EMMET COUNTY PLANNING COMMISSION
REGULAR MEETING
THURSDAY JUNE 4, 2009
7:30 P.M.
COMMISSIONER’S ROOM
EMMET COUNTY BUILDING
200 DIVISION STREET
PETOSKEY, MI 49770
CORRECTED MINUTES

MEMBERS PRESENT:  Kelly Alexander, Sue Anderson, Leroy Gregory, Jack Jones, John Eby, Dan Plasencia, Steve Neal, James Scott

MEMBERS ABSENT:  David Laughbaum

STAFF:    B. Michalek, T. Doernenburg, M. Linehan

VISITORS:   Bob Bernock, Roberta Svatora, Ronald Svatora, Becky Bulmann, Steve Bulmann, Ken Harrington, Alyce Conrad, Paul Mooradian

I Call to Order and Attendance
The meeting was called to order at 7:32 p.m. by Chairman Eby.  All members were present except Laughbaum.

II Minutes of May 7, 2009 meeting
Gregory made a motion, supported by Anderson, to approve the minutes of the May 7, 2009 meeting as presented. The motion passed by a unanimous voice vote of the members present.

III Cases
1. Case #4-09  Petoskey 131 LLC, PRELIMINARY MIXED USE PUD, 2404 US 131, 2265 & 2287 Anderson Road, Section 18, Bear Creek Township
Legal Notice:  A request by Petoskey 131 LLC for a Preliminary Mixed Use Planned Unit Development-1 (PUD-1) to apply to properties located in Section 18 of Bear Creek Township. The property is zoned FF-1 Farm and Forest and includes the following tax parcels/addresses 24-01-19-18-100-042 (addressed 2323 Anderson Road, 2420 US-131 Hwy, 2404 S US-131 Hwy, 2412 S US-131 Hwy – owned by Petoskey 131 LLC); 24-01-19-18-100-040 (addressed 2287 Anderson Road owned by Tina and Robert Crothers); and 24-01-19-18-100-017 (addressed 2265 Anderson Road – owned by James and Regina Gasco). The request is per Article XVIII of the Zoning Ordinance.
Packet items:  No new information

Doernenburg stated that she has talked with the applicant who informed her that they are still working with MDOT. She advised them that due to the length of time without action on this case it was likely to be withdrawn from the agenda tonight and if so, they would have to reapply. They had no issue with Anderson stated that the applicant was at the Bear Creek Township meeting.

There was no public comment on this case.

Scott made a motion to deny Case #4-09, Petoskey 131 LLC without prejudice due to lack of action in this case. The motion was supported by Anderson and passed on the following roll-call vote:  Yes: Eby, Neal, Jones, Scott, Gregory, Anderson, Plasencia, Alexander. No: None. Absent: Laughbaum.

2. Case #8-09  Emmet County Planning Commission, TEXT AMENDMENT-OUTDOOR LIGHTING
Legal notice:  See attached.
Due to the length of the agenda, this case was moved to the end of the agenda.

Doernenburg noted that the two changes discussed at the last monthly meeting were incorporated into the amendment. Comments were received from Littlefield Township. They recommended approval but suggested adding a definition for light source. A definition was looked for in both the IESNA handbook and from Dark Skies. Neither have a definition for light source. It is staff’s recommendation that a definition is not added for light source and that the amendment is forwarded along to the Board of Commissioners for final approval.

There was no public comment on this case.

Anderson made a motion to recommend approval to the Emmet County Board of Commissioners of Case #8-09, Emmet County Planning Commission, Text Amendments to replace Section 2204, Paragraph 3, “Outdoor Lighting” with a new Section 2212 “Outdoor Lighting” as proposed for the following reasons: based on the findings and reviews of the Emmet County Sign and Lighting Committee, and Robert White, Senior Designer from Illuminart Lighting Consultation and Design, also based on the draft Model Lighting Ordinance issued by International Dark Sky Association and guidelines established by the Illuminating Engineering Society of North America. The proposed text is necessary to clarify standards; it removes discretionary decision making authority, and provides for review procedures. The motion was supported by Jones and passed on the following roll-call vote: Yes: Eby, Neal, Jones, Scott, Gregory, Anderson, Plasencia, Alexander. No: None. Absent: Laughbaum.

3. **Case #9-09**

   **Kurt Anderson, SITE PLAN REVIEW, 4407 S. State Road, Section 26, Friendship Township**

   **Legal Notice:** A request by Kurt Anderson for Site Plan Review for a commercial farm with retail sales at 4407 S. State Road in Section 26, Friendship Township. The property is zoned FF-1 Farm and Forest and is tax parcel 24-06-12-26-200-024. The request is per Section 800-5 of the Zoning Ordinance.

   **Packet Items:** Request & location map, application, impact statement, 4/13/09 Fire Department letter, 4/21/09 ECRC letter, 4/21/09 letter from Benchmark, 4/21/09 drive permit, 4/21/09 DEQ report, 4/21/09 Health Department memo, Health Department well & septic permit, 5/11/09 zoning evaluation, 5/7/09 email from Friendship Township, 4/21/09 site plan, 4/21/09 aerial, 4/21/09 floor plan, 4/21/09 elevation plans.

   Doernenburg explained that this is an eleven acre parcel located on the east side of State Road. It is zoned FF-2. The request is for a commercial farm with retail sales of produce that is grown on site. Road Commission, Health Department, and Fire Department approvals have been received. Parking requirements for this site, which has a proposed 672 square foot of retail space, would be four spaces. The available parking is adequate. A letter from an engineer regarding drainage was received. Screening is proposed. Doernenburg showed the site plan. According to the plan, the sign for the farm is located behind trees. This could cause a traffic issue. There was discussion regarding screening and whether the site plan could be approved as it showed the screening now. Plasencia noted that the applicant’s statement said that the trees were there for wind erosion reasons.

   The applicant, Kurt Anderson, was present. He explained that the trees are already there and they are there for USDA wind erosion purposes. The trees are 30-40’ from the road and are currently knee high.
Michalek noted that tree requirements are tied to parking requirements. On this site, no trees are required.

Neal made a motion to approve Case #9-09, Kurt Anderson, Site Plan Review for a commercial farm on tax parcel #24-06-12-26-200-024, in Section 26, of Friendship Township for the following reasons:

- The site plan meets the standards of Section 2405.
- The approval is based on the facts presented in this case.
- ECRC approval has been received.
- Fire Department approval has been received.
- Health Department review has been received.
- The approval is based on the Site Plan dated received 4/22/09PZ.
- The minimum trees needed to satisfy parking requirements must be maintained.

This motion was supported by Gregory and passed on the following roll-call vote: Yes: Eby, Neal, Jones, Scott, Gregory, Anderson, Plasencia, Alexander. No: None. Absent: Laughbaum.

4. **Case #91A-98 Drive Now Auto/Jack Anderson, SPECIAL USE PERMIT-OUTDOOR DISPLAY, N US 31, Section 26, Bear Creek Township**

Legal Notice: A request by Jack Anderson for Drive Now Auto for a Special Use Permit for an outdoor display and sales lot on property located adjacent to and on the westerly side of 2215 US-31 N in Section 26 of Bear Creek Township. The property is zoned B-2 General Business with a Mixed Use Planned Unit Development -1 (PUD-1) overlay and it is tax parcel 24-01-16-26-200-052. The request is per Section 1001-4 and 2405 of the Zoning Ordinance. The property is owned by BF Properties, LLC.

Packet Items: Request & location map, tax parcel map, application, 5/11/09 site plan review checklist (revised), 5/12/09 zoning evaluation, impact statement, 5/18/09 addendum for fencing, 5/19/09 site plan.

Doernenburg explained that both the applicant and the property owner have asked for this case to be postponed. They would like time to make revisions to their site plan based on the township review and there are also issues with the PUD that need to be addressed.

This case will be postponed until the next meeting scheduled for July 2, 2009.

5. **Case #39D-07 Meijer/Robert Dunston, SITE PLAN REVIEW AMENDMENT, 1201 Learns Road, Section 18, Bear Creek Township**

Legal Notice: A request by Robert Dunston, for Meijer, Inc., for an amendment to the site plan to permit a 6’x12’ accessory structure at 1201 Learns Road, Section 18, Bear Creek Township. The property is zoned B-2 General Business, R-2B General Residential, and FF-1 Farm and Forest with a Mixed Use Planned Unit Development-1 overlay and is tax parcel number 24-01-19-18-200-062. The request is per Section 2405 Site Plan Review of the Zoning Ordinance.


Michalek explained that this request is for a small smoking hut that is proposed to be located behind the garden center of the Meijer store. It is similar to a bus stop in size. Photos of an existing smoking structure at another location were shown along with the site plan. Bear Creek Township has recommended approval. Michalek added that they may wish to explore removing the requirement that small site plan adjustments come to the Planning Commission. Jones advised Robert Dunston, the applicant, that there are new requirements with the smoking ban legislation that he may want to check into.
Anderson made a motion to approve Case #39D-07, Robert Dunstan for Meijer, Inc., Site Plan Review amendment on tax parcel #24-01-19-18-200-062 in Section 18, of Bear Creek Township for the following reasons:

- The site plan amendment is consistent with the Final PUD Master Plan.
- The site plan meets the standards of Section 2405.
- The approval is based on the facts presented in this case.
- The approval is based on the Site Plan dated received 5/4/09.
- The site plan amendment and approval is for the 6’x12’ accessory structure located on the south side of the building only.
- Bear Creek Township recommended approval.

The motion was supported by Jones and passed on the following roll-call vote: Yes: Eby, Neal, Jones, Scott, Gregory, Anderson, Plasencia, Alexander. No: None. Absent: Laughbaum.

6. Case #32A-07 Ken Harrington, SPECIAL USE PERMIT-MINING OPERATION, 2130 River Road, Section 17, Bear Creek Township

Legal Notice: A request by Ken Harrington for a Special Use Permit for a Level III Resource Mining and Extraction operation to be located on the east side of Howard Road, Section 17, T34N-R5W, Bear Creek Township. The property is zoned FF-1 Farm and Forest. The use is proposed on approximately one half of the sixteen and one half acre parcel, being tax parcel number 24-01-19-17-100-019. The review is per Section 2102-10 of the Emmet County Zoning Ordinance and is an after-the-fact permit for the extraction; removal of the remaining stock pile is proposed.

Packet Items: Request & location map, tax parcel map, application, impact statement, 5/14/09 zoning evaluation, plan showing stripped area, 5/11/09 site plan.

Michalek explained that the request was originally for a level three mining operation. The area was closer than 100’ from the north property line so it could not be approved administratively. All of the activity has been completed on this property already and the re-seeding is being done this weekend. This would have been approved administratively had they been 100’ from the property line. Because it should not have been done to begin with, the options are to allow a mining operation on the property, knowing that it won’t be done again or to deny the request. Staff recommendation is to deny the request based on the fact that approval is no longer necessary.

There was no public comment on this case.

To deny Case #32A-07, Ken Harrington for a Special Use Permit for a Level III Resource Mining and Extraction operation to be located on the east side of Howard Road in the NW ¼ of Section 17 of Bear Creek Township. The parcel is approximately 16.5 acres, zoned FF-1 Farm and Forest with tax parcel number 24-01-19-17-100-019 for the following reasons:

- There is not documented adequate access to Howard Road
- The permit is no longer necessary.

The motion was supported by Scott and passed on the following roll-call vote: Yes: Eby, Neal, Jones, Scott, Gregory, Anderson, Plasencia, Alexander. No: None. Absent: Laughbaum.
Legal Notice: A request by Ken Harrington for a Special Use Permit for a Wind Turbine Generator to be located at 2100 River Road which is property situated between Howard Road and River Road in Section 17, T34N-R5W, Bear Creek Township. The property is zoned FF-1 Farm and Forest. The request is per Section 2102-2A and 2405 of the Zoning Ordinance. The review includes tax parcels 24-01-19-17-100-019 (2100 River Road) and 24-01-19-17-100-006 (2130 River Road) both owned by Kenneth Harrington; 24-01-19-17-100-011 (2175 Howard Road) owned by Marguerite Meyer Trust; and 24-01-19-17-100-007 (2152 River Road) owned by Paul and Annette Fettig.

Packet Items: Request & location map, tax parcel map, impact statements, 2/25 letter of support from Gary McDowell, 5/14/09 zoning evaluation, 5/11/09 site plan, 5/12/09 windmill plan.

Passed out at meeting: 6/4/09 letter from Ronald & Roberta Svatora

Michalek explained that this request is on the same parcel that Mr. Harrington owns as well as a combination of three other parcels to obtain the required 40 acres for a wind turbine generator. This combination of parcels potentially will form a zoning lot. According to the ordinance, a zoning lot needs to be under single ownership or control. The specifics of how Mr. Harrington and the other three property owners will accomplish this need to be worked out. The proposal is for a 395’ commercial tower. The access is proposed off of River Road rather than Howard Road although no Road Commission review has been received. The site plan is not complete as is and the applicant is aware of the deficiencies. A test tower was approved two years ago at this site by the ZBA. The site plan was shown and the location of the proposed tower was pointed out. The fall zone of the tower would be on his property as well as the property immediately south. The majority of the east side of his parcel is heavily wooded. The aerial from 2008 was shown which included the test tower. The elevations of the tower were shown. A letter from Ronald & Roberta Svatora was handed out.

Eby opened the floor to public comment.

Roberta Svatora highlighted some of the points from the letter that was passed out. She stated that she and her husband feel that this is not an appropriate location for this proposal. It does not fit with the Bear Creek Township’s Master Plan. There is no urgency to approve changes to the Master Plan. She stated that the State of Michigan has identified eleven counties in the state as best for wind generated electrical energy; Emmet County is not one of them. The Bear Creek Township area is ranked poor-marginal. The Petoskey News Review reported that Michigan already produces enough green energy to last through 2014. There is currently a wind farm near Traverse City that produces and sells its energy to DTE, who is an electrical provider in our area. The zoning ordinance allows one turbine per 5 acres once the 40 acre requirement is met. This would mean a potential of up to eight turbines in this residential area. There is no way to minimize the impact of the wind towers. Placement is very important. There is no way to minimize the impact of the noise, flicker, etc. Usually the applicant is required to provide ways to minimize the impact during a review. Once the tower is up, it will be too late to deal with the problems. The Master Plan mentions wind turbines as something that may adversely impact the public interest. They are not appropriate in this location. There was a lot of money, energy, and time put into the Master Plan; it should be given a chance to work. This request should be denied.

Ronald Svatora stated that he saw the ordinance that West Traverse Township is proposing today. It seems to take into consideration a lot of their concerns. This area is potentially a high density residential area according to the Master Plan. There doesn’t need to be up to eight turbines here. This area is rapidly growing. If the Master Plan exists and it’s going to be used, then a lot more consideration needs to be taken when discussing allowing these to be put up. Wind generates electricity; that is not a question. The best place is along the water although this won’t happen.
because it interferes with fish. Emmet County needs to take more time and figure out what needs to be done. In Germany, there are turbines on every telephone pole. He explained that they have lived in Emmet County for 35 years. They love the County and Bear Creek Township and want to see it grow and be a place in which everyone can live and enjoy. Ten turbines placed around the County is not a good plan.

Steve Bulmann lives across the street from Mr. Harrington. He stated that he went to the Bear Creek Township meeting to learn about the project. He is not opposed to wind turbines and feel that they are a good energy solution, but feels that this is not the correct area to have them. Bulmann stated that he and his wife went up to Mackinaw City to listen to the two that area there. They were very loud. Perhaps the commission should consider a bus trip to experience this for themselves. The flicker could be observed on the trees. He stated that his morning coffee on his porch would be inhibited by that flicker. They did some research online. This won’t help their resale value and it is too close to other residences.

Ken Harrington, the applicant, stated that this plan wasn’t something that he threw together overnight. He had the study tower installed which indicated adequate winds on his site and throughout Emmet County. It doesn’t matter where these turbines are located, they will always be in someone’s back yard and someone won’t like it. This turbine would be in his yard. He is not asking anyone to deal with anything that he doesn’t have to deal with. Wind energy is important to make us self-sustainable. This has been proved in Europe. Harrington stated that he would like to get this one up and running. It is shorter than the radio tower located a mile away. He would like to get the community used to it. It is not feasible to have eight towers on this parcel and he won’t be asking for another on this site. He is working on a lease with the neighboring property owners which would be recorded and be tied to the land not the current owners.

Bulmann added that in Denmark, depreciation in property value is examined if built within four times the height of the tower to a residence.

Anderson stated that no matter where its built, “Not in my back yard” comes into play. This needs to be reviewed in many different ways with many issues discussed. Location is only one of the issues.

Eby asked Alexander if he feels that the ordinance is adequate in regards to wind turbines. Alexander replied that he does not think it is adequate. Decibel levels are misleading because of the type of noise produced. It took him a long time to figure out that there is a difference between high and low frequency noise. Low frequency noise is produced and it is more permeating. It also travels further and doesn’t dissipate like high frequency noise. Anderson stated that the ordinance doesn’t address flicker. This was something that she didn’t think of until the Bear Creek Township meeting. Alexander added that there was a Japanese TV show that put people into epileptic seizures by using flickering light; this is a legitimate concern and is annoying at the very least. The degree of the flicker depends on the rising and setting of the sun and moon.

Eby stated that the acreage requirements could be a real problem. What prevents people from using long parcels strung together to get to their 40 acre requirement? Neal stated that it seems odd to combine acreage and try to tie them together for the use. Eby suggested consulting legal counsel on this issue.

Michalek noted that the ordinance was fairly progressive at the time it was written but a lot has been
learned about wind turbine generators since then. It took West Traverse Township three years to complete their ordinance regarding this. Anderson noted that Harrington was honest and said that this wouldn’t be the only one. We need to look at the ordinance to determine how and where we want to approve this use. Michalek noted that both the requirements of the special use permit section and the wind turbine generator section need to be looked at in this case. Anderson stated that Bear Creek Township wants to get a bus trip together to go up to Alexander’s house to observe the turbines in Mackinaw City. Perhaps this could be done in conjunction with the County.

Alexander noted that he lives about 1200’ from the turbines in Mackinaw City. This is not an everyday problem. He is not anti-windmill. He has spoken with the president of Crystal Flash, the owner of the towers in Mackinaw City. They were going to put up more towers but the two there have not lived up to their expectations. Turbines are an industry use and they have an impact. Alexander stated that he had the opportunity to go down to the thumb area to look at the wind farm that they have there. The commissioners there were very honest and straightforward. They were trying to achieve farmland preservation because they were losing farmland in the area. Their wind farm is not near residential areas. The wind maps for the southern part of the state show better wind potential there than up north. The turbines are an irritant to residential areas both visually and audibly. We need to be sensitive to where people live and they shouldn’t be placed near residences.

Gregory noted that there are large wind farms in Minnesota, but they are in fields with not much around them. There are many open lands in the north part of Emmet County that used to be farms and are now idle lands with no one around.

Jones stated that there are 150 or so turbines in the Sault Ste. Marie, Canada area along the east shore of Lake Superior. They are also now on the docks in Mackinaw City.

Neal stated that just because the wind produced energy benefits a company it doesn’t necessarily benefit the neighbors.

Alexander added that on the turbines in Mackinaw City, every time the winds change, the turbine is stopped with a very loud braking system. The turbines in the thumb area were able to move toward the wind. Production potential can be projected but the actual production is usually different.

Anderson asked Alexander how old the turbines in Mackinaw City are. He noted that they were put up in 2001-2002. She asked how tall they are. Harrington replied that the pole is the same height as his proposed turbine. Alexander noted that there has been a fire in one of the towers and there also have been issues with the strobe lights.

Eby advised staff to check with civil counsel on the acreage requirement; is combining these parcels skirting the intent of the ordinance? Michalek noted that there may be further information into the intent of this section in the original file from when this section was added to the ordinance. This will be checked into. This case will be deferred until the next regular meeting scheduled for July 2, 2009 to allow for further study of the request and for the applicant to complete his site plan and additional information.

8. Case #5A-08 Zoning Coordinating Committee, TEXT AMENDMENT-WIND ENERGY SYSTEMS, West Traverse Township

Michalek explained that a wind turbine ordinance from West Traverse Township was presented before. The concerns that came up with that review have been addressed in this amendment. Personal
wind energy systems up to 60’ would be reviewed under site plan review (with public notification) and systems up to 120’ would be reviewed under special use permit. They also address flicker by stating that flicker cannot fall on or in existing dwellings either personal or commercial. The amendment also stipulates that the applicant provide an indication of all residences within a one mile radius along with the locations of all windows. This requirement seems extreme if there cannot be any flicker on or in dwellings.

Scott made a motion, supported by Anderson to authorize the Chair to sign the memo to West Traverse Township regarding Wind Energy Systems. The motion passed by unanimous voice vote of the members present.

V  Public Comments
Mary Rapin was present. She owns a 45 acre farm on Hill Road between Levering and Division in Cross Village. The only existing building is a barn in which she has proposed a kitchen. She met with Michalek regarding the plans. Her builder was concerned and wanted to be sure that they were doing everything that needed to be done. Michalek stated that he spoke with Kathy Abbott regarding the many changes that have occurred recently within the farm definitions. This may require a review of the agricultural portion of the ordinance sooner rather than later. The plan is to use the kitchen to produce and can products from produce from their farm to sell to markets or possibly onsite. They would also like to do agri-tourism which would offer the experience of working on a farm, farm cooked meals, and short term lodging as a vacation. Michalek noted that there is a question as to where the boundary is between agricultural and commercial uses. The Right to Farm act allows the currently proposed activities in her kitchen. There is also a possibility of using the kitchen as a community kitchen for others from the community to use and possibly teach canning and the like. Michalek noted that perhaps the ordinance subcommittee should review this section of the ordinance now. Scott noted that the definitions need to be completed first. Eby suggested getting some outside expertise. Michalek noted that NLEA is a good resource; they may be dealing with the same kind of thing elsewhere as well. The possibility of holding weddings there was discussed as well. This may be too intense of a use.

The subcommittee will move on this section as a priority once the definitions are completed.

VI  Other Business
- **Enforcement Report:** Distributed; no discussion.
- **Whitefeather Wellness Project:** Eby stated that he received a call within the last month from a group, Whitefeather Wellness Project, which was planning on obtaining the Camp Pellston property to establish a Native American juvenile treatment/counseling center. This property fell through and they were calling to see where they could establish such a center. There doesn’t appear to be a location established in the ordinance for such a use. Doernenburg noted that it may fall under institutional uses. Michalek noted that if it were under that section, it would be a principle use permitted in all FF zones. There was some discussion regarding the need and activity of such a use. Jones suggested approaching the group to see what they plan to do and possibly help find a suitable location.
- **Bike path:** Doernenburg explained that at the last meeting, it was decided that the bike path will move forward without a plan on where to enter Emmet County. There may be issues with some of the property owners around Burt Lake. The next meeting is scheduled for August 15th.
- **Drive Now Auto-Minor deviation:** There was discussion on the property currently used for Drive Now Auto (Petoskey RV). The ordinance requires “The front setback line of the vehicle display
area shall be marked by a permanent curb of sufficient height and stability to serve as a tire stop.” The owner would like to remove the green chain link fence, pound down the posts and put a bar in for a tire stop. The reason for the discussion is to determine whether this would be a minor deviation from the site plan or whether it would require the site plan review process. The approval motion specified “3) the front fence is a black chain link fence.” Eby stated that the intent is to keep vehicles out of the setback area. After discussion, there was a consensus that this would be a minor deviation to the site plan because the change still meets the original intent of the motion.

VII Adjournment
Chairman Eby called the meeting adjourned at 9:15 p.m.

James Scott, Secretary

Date