EMMET COUNTY PLANNING COMMISSION
REGULAR MEETING
THURSDAY AUGUST 5, 2010
7:30 P.M.
COMMISSIONER’S ROOM
EMMET COUNTY BUILDING
200 DIVISION STREET
PETOSKEY, MI 49770

MINUTES

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

MEMBERS ABSENT: None

STAFF: B. Michalek, T. Doernenburg


I Call to Order and Attendance
The meeting was called to order at 7:30 PM by Chairman Eby, all members were present.

II Minutes of June 3, 2010 meeting
Jones made a motion, supported by Alexander, to approve the minutes of the June 3, 2010 meeting as presented. The motion passed by a unanimous voice vote.

III Cases

1. Case #18-10 Boguslaw Gierke, SPECIAL USE PERMIT, Exception to Section 2201, 4742 N Lake Shore Drive, Section 8, Readmond Township

Legal Notice: A request by Boguslaw Gierke for a Special Use Permit for an Exception to Section 2201 Accessory Buildings to apply to the property located at 4742 N Lake Shore Drive, Section 8, Readmond Township. The property is zoned SR-2 Scenic Resource and RR-2 Recreation Residential and is tax parcel 24-12-08-100-007. The request is to allow a 4th accessory building (greenhouse) to exist at 240 sq. ft., an exception of 40 sq. ft. per Section 2201-8 of the Emmet County Zoning Ordinance.

Michalek explained the request for the parcel on North Lake Shore Drive with water frontage on Lake Michigan. The property is a fifteen acre parcel located within two zoning districts RR-2 Recreation Residential & SR-2 Scenic Resource. The 2008 aerial photo of the property was displayed. The property is being developed for a single family residential use. In addition to the residence being constructed, the property has five accessory buildings: a gazebo 216 sq. ft.; a greenhouse 240 sq. ft.; a workshop 960 sq. ft.; a garage 1000 sq. ft.; and a structure in the garden 196 sq. ft. The Zoning Ordinance allows 3 accessory buildings one for each 5 acre lot, plus one storage building up to 200 sq. ft. They are allowed three accessory buildings plus a fourth less than 200 sq. ft. The building is screened from the road. Neighbors have contacted staff with concerns that the property will be used for commercial use. The neighbor to the south wants to ensure the same consideration for future use on their property. All applicants are treated the same and can apply for exceptions if they choose. The site plan was displayed and explained. Photos of the property were displayed and explained. The fifth
building is within the garden area. The photo of the gazebo on the water side of the property was displayed, but that building was not shown on the site plan. Michalek read the standards of Section 2201-1-c paragraphs 1, 2 and 3.

Mr. Gierek was available to answer questions.

Anderson asked if the buildings in the garden enclosure were attached, would that bring the property into compliance. The members noted that the buildings were relatively close. The site plan does not show all of the buildings. Anderson stated that if there were four buildings, then the only exception is 16 sq. ft. for the gazebo. The case is not valid as the site plan is not complete.

Gierek explained his intention on the property. The enclosure includes a greenhouse and water tower. They wish to preserve them outside. The property when purchased, he thought would be no problem. He would be able to connect the buildings in the garden. The 6’x6’ structure is for water and a dripping system. He wants to make it nice. The structures he has built make it look different, as it was vacant land. He has built the structures to last. He would be willing to connect the buildings to reduce the total number of buildings. A roof would make sense. He plans to move here and he would like to grow vegetables.

The site plan needs to be completed. A fifth building would not be permitted under the Zoning Ordinance. No other buildings would be permitted after this, if the two are combined. It’s the same request, just for different buildings. The site plan would need to show the buildings connected and would need to show all of the buildings. If the gazebo size would be reduced, there would be no need for the exception. Gierek stated that it would be difficult to reduce the size of the gazebo.

Bob Birinch, a neighboring property owner, voiced his concerns. He didn’t know what was being built. He was concerned that it would become a commercial venture. He understands that is not the case. He is not concerned with the additional 40 sq. ft. He is concerned with fertilizer and contaminated well water. If it is for personal use, he is not concerned. He wants to know the intended use of the property.

Gordon Kruskie, Readmond Township Supervisor, stated that the information regarding the gazebo is new to the Readmond Township Board. The Planning Commission and Board recommended approval.

Mr. Gierek was asked to reduce the number of accessory buildings to four and provide a complete site plan.

The case was deferred until a corrected site plan and re-advertisement occurs.

2. **Case #20-10  Molly & Ben Veling, SITE PLAN REVIEW, Contractor’s Use Building, 3334 N State Rd, Section 15, Readmond Township**

A request by Molly and Ben Veling for Site Plan Review for a Contractor’s Use on property located at 3334 N. State Road, Section 15, Readmond Township. The property is zoned I-1 Light Industrial and is tax parcel 24-12-08-15-300-009. The request is per Section 1300 of the Emmet County Zoning Ordinance.

Michalek explained the request for a site plan amendment. The property is zoned I-1 adjacent to the
property owner’s property zoned FF-2. The contractor’s use on their FF zoned property will be moved to the industrial zoned property. It is site plan review for the location of the building. The building would be a second storage building north of the existing one to be used for vehicle storage. There was no drainage plan, the applicant requested waiver of the drainage plan requirement. Soils are sandy and well drained.

Gordon Kruskie stated that the township reviewed the case. The Planning Commission recommended approval. One question about the new driveway restrictions was who would enforce that? Kruskie stated that the previous requirements required a commercial access. Eby responded that it would be enforced by the Road Commission. Kruskie stated that there is an existing driveway that will be used.

Scott stated that the site plan is not sufficient. The site plan needs to be a commercial site plan. There needs to be parking identified, surface types for the drive, how much hard surface there is may impact the need for a drainage plan. Plasencia stated that a sealed print should be required. A site plan dimensioned and drawn to-scale is required. The commission requested a more complete site plan. Ingress/egress to the site for the new building needs to be shown.

The case was deferred until a more complete site plan is provided.

3. Case #15B-02 KH Development, PLANNED UNIT DEVELOPMENT-1, Amendment, Cluster Housing Plan, 2500 True North Drive, Section 13, Friendship Township

A request by KH Development, LLC/John Hover for an amendment to the Preliminary and Final Mixed Use Planned Unit Development-1 (PUD-1) to the development known as True North Golf located at 2500 True North Drive, Section 13, Friendship Township. The underlying zoning is FF-2 Farm and Forest and includes tax parcels 24-06-12-13-100-008, 100-012, and 24-06-12-110-101 thru 110-172. The purpose of the amendment is to allow a Cluster Housing Plan of 12 units to replace 4 single family lots and open space totaling 7.37 acres. The request is per Article XVIII and Section 1902 of the Emmet County Zoning Ordinance.


Information distributed at the meeting: e-mail from Mark & Jane Feltenstein, Second Health Department Review

Michalek explained that the site was reviewed earlier in the year and a PUD was applied to the property to allow for four bedroom rental homes on the single family residential home sites. At that time, density remained the same as the originally approved plan. The current request is to replace four single family residential lots with 12 site units in a cluster housing plan. There is a total allowed density of 158 on the entire property. Currently there are 72 single family lots approved, the proposal would increase the site units by 8 units, an increase from 72 to 80 units; half of the allowed density on the entire site. A revised stormwater plan was provided. Two letters of support have been received. No township written response has been received. The Health Department conditionally approved the single family uses as identified in their letter which was reviewed. Each site would be evaluated individually by the Health Department and the condition was that each unit must remain single family. The site plan was displayed. Each site has an individual septic and well. Parking lots were identified and would be shared by the units. The floor plan and elevation plan was displayed. The request is a two-part request: First the PUD amendment needs to be reviewed and then the site plan. The PUD Amendment would be reviewed by the Board of Commissioners.
John Hover, property owner and Bryan Nolan, engineer, were available to answer questions. Hover explained that they would prefer the cluster housing option. It has been segregated from the development so as not to interfere with the neighboring property.

Scott voiced his concerns that these are commercial rental uses and don’t fit in with the original approval. The lots are small for the zoning district.

Laughbaum asked for clarification. The health department reviewed the buildings as single family residences. The health department looks at water usage.

Michalek stated that the PUD has been previously added to the property. Laughbaum asked what concern Scott has. Scott stated that he doesn’t have a problem with the use; he has a problem calling it single family residences. They are resort cottages, not single family units. Jones asked if there is anything that says that these are not single family residences. Alexander said that they are single family homes rented or not rented.

Hover stated that the township recommended approved. Nothing in writing has been received at this time.

Plasencia stated that the plan looks like a good use of land. He doesn’t see anything wrong with the plan.

Anderson made a motion, supported by Jones, to recommend approval to the Board of Commissioners of Case #15B-02 KH Development LLC. - John Hover for a Mixed Use Planned Unit Development-1 (PUD-1) amendment at 2500 True North Drive, Section 13, Friendship Township to allow a Cluster Housing Plan of 12 units to replace 4 single family lots (Lots 69, 70, 71 and 72), the parcels of the PUD are identified as tax parcel IDs 24-06-12-13-100-008, 100-012, and 110-101 thru 110-172. Approval is recommended for the following reasons: 1) the characteristics surrounding the property will not change significantly; 2) the effects would not adversely impact adjacent properties; 3) limited additional demands are identified than what was approved in the original use; and on the following conditions: this approval does not remove the conditions of approval identified in the July 16, 2002 meeting of the planning commission (SUP, open space plan/site unit condo) and each site will require Zoning Administrator review. The recommendation of approval is for preliminary and final Mixed Use PUD-1. The motion passed on the following roll call vote: Yes: Eby, Neal, Jones, Gregory, Laughbaum, Anderson, Plasencia, Alexander. No: Scott. Absent: None.

The site plan was reviewed and then approved as follows:

Anderson made a motion, supported by Jones, to approve Case #15B-02 KH Development LLC. - John Hover, site plan at 2500 True North Drive, Section 13, Friendship Township, Cluster Housing Plan of 12 units, the parcels of the PUD are identified as tax parcel IDs 24-06-12-13-100-008, 100-012, and 110-101 thru 110-172, for the following reasons: the 12 unit cluster housing plan meets the standards of the ordinance, subject to approval of the PUD amendment by the Emmet County Board of Commissioners. The motion passed on the following roll call vote: Yes: Eby, Neal, Jones, Gregory, Laughbaum, Anderson, Plasencia, Alexander. No: Scott. Absent: None.
4. Case #41A-85  Richard Bacon, SPECIAL USE PERMIT, Personal Use Tower over 50’ in height, 8364 M-68, Section 12, Littlefield Township

A request by Richard Bacon for a Special Use Permit for a personal tower over 50 feet in height at 8364 M-68 Hwy, Section 12, Littlefield Township. The property is zoned FF-1 Farm and Forest and is tax parcel 24-07-17-12-300-009. The request is per Section 2102-2-C-2 of the Zoning Ordinance.

Michalek explained the request for up to a 100 foot telecommunication tower for personal use of the property owner. The tower would meet the required 100% fall zone setback. There is a residence and accessory building on the property. Littlefield Township recommended approval on condition that if the neighbors’ TV or radio reception is interfered with that the hours of operation be limited. Anderson asked if there needs to be a fall zone from the house it is serving, but it does not.

Eby asked the applicant what the tower is for. Richard Bacon stated that it is for high speed internet and digital television reception. The ham radio could possibly interference, but there should not be a problem addressing any neighboring interference. It is primarily for high-speed internet and good quality digital TV. The pine tree on the property is 80 feet tall, and he has to get above the tree tops for the high speed internet.

There was no public comment.

Plasencia stated that the township recommended approval. The township board meets tonight but has given authority to the Littlefield Township Planning Committee to move forward without a board recommendation.

Plasencia made a motion, supported by Gregory to approve Case #41A-85, Richard Bacon, Special Use Permit, private communications tower, 8364 M-68 Hwy, Section 12, Littlefield Township, parcel number 24-07-17-12-300-009 because the tower is for personal use, it meets the setback standard as shown on the site plan dated received July 12, 2010, it will not interfere with radio/television reception in the area, and the tower is located more than 179 feet from the nearest public or private road right-of-way, and on condition that the ham radio does not interfere with local television and radio reception, and the tower does not exceed 100 ft. in height. The motion passed on the following roll call vote: Yes: Eby, Neal, Jones, Scott, Gregory, Laughbaum, Anderson, Plasencia, Alexander. No: None. Absent: None.

5. Case #124J-94  Versa Development for RG Properties, PLANNED UNIT DEVELOPMENT-1, Amendment (Preliminary and Final) and SITE PLAN REVIEW, Allow retail sales, 1950 US-131 S, Section 7, Bear Creek Township

A request by Versa Development for RLG Bear Creek LLC and GCG Bear Creek LLC for a Preliminary and Final Mixed Use Planned Unit Development-1 (PUD-1) Amendment to allow retail sales at the parcel located at 1910 US-131 Highway in Section 7 of Bear Creek Township. The property is zoned R-2B General Residential with a PUD-1 overlay and is tax parcel 24-01-19-07-300-047. Uses currently permitted on the site include R-2B uses listed in the Zoning Ordinance and one sit-down restaurant. The request is per Article XVIII of the Zoning Ordinance.

Michalek explained the request on the site most recently approved for a Bob Evans Restaurant along Plaza Drive and US-131 in Bear Creek Township. The site is within the commercial PUD along US-131, Anderson Road, Cemetery Road and Lear's Road. The uses adjacent to the subject parcel include medical offices, restaurants including: Pizza Hut and Applebees, and retail uses including Wal-Mart. The original PUD was created in 1994 under Emmet County Zoning jurisdiction. Development
continued when Bear Creek Township assumed zoning jurisdiction for three years. Michalek gave a
history of the subject parcel: In July 2006 a request for a third sit-down restaurant was submitted, then
withdrawn. That plan showed a reduction in the easement to the office building to the north; In
September of 2006 the PUD was amended to bring the two (Bear Creek Township and Emmet County)
PUD agreements into alignment – the restaurant request was again withdrawn. In March 2008, a 3rd –
sit-down restaurant was approved. The case has been contested, and has been ruled in favor of the
County through to the Michigan Appeals Court. It is now being contested in the Michigan Supreme
Court, but has not yet been decided.

The case before the Planning Commission now being requested is by Versa Development to amend the
PUD to allow for a retail establishment on one parcel (300-047). The underlying zoning is R-2B
General Residential. The uses are compatible with neighboring uses. The decision to be made is
whether to amend the PUD to allow retail along US-131. The uses originally permitted along US-131
were R-2B uses and two sit-down restaurants. The PUD was amended to allow three sit-down
restaurants along US-131. Bear Creek Township postponed the decision on this case. There was
discussion at the Township regarding changes needed on the site plan. This is a two-part request –
should the use be permitted on this site? If so, then the site plan could be reviewed. The Township
discussion included questioning that if the other uses along US-131 were no longer there, should other
businesses be allowed to become retail.

Steve Robinson, Versa Development Company, stated that he thought that the use was a logical use,
restaurants are higher intensity use. There is a demand for smaller retail uses. They have gotten mixed
messages at the township. They would limit the size of a restaurant within the building. It seems like
a logical use for the site. The traffic generation for retail is less than a restaurant. Anderson asked if
this use were approved, would the restaurant use be eliminated. Michalek stated that it could be a
restaurant along with retail use. Jones asked if a restaurant is limited because of the court order.
Michalek stated that the restaurant use is still under court review, but is an approved use on the
property.

Anderson stated that she doesn’t know about parking around the entire building. Robinson stated that
they realize there are architectural issues to address.

Pat Cormican, part owner of the building to the north stated that he would like to see a retail use. Bob
Evans was approved at 5,200 sq. ft. with 91 parking spaces. The proposed building is a 9,400 sq. ft.
building, and part of the building may be a restaurant. He could foresee parking of employees along
the drive or at adjacent businesses. The building seems too large for the site, and if retail is approved
the Planning Commission should take away the ability to put a restaurant on the property. The parking
lot needs to be sized appropriately for the use.

Anderson asked about the parking requirements. Michalek explained that the parking is dictated in the
PUD agreement. Parking can be shared throughout the PUD. Parking is required to be 4-5 per 1,000
sq. ft. Different uses typically require use-specific parking standards.

Gregory stated that the restaurant use should not be removed. Anderson stated that the size of the
building for a restaurant is not appropriate. The site plan approved for Bob Evans is expired. There
was discussion regarding the court case pending on the restaurant use.
Anderson stated that the use seems appropriate, but the size of the building seems out of proportion. The PUD has been developed as initially approved.

Val Trabucci asked if the change would allow his property to be changed. Michalek stated that a PUD is an agreement between the developer and the Planning Commission. The agreements can be modified, but it is not automatic. Alexander stated that restaurants seem more viable than retail.

The case was deferred until the next regular meeting.

VI Other Business

• Balance 4 Earth
  o A PowerPoint presentation by Rich Benson and Martin Nels was presented. Benson stated that they would give an update on the Met Tower and a status report of the progress of their wind farm development in northern Emmet County. Benson explained the direction of Balance 4 Earth’s development. Nels explained that wind direction and wind speed are necessary data which is transferred throughout the area based on computer simulation. Based on the wind understanding, based on assumption, they will be able to know how much energy will be produced. There is different energy production for different turbines. Environmental reviews are necessary. Interconnection studies are required. Questions have been raised concerning which tower will be used. Because they don’t know the wind conditions, they don’t know which type of tower would be used. The “Bliss Plateau Wind Farm” was identified. The presentation was given to the public June 22, 2010 in Carp Lake Township. They wanted to provide additional information and provide an update. Laughbaum asked how close to an airport the turbines can be – Nels answered three miles. Laughbaum asked about proximity to existing power lines. Benson stated that they’d like to be close to transmission lines, but wind is more important than proximity to existing power lines. Energy generated at today’s rates including incentives 60 to 120 per megawatt hour. Gross annual revenue $450,000 per year. Depends on the wind turbines. Alexander asked about benefits to the community – are wind turbines exempt from personal property. Benson stated that if personal property taxes go up, the company will be liable.
  o Mary Fortney – Assessor claims that there is a limit or cap on personal property.
  o Alexander asked about telecommunications – what’s required? Nels stated that they need to communicate with telecommunication companies about the ability to put antennae on the towers – not interference, but co-location.
  o Mary Fortney asked about the height and the sound. Benson stated that they don’t know what height; it will depend on the wind data. The approved met tower is 328 feet.
  o John Woodcock, lives just outside of the proposed wind farm area and has attended two meetings. After listening to the reviews given to other cases, he is asking that the Planning Commission give as much attention to his property values as to other uses that have been reviewed. Regarding land agreements, it seems that the cart is going before the horse.
  o Sandy Thompson lives outside the range – her concerns are with aesthetic value. She retired here for the beauty.
  o Susan Mallory – retired three years ago, coming here since early 1960s. Not enough
information going out. Has to read what is going on. Not clear on everything. They have come into the area and she does not feel comfortable with any of this. Came here for peace and quiet, feels that this is going to be a problem.

- Ruth Melching, asked how loud is the sound? Nels responded that it depends on how far away the turbines are from the structures. She’s heard about problems with hearing loss. Nels stated that the noise analysis will be needed. They will bring in experts and are aware of these issues.

- Gerry Burgess noticed that his parcel is outside of the area because they have serious concerns and have not signed an agreement. His concerns have not been answered. Does Balance 4 Earth have intention of meeting the current ordinance? If the standards are exceeded, who enforces the ordinance? Has anyone done due diligence on Balance 4 Earth and their financial information? He has lots of questions. He plans to live in the community.

- Meryl Cameron is concerned about people being lied to it’s the same as gas companies – people are treated differently from property to property.

- Sandy Thompson – remember when the wind towers were to be placed in the ocean do we want these in Little Traverse Bay.

- Mary Fortney - Appreciates Martin’s comments that they don’t want to create controversy – people are community minded. People want to come to Bliss for the blissfulness. The night sky, tourists provide dollars, and people serve to community, the towers are not an attractive thing. People come here to get away from noise.

- Bill Marshall – several reservations about the ability to stay within the Ordinance standards. Bliss is a special place because it is quiet and beautiful. There have been upgrades in Bliss, barns being repainted, becoming a destination for peace and quiet, doesn’t fit with the community. There is much opposition to the development.

- Alexander asked about decommissioning – how is it handled? Nehls explained that they have an escrow account for every turbine – adjusted for inflation. The escrow accounts start after 11 years. There is a 10 year guarantee maintenance with the wind turbine producer. If the project goes bankrupt in year five, the bank will need to decide how to proceed. Michalek read the removal requirement of the Zoning Ordinance.

- Alexander asked if they dealt with off-shore, Nehls stated that they won’t because the cost is too high in the US. Nehls stated that their company believes the cost is too great to develop off-shore.

There was discussion between members in the audience and Nehls and Benson. A break was taken from the meeting for approximately 10 minutes.

- Resort Township Text Amendment: The text modifies the Non-Conforming Section of the Resort Township Zoning Ordinance. Staff prepared and distributed the report and proposed text. The only concern of staff is that the text doesn’t address intentional removal of a non-conforming use. Scott made a motion to authorize the Chair to sign the staff report and provide it to Resort Township as the recommendation of the Zoning Coordinating Committee. Alexander supported the motion which carried by a unanimous voice vote.

- Annual Report: Michalek had previously reviewed the highlights of the 2009 Annual Report, but a formal motion was not made. Neal made a motion to approve the Annual Report and send it to the Board of Commissioners; Scott supported the motion which passed on a unanimous voice vote.
• PUD amendment – Doernenburg explained that administrative approval was given on a PUD in Bear Creek Township accessed on Barney Road to convert an office use to a single family residence. No structural changes occurred and the density was within the standards of the Zoning Ordinance.

• Dune Overlay District – copies of proposed text amendments were distributed and will be explained next month by Nancy Salar. Changes proposed in this section require review by the State of Michigan, so rather than wait until the other proposed zoning ordinance changes are presented, staff would prefer to present the changes to the state prior to advertising for public hearing.

• Michigan Medical Marihuana Act “Compliance with Law” – tabled by the Board of Commissioners twice. Civil Counsel attended a seminar regarding the state law. The law is confusing. At the Board of Commissioners meeting staff will recommend a committee be formed with planning staff, civil counsel, sheriff deputies and prosecuting attorney’s office serving as staff; and two Planning Commissioners, two County Commissioners and two at large members to serve on the committee that will look at options for the county.

• Mining Operation – Leelanau County court case update – can limit mining operations to certain zoning districts. A memo prepared by Civil Counsel was distributed. Should an amendment be made to the Master Plan to call for that initiative? Michalek stated that he’d review the Master Plan because natural resources are addressed in the Master Plan.

• Enforcement Report: Was distributed in packets; no discussion.

Public Comment
Alfred LaCount stated that downstate there are schools being set up to teach people how to operate a commercial marijuana operation.

VII Adjournment
Chairman Eby called the meeting adjourned at 9:57 p.m.

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James Scott, Secretary               Date