Niles Charter Township Planning Commission

April 18, 2017

Regular Meeting

Chairman Smothermon called the meeting to order at 7:00 p.m. at the Township Hall, 320 Bell Road, Niles, Michigan

Pledge of Allegiance: The Pledge was recited.

Roll Call:

Present: Smothermon, Conover Strefling, McNelis, Spurlock, Cooper, Durm

Absent: None

Others Present: ZA Hartman and C. Swanstrom, Recorder

Approval of Agenda: Conover motioned to approve the April 18, 2017 Niles Charter Township Planning Commission meeting Agenda as written, Durm seconded the motion.

MOTION CARRIED

Approval of Minutes: Strefling motioned to approve the minutes of the Niles Charter Township Planning Commission meeting of March 21, 2017 with no corrections. McNelis seconded the motion. All voting in favor.

MOTION CARRIED

Approval of Minutes: Durm motioned to approve the minutes of the Niles Charter Township Planning Commission Special meeting of April 4, 2017 as written, Cooper seconded the motion. All voting in favor.

MOTION CARRIED

New Business: Public Hearing of Special Land Use Expansion at 310/320 Fulkerson Road, Niles, MI 49120, Kachur Tree Service. Mr. Robert Landgraf, Attorney, 19 S. 3rd Street, Niles, MI 49120 gave the background to change the zoning of the parcel that was presented last year to the Planning Commission. Mr. Kachur has been operating his business for approximately 20 years at the current site under a grandfather provision as a general business special use. Mr. Kachur cannot expand this use unless he receives special approval from this Planning Commission. Mr. Kachur would like to incorporate his additional lot at 310 Fulkerson that is now zoned General Business. Mr. Landgraf asked the Planning Commission to keep in mind that Mr. Kachur has operated his business for over 20 years and is not planning to change the type of business. Mr. Kachur's request includes combining the two properties into one parcel.

Zoning Administrator reported that no written correspondence received. Mr. Vosburgh and Mr. Clark, neighbors in the vicinity of the Kachur business, came into the office to review the application. They are both in attendance tonight. Staff report was provided to the Planning Commission regarding the application and highlighted details within the report. The ZA reminded the Planning Commission of the

key points to consider in determining this SLU -- the green belt buffer be maintained, correct setbacks for both sides of buffer and the current zoning of the property. Landscape buffer on the plans presented by Kachur shows earthen berm with correct setbacks; it is the ZA's opinion that the landscape buffer should be on both sides abutting residential districts – to the south and to the west, and not sure it that is shown on the submitted site plan. The green belt will need to be maintained - if trees die, they will be replaced. Hartman reported she spoke with the Berrien County Drain Commissioner and that office would like to review the plans regarding the drainage. Lighting standards were also discussed; ZA reported that no recent complaints have been received. The use of asphalt parking was not addressed for the property. Hours of operation were discussed and brought to the Planning Commission's attention. The proposed site plan does not include the traffic pattern. Any further information received this evening should be noted. In addition, ZA reported that it was brought to her attention that several Planning Commission members were contacted by persons regarding the application and reminded the Planning Commission that if they were contacted, they should divulge any information received so that any determination made is based on information all members have received.

Smothermon asked if anyone had been contacted. Strefling stated Mr. Vosburgh called him and he had a conversation over the phone. Vosburgh wanted him to come and look at it which he did but no conversation was made regarding the meeting. Smothermon asked if anyone else had been contacted and all the members reported they were contacted by Mr. Vosburgh to come and look at the property. No discussions took place with Vosburgh.

Public Hearing: Chairman Smothermon opened the meeting at 7:14 p.m. Ralph Vosburgh, Jr., 2415 S. 3rd Street, Niles, MI, owner of adjacent property spoke and feels the approval of the application is the appropriate direction for the Planning Commission to go, and expressed his concerns. He indicated that since the mulch and painting of mulch has been moved off-site, the noise in the neighborhood has improved. He believes the mulch and painting should not be permitted. He requested the Planning Commission consider the 60 decibels ordinance and to put it in the approval that 60 decibels be maintained. He requested that the required green belt be a total height of at least 10 feet. He also mentioned erosion, dust and hours of operation. He indicated that snow removal may require hours of operation be set.

Kachur response: Mike Kachur spoke regarding the berm on the property to the south is 10-15 ft high. There are no plans to put a berm on the south side of the property as the existing berm already exists. He confirmed hours of operation and no business being done after hours. There is no painting conducted on the property at current time. He discussed the noise levels regarding equipment. He indicated that they may need to plow snow at 2:00 a.m. but generally do not want to plow in the middle of the night. Regarding the parking, asphalt pockets from rain wash and current plans are to compact it and put new down on everything. The new area will be used for employee parking with a building being added for equipment storage and could eventually house other products. Hours would be 8:00 am – 2:00 pm in the summer months. Lights will be angled down to keep light down and lights will not be shined on the neighbors.

Smothermon asked if the berms are to be covered with anything. Kachur replied they could be covered with mulch. He asked if stumps that remain will be removed. Kachur responded that he will get rid of the stumps. Smothermon discussed the blocks with ZA Hartman as to if they are within setbacks she

responded "I believe that they are." Per Section 21.35(F) Open Air Business they probably should be moved to comply with Standard F of the Zoning Ordinance. The elevation could be prohibitive to move the blocks due to holding the earth back due to the property being at least 10 feet taller.

Smothermon closed the Public Hearing at 7:38 p.m.

Smothermon asked if the Planning Commission had questions. Durm asked Kachur about the retention pond and the green belt. Kachur will take care of the berm on south side where the trees are now. Kachur described the current drainage to Durm and stated he will make a small retention pond on the property at 310 to make sure water flows into the pond.

Mr. Cooper also asked about the berm. Kachur stated the plan is to remove the shrubs and trees currently on the 310 property around the existing home and install a green belt. The mobile home will be removed. Cooper inquired if a hard surface would be installed, graded and drained. Kachur stated he will make the lot the same as what he currently has. Cooper questioned the items for sale on property as it is not a retail location. Kachur responded customers will come to pick up mulch products. This is not to be a Walmart or TSC.

Spurlock inquired about the statement regarding adding some products for sale. Kachur stated pea gravel, washed sand are what people currently request. Spurlock asked if it would be trucked in. Kachur stated yes and explained the delivery process. Spurlock questioned the proposed lighting. Kachur explained it is for security purposes. Spurlock also asked about the height of the berm - will it be approximately 8-10 feet. Kachur said it will be at least 8 ft. if not higher.

Conover asked about pond retention into setbacks. He questioned if parking spaces are for employees or customers. Kachur explained the truck spaces and customer parking and employee parking. Conover asked Hartman if 41 spaces are adequate. Hartman stated it will be adequate. Conover stated that with snow removal most businesses have their snow removed before the business opens. Conover also inquired if Kachur had a problem with combining the parcels. Landgraf commented there would be no problem with combining parcels.

Strefling asked if there would be any changes to the current signage. Kachur responded there is no plan to change the current signage. Strefling also asked about the weekend hours of 8:00 a.m. - 2:00 p.m., and if additional bins on the property are to be combined. He questioned if the application is approved, will this make the entire property "legal non-conforming" property? Hartman replied it would make the property legal and conforming as long as the current standards are met.

McNelis questioned about weekend hours, confirming that they are 8 am to 2 pm with no Sunday hours. Kachur confirmed. Kachur also explained that any additional bins will hold mulch, compost and sand. Kachur explained how the noise and hours of operation would affect the property. Kachur explained his rationale for the bins and their location. McNelis also asked about the future pole barn. Kachur stated it will be for trucks to warm up in the winter and for storage.

Smothermon asked if all the hard material could be moved over to the farthest part of the property. Kachur agreed that would be possible.

Smothermon asked if there were any other questions.

Cooper inquired if the current bins/retaining wall will be strong enough to hold the materials. Smothermon asked how long it has been in place. Kachur answered the bins have been in use for 10 years and explained the current bin system. The existing wall is approximately 12 feet in height. Discussion was made about additional bin structures and whether they meet the buffer requirement on the south side. Smothermon explained the property layout of the bins with Cooper.

Smothermon asked if there were any other questions or comments. Strefling questioned the berm sides - the berm with the trees will be on west side and south side up to the bins. Kachur commented yes.

Smothermon asked Spurlock to read the standards for Sections 23.08, 21.03 and 21.35 to determine if standards are met. Smothermon stated that after each standard is read the Planning Commission will be able to address concerns.

Section 23.08 – Review Standards

The following standards shall be utilized by the Planning Commission in reviewing all site plans. These standards are intended to provide a frame of reference for the applicant in the preparation of site plans as well as for the reviewing authority in making judgment concerning them. These standards shall not be regarded as inflexible requirements, and are not intended to discourage creativity, invention, or innovation.

A. The uses proposed will not adversely affect the public health, safety, or welfare. Uses and structures located on the site shall take into account topography, size of the property, the uses on adjoining property and the relationship and size of buildings to the site.

PLANNING COMMISSION: No concerns

B. The site shall be developed so as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this Ordinance.

PLANNING COMMISSION: No concerns

C. Safe, convenient, uncongested, and well-defined vehicular and pedestrian circulation shall be provided for ingress and egress points, and within the site. Drives, streets and other circulation routes shall be designed to promote safe and efficient traffic operations within the site and at ingress and egress points.

PLANNING COMMISSION: No concerns

D. The arrangement of vehicular and pedestrian connections to existing or planned streets in the area shall provide a safe and efficient circulation system for traffic within Niles Charter Township.

PLANNING COMMISSION: No concerns

E. Removal or alteration of significant natural features shall be restricted to those areas which are reasonably necessary to develop the site in accordance with the requirements of this Ordinance. The Planning Commission may require that landscaping, buffers, and greenbelts be preserved or provided to ensure that proposed uses will be adequately buffered from one another, and from surrounding public and private property.

PLANNING COMMISSION: No concerns

F. Areas of natural drainage such as swales, wetlands, ponds, or swamps shall be protected and preserved, insofar as practical, in their natural state to provide areas for natural

habitat preserve drainage patterns, and to maintain the natural characteristics of the land.

PLANNING COMMISSION: No concerns

G. The site plan shall provide reasonable visual and sound privacy for all dwelling units located within the site, and adjacent thereto. Fences, walls, barriers, and landscaping shall be used, as appropriate, to accomplish these purposes.

PLANNING COMMISSION: No concerns

H. All buildings and groups of buildings shall be arranged so as to permit necessary emergency vehicle access. To this end the Zoning Administrator shall refer all site plans for review and comment by the Township Fire Department.

PLANNING COMMISSION: No concerns

I. All streets and driveways shall be developed in accordance with the Township Land Division Ordinance, the Berrien County Road Commission, or Michigan Department of Transportation specifications, as appropriate. Provided, however, that that the Planning Commission may impose more stringent requirements than those for the Road Commission or Department of Transportation with respect to driveway location and spacing. In addition, sidewalks may be required if determined to be necessary or appropriate for pedestrians and non-motorized vehicles.

PLANNING COMMISSION: No concerns

J. Appropriate measures shall be taken to ensure that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system. Provisions shall be made to accommodate storm water, prevent erosion and the formation of dust. The use of detention or retention ponds may be required. Surface water on all paved areas shall be collected at intervals so that it will not restrict vehicular or pedestrian traffic, or create puddles in paved areas. Catch basins may be required to contain oil filters or traps to prevent contaminants from being discharged to the natural drainage system. To this end the Zoning Administrator may refer all site plans for review and comment by the Township Engineer.

PLANNING COMMISSION: No concerns

K. Exterior lighting shall comply with Section 3.19 hereof and be arranged so that it is deflected away from adjacent properties, and does not interfere with the vision of motorists along adjacent streets. Lighting of buildings or structures shall be minimized to reduce light pollution and preserve the character of the Township.

PLANNING COMMISSION: No concerns

L. All loading and unloading areas, outside storage areas, and areas for the storage of trash which are visible from Residential Districts or public streets, shall be screened by a vertical screen consisting of structural or plant materials no less than six (6) feet in height.

PLANNING COMMISSION: No concerns

M. Entrances and exits shall be provided at appropriate locations so as to maximize the convenience and safety for persons entering or leaving the site. The number of entrances to and exits from the site shall be determined with reference to the number of dwelling units or other land uses within the site, the nature and location of the

surrounding streets, the effect of traffic in the area, nearby topography, and other factors.

PLANNING COMMISSION: No concerns

N. Site plans shall conform to all applicable requirements of County, State, Federal, and Township statutes and ordinances. Approval may be conditioned on the applicant receiving necessary County, State, Federal, and Township permits before site plan approval or an occupancy permit is granted.

PLANNING COMMISSION: No concerns

O. Appropriate fencing may be required by the Planning Commission around the boundaries of the development if deemed necessary to minimize or prevent trespassing or other adverse effects on adjacent lands.

PLANNING COMMISSION: No concerns

P. The general purposes and spirit of this Ordinance and the Master Plan of Niles Charter Township shall be maintained.

PLANNING COMMISSION: No concerns

SECTION 21.03 – General Review Standards

A. In addition to the standards established for specific Special Land Uses set forth in this Chapter 21, an application for a Special Land Use approval shall satisfy the following general review standards which are basic to all Special Land Uses. The Planning Commission shall reach findings that a proposed Special Land Use will meet all of the following general review standards:

1. The proposed use is listed as a Special Land Use for that district in which said use is proposed to be located.

PLANNING COMMISSION: No concerns

2. All special requirements for the proposed Special Land Use, if any, and all standards of the district, if any, in which the Special Land Use is to be located shall be fulfilled or met. 3. The Special Land Use must be designed, constructed, operated and maintained in a manner harmonious with the character of adjacent property and the surrounding area.

PLANNING COMMISSION: No concerns

3. The Special Land Use shall not inappropriately change the essential character of the surrounding area.

PLANNING COMMISSION: No concerns

4. The Special Land Use shall not interfere with the general enjoyment of adjacent property owners, inhabitants, and guests.

PLANNING COMMISSION: No concerns

5. The Special Land Use shall represent an improvement in, or to the use or character of the property under consideration, and the surrounding area in general, while also maintaining as closely as possible the natural environment of the site.

PLANNING COMMISSION; No concerns

6. The special land use shall represent an improvement in, or to the use or character of the property under consideration, and the surrounding area in general, while also maintaining as closely as possible the natural environment of the site.

PLANNING COMMISSION: No concerns

7. The Special Land Use shall not be hazardous to adjacent property, nor shall it involve uses, activities, materials or equipment which will be detrimental to the health, safety, or welfare of persons or property through the production of excessive traffic, noise, smoke, odor, fumes, glare or other conditions which will be significantly greater than current conditions in the vicinity.

PLANNING COMMISSION: No concerns

8. The Special Land Use shall be adequately served by essential public facilities and services, or, in the alternative, it must be demonstrated that the person responsible for the proposed Special Land Use will be able to continually provide adequately for the services and facilities deemed essential to the Special Land Use under consideration.

PLANNING COMMISSION: No concerns

9. The Special Land Use shall not place demands on public services and facilities in excess of available capacity.

PLANNING COMMISSION: No concerns

10. The Special Land Use shall be consistent with the intent and purpose of this Ordinance and with the objectives of the Niles Charter Township Master Plan.

PLANNING COMMISSION: No concerns

11. The proposed Special Land Use shall, at all times, be in compliance with all other Township, County, State, and Federal ordinances, laws, rules, and regulations.

PLANNING COMMISSION: No concerns

B. The Planning Commission shall reach findings that a proposed Special Land Use will meet all of the standards for site plan review set forth in Chapter 23.

PLANNING COMMISSION: No concerns

C. Conditions of Approval. The Planning Commission may stipulate additional conditions and safeguards deemed necessary to mitigate the impact of the proposed special land use on neighboring properties or the community or to achieve the objectives of this Ordinance or the Niles Charter Township Master Plan. Failure to comply with such conditions may result in the revocation of the Special Land Use approval. Any conditions imposed shall meet the following standards:

1. Conditions shall be necessary to meet the intent and purpose of the Zoning Ordinance.

PLANNING COMMISSION: No concerns

2. Conditions shall relate to the standards established in the Ordinance for the land use or activity under consideration.

PLANNING COMMISSION: No concerns

3. Conditions shall be necessary to insure compliance with Ordinance standards.

PLANNING COMMISSION: No concerns

4. Conditions shall be necessary to protect the general welfare and individual property rights.

PLANNING COMMISSION: No concerns

Section 21.35 – Open Air Business

In addition to the standards of Section 21.03, the Planning Commission shall find that a proposed open air business shall meet the following specific Special Land Use standards.

A. Minimum lot area shall be two (2) acres and minimum lot width of two hundred (200) feet.

PLANNING COMMISSION: No concerns

B. The Planning Commission may require a six (6) foot fence or wall to be constructed along the rear and sides of the lot to keep trash, paper, and other debris from blowing off the premises. As an alternative to fencing, the Planning Commission may establish, as a condition of approval, buffering mechanisms, including, but not limited to, evergreen landscaping, berms, and fencing; and such conditions may be in addition to the Landscaping and Buffering standards of Section 3.13 of this Zoning Ordinance to mitigate the visual impact of an Open Air Business.

PLANNING COMMISSION: No concerns

C. All open air businesses shall comply with all applicable Berrien County Health Department regulations regarding sanitation and general health conditions.

PLANNING COMMISSION: No concerns

D. The proposed site shall front upon a major or minor arterial road, as defined herein. All ingress and egress shall be from that street or streets.

PLANNING COMMISSION: No concerns

E. The lot area used for parking, driveways and vehicle movement shall be hard-surfaced. The display or storage areas shall be provided with a permanent, durable, and dustless surface, and shall be graded and drained so as to dispose of all surface water on-site.

PLANNING COMMISSION: No concerns

F. No display area shall be located within the required front yard, nor within twenty (20) feet of any side or rear lot line.

PLANNING COMMISSION: No concerns

G. No item or items displayed or stored outdoors shall be greater than thirty-five (35) feet in height.

PLANNING COMMISSION: No concerns

H. The Planning Commission may establish, as a condition of approval, hours of operation for the Open Air Business.

PLANNING COMMISSION: No concerns

I. The Planning Commission may make reasonable inquiries of the applicant, including, but not limited to, what types of items will be for sale. Certain items, as determined by the Planning Commission, may be restricted for display to rear or side yards and with adequate screening or fencing.

PLANNING COMMISSION: No concerns

Smothermon asked if there was any other discussion.

Spurlock motioned to approve the applications from Michael and Melissa Kachur to operate an open air business as a special land use on property located at 310-320 Fulkerson, Parcel ID#

11/14/8550-0037-01-9 and 11-14-8550-0038-01-5 per the site plan dated April 13, 2017, based upon the information provided during tonight's meeting, both written and oral, and with the following conditions:

- combining parcel ID# 11-14-8550-0037-01-9 with parcel ID# 11-14-8550-0038-01-5;
- Review and approval by Berrien County Drain Commission office; for drains and retention pond
- no processing, manufacturing or production of materials will take place on-site;
- all drives and parking surfaces be compacted;
- Landscape buffer is in place on both the south and west sides four (4) berm; trees on top to total eight (8) feet.
- Hours of operation are 8 am to 5 pm, Monday through Friday, although it is anticipated that employees may report to work earlier/depart later during these days, as well as during emergency calls; Saturday hours of 8:00 a.m. through 2:00 p.m.
- Additional detail regarding traffic patterns be provided and traffic patterns will minimize any disruptions to the residential properties.

The site plan drawings dated April 13, 2017 shall become the drawings of record for this project.

Motion made by Spurlock and supported by Strefling.

All voting in favor. **MOTION CARRIED**

OTHER BUSINESS:

ZA Hartman reported on the following:

- Has not yet heard from County PC (they met last Tuesday) but will try to put on agenda for next Board meeting;
- Check calendars for possible joint meeting with Board in June at 6 pm, prior to the regularly scheduled PC meeting;
- Master Plan has been given to Board for review;
- Received application for a private road off Walton Road;
- Also expecting application for private road off of Ullery Road;
- Longmeadow may apply for PUD amendment or waivers for private septic;
- Morris Farm property has expressed interest in a PUD

COMMENTS FROM THE PUBLIC: None

ADJOURNMENT

McNelis motioned to adjourn the meeting at 8:43 p.m., Conover seconded the motion.

All voting in favor **MOTION CARRIED**

Prepared by Recorder Carol Swanstrom

John McNelis, Secretary John McNelis

Approval Date: 5-9-17