I Call to Order and Attendance
The meeting was called to order at 7:34 p.m. by Chairman Eby. All members were present except Laughbaum and Neal.

II Minutes of March 1, 2007 meeting
Gregory made a motion, supported by Derrohn, to approve the minutes of the March 1, 2007 meeting as presented. The motion passed by a unanimous voice vote of the members present.

III Cases
1. Case #148E-77 Spartan Stores Fuel, LLC, SPECIAL USE PERMIT & SITE PLAN REVIEW, Gasoline Station & Retail Store, US-31 N, Section 33, Bear Creek Township

Legal Notice: A request by Spartan Stores Fuel, LLC for a Special Use Permit to allow a gasoline station to be located on the southwest corner of property located at 1185 N US-31 Hwy., Section 33, T35N-R5W, Bear Creek Township. The parcel encompasses 0.67 acres of the approximately 12 acres site and is zoned B-2 General Business with a tax parcel number of 24-01-16-33-200-017. The review is per Section 1001-6 and 901-1 of the Emmet County Zoning Ordinance.


Michalek showed the parcel on a location map. New information has been provided since the last meeting including Road Commission approval. The Road Commission stated that if an additional 2" of pavement was placed on Rice Street, they would allow truck traffic. Health Department and Fire Department approvals have been received and the right-of-way issue has been resolved by obtaining title insurance which has been reviewed by Civil Counsel. There is a snow storage plan on file. The updated site plan addresses the issues with traffic congestion. The drainage plan has been reviewed and a $14,000 performance guarantee will be required. A landscape plan has been submitted that includes adding trees along the back of the building facing Rice Street for screening purposes. The current site plan was shown. The entrance has been relocated from the original site plan. Traffic islands and stop signs have been added. There have been two letters of objection received. The Sign & Lighting Committee will look at signs and lighting at their meeting tomorrow. Photos were shown to illustrate where the trees will be planted facing Rice Street.

Darline Wethington from Spartan Stores stated that they are trying to be open for Memorial Day weekend.

John Kraus explained in more detail the landscape plan. Along the front of the store will be ornamental grasses and day
lilies. The grass will be irrigated and maintained. He explained that there will be five 8’ spruce trees planted to screen the back of the building from Rice Street. In addition, they will be planting additional trees along Rice Street with approximately 20’ separation between the new trees and existing trees to screen the existing building and trash receptacles. This is estimated because they have to work around the existing trees, utility poles, and some buried utilities. Kraus stated that the retention pond will be mostly empty except in cases of excess precipitation until it drains off.

Derrohn asked if they are going to be able to save any of the existing trees on the lot. Wethington stated that they contacted four landscaping companies to look at the trees. All said that they are too old to move. Kraus stated that the trees are located in the heart of the site; they would not be able to build without removing the trees.

Derrohn asked about the discussion at the Bear Creek Township meeting regarding the air conditioning unit and screening. Kraus explained that as the building is small, the air conditioning unit will be about the same size as a residential unit would be. It will be screened by lilies.

There were no public comments on this case.

Anderson made a motion to approve Case #148E-77, Spartan Stores Fuel LLC for a Special Use Permit and Site Plan for a gasoline service station and convenience store located on approximately 0.67 acres at the southwest corner of tax parcel 24-01-16-33-200-017, Section 33, Bear Creek Township based on the facts in the Case and because the standards of Section 1001-6 and 901-1 have been met, the site plan is dated 03/20/07 and the landscape plan dated 04/04/07 and on condition that the outdoor lighting and signs be reviewed by the Sign & Lighting Committee and a performance guarantee in the amount of $14,000.00 be in place prior to issuance of a Zoning Permit. The motion was supported by Jones and passed on the following roll call vote: Yes; Eby, Jones, Scott, Gregory, Anderson, Derrohn, Alexander. No; None. Absent; Laughbaum, Neal.

2. Case #150E-98 Gerald McConnell, FINAL PUD & SITE PLAN REVIEW, 1619 Anderson Road, Section 7, Bear Creek Township

Legal Notice: A request by Gerald McConnell for a Final PUD-2 Master Plan review for property located at 1589 & 1619 Anderson Road. The properties are tax parcels numbered 24-01-19-07-300-004 & 24-01-19-07-300-007. The PUD-2 encompasses 3.64 acres with retail sales uses allowed. The request includes modifications to the PUD-2 perimeter setback and sign standards. The request is per Article XVIII of the Zoning Ordinance.


Michalek showed the parcel on a location map. An aerial was shown and surrounding businesses pointed out. The rezoning on this property has been finalized. The PUD-2 allows for retail sales use. The building signs have been reviewed by the Sign & Lighting Committee and ‘option D’ was approved. The freestanding signs and lighting still need to be reviewed. The signage on the elevation drawings dated 04/03/07 includes the approved sign dimensions. The parking exceeds the minimum amount required. A $28,000 performance guarantee will be required for the drainage plan. Bear Creek Township recommended approval with conditions. Bear Creek Township recommended approval of an outdoor tent sale twice a year for a maximum of 30 days. In staff discussion after the meeting, the PUD may have to be amended to allow for some form of outdoor sales. The existing temporary use permit for outdoor sales on this property was removed when the PUD was granted. If allowed, the tent is proposed to be located in the parking lot on the north side of the property and the pavement area would be expanded to allow for trucks to get behind the area. The line of trees on the property will be moved to the eastern property line. Michalek explained the requested setbacks. The applicant would like to be allowed 54’ setback on the front, 27’ on the north side, 22’ on the south side, and 34’ on the rear.

The issue of allowing for the outdoor sales was discussed. The RG Properties PUD agreement doesn’t allow for outdoor sales; only a small display is allowed for the garden center. The Strathmore Properties consent judgment states that they have to follow the outdoor sales restrictions for RG Properties. Jones stated that he believes that the Wal-Mart outdoor display is limited only to plants. Michalek stated that they are allowed outdoor display of plant materials. Jones stated that he has talked to Kathy Abbott about the outdoor tent sales. Her opinion is that if this is allowed and because of the restrictions at the other sites, it would be very hard to enforce those restrictions if this property is allowed to have a tent sale. Jones stated that Dennis Keiser stated that he doesn’t want tents at those other locations. Doernenburg stated that if tents or outdoor displays are allowed at all of these locations, it would put a burden on enforcement and would be difficult to enforce.
Joe O’Neill-Benchmark Engineering stated that the biggest change from the last meeting is that the parking will now be in the north section of the parcel instead of the south. They have tried to address all of the Bear Creek Township Planning Commission’s concerns.

Eby asked how big the trees are that will be moved to the east property line. O’Neill stated that they are 6-8’.

The applicant, Gerald McConnell, stated that they looked at the fact that they have excess parking area and thought of a way to utilize it. A tent would hold the entire product being sold. These sales are a normal part of the furniture industry and coincide with what is done at their store in Onaway. These sales make their site profitable and are a vital part of their marketing plan. They are held typically in the summer for a short time. If it would help with enforcement issues, they could take out a permit for the dates of the sales. McConnell stated that it is important to recognize that their property is located in a different PUD from Home Depot and Wal-Mart. There are other businesses in Bear Creek Township that have tent sales.

Jones stated that perhaps they could put an addition onto the building that is a screened area for outdoor sales similar to what Wal-Mart has for their garden center. If a PUD amendment is required for outdoor sales, then it would not be part of the issue tonight.

Eby asked how big the tent is proposed to be. 40’x60’.

Michalek stated that the idea of a tent sale was brought up at the Bear Creek Township Planning Commission meeting. There wasn’t enough time to get the request in for this meeting as it wasn’t discussed or proposed as part of the original request. If this is desired, the applicant would have to go through the PUD process again.

Anderson stated that at the Bear Creek meeting she didn’t have a problem with the tent sale as it was looked at like a garden center, however if it would cause issues with the other businesses in the area, she would not be in favor of allowing it.

There was discussion as to what would be required if they chose to put an addition onto the building. The addition would have to be a permanently placed addition with a roof that is part of the main building. There would be no limit on the use of this area. Michalek stated that the PUD wouldn’t require an amendment if it was looked as an addition to the building. If the site plan as it is now is approved tonight, they could come back to the Planning Commission with an amended site plan if they desire.

Derrohn asked how many trees will be placed along the east of the property. Screening is important and it is important that if the trees don’t take, they are replaced. Michalek counted 48 shown on the site plan. Karen Mindel, the property owner, said that they had planted 28 trees. Doernenburg stated that the ordinance requires screening of a commercial use from a residential use. This would be between two commercial uses and that type of screening is not required by the ordinance. Eby stated that if there really are 48 trees, it will be too many when they grow up.

There was no public comment on this case.

Anderson made a motion to approve Case #150E-98, Gerald McConnell, Final PUD-2 and Site Plan on tax parcels 24-01-19-07-300-004 & 007, for the plans received April 4, 2007 (P&Z), modification of the setbacks are reflected on the site plan dated 04/04/07 (P&Z), and modifications to the wall mounted sign as per the recommendation of the Sign and Lighting Committee as shown on the elevation plan received April 3, 2007 (P&Z). The motion was supported by Jones and passed on the following roll call vote: Yes; Eby, Jones, Scott, Gregory, Anderson, Derrohn, Alexander. No; None. Absent; Laughbaum, Neal.

3. Case #46-06  Emmet County Planning Commission, TEXT AMENDMENT, Cemeteries in FF zones

Legal Notice: A request by Emmet County Planning Commission for a Zoning Ordinance Text Amendment as follows:
Part I: Add to Article II, Section 200 of Definitions: CEMETERY: A place set apart for burial or entombment of the dead.
Add to Article VIII, Section 801, Paragraph 10:
10. Cemetery provided that:
   a) All laws, ordinances, rules, and regulations established by federal, state, and local governing bodies have been complied
b) Cemetery boundaries shall be clearly identified (fencing, signage, etc.).
c) The cemetery perimeter shall meet a minimum setback of fifty (50) feet from a right-of-way and 100 feet from all side and rear property lines.

On the basis of findings at the Public Hearing, the Planning Commission may waive or modify standard c) above where strict compliance is not necessary to protect the public health, safety, or general welfare.

Part II: Consider removal of Article IV, Section 401, Paragraph 3: “Cemeteries when developed on site of ten (10) acres or more.”

Packet items: Proposed wording of amendment

Doernenburg explained that this proposed amendment was advertised with the consideration to remove cemeteries in R-1 and R-2 zones. The changes on the wording that were in the packet are minor changes suggested by Civil Counsel. Bear Creek Township has recommended approval. Friendship Township thought that the setbacks are excessive. Readmond Township has submitted a written approval on the condition that the township has the right to approve or deny a proposed cemetery. Doernenburg explained that this is not possible to allow. Michalek added that the concerns from Friendship Township were that a lot of land is used up after figuring in the land taken for the cemetery and the setbacks.

Jones stated that the setbacks are for those who wouldn’t want to live next door to a cemetery. Eby agreed; they are in place for those people who already live on a property and a cemetery is placed after the fact. Scott stated that there are no concerns from Springvale Township.

Michalek asked if the board felt that the cemeteries should be removed from R-1 and R-2 districts. Eby stated that having them in Residential districts seem to be against planning principles as it takes up space that could be used other ways.

After discussion, it was decided that the recommendation would be to remove cemeteries from R-1 and R-2 zones and have no reduction of setbacks. As this is the first public hearing, this case will be heard again at the May 3, 2007 meeting.

4. Case #7-06 Terry Williams, SIGN EXCEPTION, 5549 N US 31, Section 3, McKinley Township (Sign & Lighting Committee Case # S-2-07)

Legal Notice: A request by Terry Williams for sign exceptions to apply to the property located at 5549 N US-31 Hwy, Section 3, McKinley Township. The property is tax parcel number 24-10-10-03-100-042 and is zoned B-2 General Business. The exception is to allow an off-premise sign (Billboard) to be converted to an on-premise sign that exceeds 56 sq. ft. The request is per Section 2207 of the Zoning Ordinance.

Packet items: Request & location map, zoning map, aerial map, 2/12/07 letter from P&Z to James Gilbert, 2/8/07 Sign & Lighting Committee meeting minutes, photos, zoning evaluation form

Doernenburg explained that this is a request to allow a sign to exist on property located on US 31 N in Levering. The parcel is zoned B-2. The sign is a billboard that was regulated by MDOT. It was a billboard for the ‘Legs Inn’; however the MDOT billboard permit was revoked in 2005. It has come under Emmet County Zoning jurisdiction because as it now reflects an advertisement for a business that is located on the property, it is considered to be an on-premise free standing sign. The ordinance allows for a 56 sq. ft. on-premise free standing sign; this sign is 128 sq. ft. The Sign & Lighting Committee denied the request as it doesn’t meet ordinance standards. The height standards for this type of sign is a maximum of 10’, this sign is 14’. Doernenburg did contact MDOT and they will not reissue a billboard permit for this location. The sign is currently in violation. There are two options for this sign to come into compliance; 1) reduce to a 10’ tall 56 sq. ft. sign or 2) place the sign on the building itself as it meets the standards for a wall-mounted sign. The sign is unlit. There has been no recommendation from the township on this case.

Gregory stated that it wouldn’t be practical to place the sign on the building as it’s so far off the road. Doernenburg stated that the building is 140’ from the road; the sign is about 60’ from the road. Derrohn stated that it should be able to be seen from the road if it’s on the building.

Eby asked if it could be granted as a non-conforming use. Doernenburg stated that it was a billboard, now it is a sign, so it wouldn’t apply. Jones stated that essentially, for review purposes, it is a new sign.

James Gilbert, Mr. Williams’s attorney, stated that in 2004 Mr. Williams changed sign to advertise his warehouse not knowing that it would become an illegal sign. The option of having the sign on the building is not a good one as there is a line of trees that block the building. The billboard has been there since the 1960s and the only change that has been made
is the wording. The billboard laws have changed and as of January 1, 2007, no new permits are being issued for billboards, not even for new information on existing billboards.

Eby stated that he understands the situation to a point. If there was a way to allow this current business to keep the sign as is with the condition that it be removed if the business ceases to exist, he could support that. Alexander agreed. Doernenburg stated that the ordinance allows the Planning Commission to allow signs to exceed the maximum sign area for the following reasons: Deep use setback, cooperative sign use (joint use or community type advertising), large site area, and/or natural feature limitations to attaining reasonable signing of the use, or if the property shares a common front or side lot line with a B or I Zoning District. Eby replied that this doesn’t seem to fit those reasons.

There was discussion as to whether the ZBA could grant this. The ZBA would only be able to interpret the difference between a sign and a billboard. They have no authority to grant the sign request.

Gregory asked if they chose to put the sign on the building, could they put another sign near the roadside. Doernenburg stated that they would be allowed a 56 sq. ft. freestanding sign in addition to a wall mounted sign.

Jones made a motion to deny Case #7-07, Terry Williams for an exception to the sign area Per Section 2207-12, as proposed, for the sign located at 5549 N US-31 Hwy, tax parcel #24-10-03-100-042, Section 3, McKinley Township because the sign exceeds the maximum sign area, there is not a deep use setback or cooperative sign use, the site area is not large and there are no natural feature limitations to attaining reasonable signage, it doesn’t meet the conditions of the ordinance, and other options exist. The motion was supported by Derrohn and passed on the following roll-call vote: Yes; Eby, Jones, Scott, Gregory, Anderson, Derrohn, Alexander. No; None. Absent; Laughbaum, Neal.

5. Case #11-07 Resort Township, Zoning Coordinating Committee, Text Amendments

Packet items: 4/3/07 Memo from staff, 3/28/07 letter from Resort Township, proposed text amendment wording.

Michalek explained that Resort Township wants to amend their zoning ordinance. They would like to:
1. Add R-1 district Special Uses to the R-2 Special Uses
2. Remove Utilities from Farm & Forest Section 800 (Principle Uses) and place it in the FF Section (Special Uses). This would restrict the placement of Electric Transmission Facilities and Substations.
3. Add Conditional Rezoning

Michalek stated that there are no questions or concerns with adding the R-1 Special Uses to R-2 Special Uses.

Michalek stated that he has concerns with the moving Electrical Transmissions Facilities and Substations to the Special Use section because it is the charge of zoning to protect the public safety and welfare. An electrical facility should be placed where it is needed to provide power for the residents. He noted that according to Crawford’s (1998) Michigan Zoning and Planning Third Edition, the law hasn’t sided with zoning restricting placement of these facilities.

Michalek also cautioned that there is a fine line between conditional zoning (which is allowable) and contract zoning (which is not allowable). He stated that he feels that utilizing PUDs are a better solution.

Jones made a motion, supported by Derrohn to authorize the chair to sign the memo to Resort Township. The motion passed by a unanimous voice vote of the members present.

6. Case #12-07 West Traverse Township, Zoning Coordinating Committee, Text Amendment

Packet items: 4/10/07 Memo from staff, proposed text amendment wording.

Doernenburg explained that West Traverse Township has added an intent section to their private access ways section of their ordinance and have expanded the standards. She explained that staff suggested adding two titles to identify the standards and utility easements.

Scott made a motion, supported by Anderson to authorize the chair to sign the memo to West Traverse Township. The motion passed by a unanimous voice vote of the members present.
IV Public comments:
Jonathan Scheel, Bear Creek Township Planning Commission stated that (regarding Case #150E-98) the reason that the tent sales were reviewed at the Bear Creek meeting is because they are common in the business.

V Other business:

- **Enforcement Report:** Distributed, no discussion.
- **Rick Bacon, RACC-Tower ordinance:** Michalek stated that Mr. Bacon contacted him and stated that he feels that the ordinance is too restrictive regarding private towers. He feels that a 50’ limit is not practical in Emmet County due to the trees and hills. He stated that he needs at least 75’ for his use, which is a tower for high speed internet access. Doernenburg added that per Section 2102-2, personal towers do not need Planning Commission review if 50’ or less. Only commercial towers require Planning Commission review.

  There was some discussion among the board; however most thought that the ordinance was fine as written.

  Michalek explained that Mr. Bacon may come in with a request in the future.

- **Annual Meeting-discussion:** Michalek asked the board if they are interested having an annual meeting this year. Eby asked staff to get an agenda together and it will be discussed again at the May 3, 2007 meeting.

VII Adjournment
Chairman Eby called the meeting adjourned at 9:10 p.m.

James Scott, Secretary

Date