approval through them and then back to us and then the go-ahead to go.

Chairman Day said he understands his reluctance to offer any guarantees and understands Ms. Barnes' concern. He thinks we would move forward with all deliberate speed and not do anything that would delay this, but again the position they are in he thinks that is the way we're going to have to go.

Ms. Barnes told him we are fine with that. We want the community to feel comfortable because she believes it often is the fear factor and not fact-based, and yet everyone needs to be comfortable so we will be willing to do that. It is important for us because the contract is coming up. We need to start after the first of the year if we are going to do the business or we are out of that opportunity and out of that business, and we have all spent time and money. So as long as we can and we can supply information as rapidly as you may need us to also.

MOTION and second by Mr. Lupinacci and Mr. Gottschall to postpone action on Special Use #08-010, Transflo Wixom Terminal, special use approval for trans-loading of molten sulfur from truck to railcar pending receipt of input from an independent expert who will opine on the safety and suitability issues that we have raised this evening.

VOTE:

MOTION CARRIED

2009 REGULAR AND WORKSHOP MEETING SCHEDULES:

MOTION and second by Mr. Gottschall and Mr. Lupinacci to accept the 2009 Regular and Workshop Meeting Schedules as presented.

VOTE:

MOTION CARRIED

DISCUSSION:

Mr. Gottschall stated he thinks we need to open up the master plan to potentially look at a light recreational zone since all our light industrial areas are being occupied now with recreational activities.

Chairman Day said he thinks the mixing of uses in light industrial areas is terrific because they are making uses at different times of the day. He thinks it is great for the community and is glad to see it.

CALL TO THE PUBLIC:

There were no comments made by the public.

COMMISSION COMMENTS:

There were no comments made by the commissioners.

STAFF COMMENTS:

There were no comments made by staff.

ADJOURNMENT:

This meeting of the Wixom Planning Commission was adjourned on motion and second by Mr. Lupinacci and Mr. Gottschall at 9:40 pm.

Jennifer Garrett
Recording Secretary
November 12, 2008