EMMET COUNTY PLANNING COMMISSION
SPECIAL MEETING
THURSDAY, JUNE 8, 2006
7:30 P.M.
COMMISSIONER’S ROOM
EMMET COUNTY BUILDING
200 DIVISION STREET
PETOSKEY, MI 49770

MINUTES

MEMBERS PRESENT:  James Scott, Sue Anderson, Kelly Alexander, Katie Derrohn, Leroy Gregory, John Eby, Steve Neal, David Laughbaum

MEMBERS ABSENT:  Jack Jones

STAFF:  Brentt Michalek, Tammy Doernenburg

VISITORS:  Mark Wolcott, Mark Nowicki, Ken Nowicki, Fred Gray, Roger Furgeson, Jack Flynn, Sue Kughn, Diana Konkus, Brandie Meisner, Russ Ryba, Walker VanWagoner, Evan Nowak, Paul Fettig, Dan Struck, Christine Struck, Brian Dodge, Karen Dodge, Thomas Urman, Christine Parker, Terry Meyer and others.

I  Call to Order and Attendance
Members reviewed information provided prior to the meeting being called to order. The meeting was called to order at 7:38 p.m. by Eby. All members were present except Jones.

II  Cases
Eby reported that Case #6A-06 is not active for this meeting, as a request to table has been presented.

1.  Case #27-06  Kery Ridge, LLC, PRINCIPLE USE PERMITTED, SUBJECT TO SPECIAL CONDITIONS, Temporary Mining Operation, Intertown Road, Section 18, Bear Creek Township

Legal Notice: A request by Kery Ridge LLC for review of a Principal Use Permitted, Subject to Special Conditions to operate a temporary mining operation on property located on the south side of Intertown Road within Section 18, T34N-R5W, Bear Creek Township. The property is zoned FF-1 Farm & Forest and includes tax parcels numbered 24-01-19-18-300-032 & 300-044. The request is per Section 801-7 of the Zoning Ordinance.

Michalek explained the request for a mining operation per Section 801-7 of the Zoning Ordinance. The property is located south of Intertown Road across from the south end of Anderson Road. The mining operation is proposed to be active for less than 90 calendar days and not nearer than 300’ from off premises dwellings. The Soil Erosion Control permit has been issued with conditions regarding dust control. The proposal is subject to Sections 2100 and 2405 of the Zoning Ordinance. The staff report including pros and cons and draft motions to approve, deny or postpone was distributed and has been updated since the last meeting. A $70,000. improvement guarantee has been received. Aerials of the site location, soil maps, depth of excavation in a color graphic, a cross section graphic and site plan were displayed and explained. There has been some question regarding the haul road, the Township minutes would indicate that they consider the haul road part of the operation and therefore subject to the 300’ setback from adjacent dwellings. Previous mining operations have had access routes within the setback distance from the neighboring property lines. The Township Planning Commission recommended approval on a split vote, the Township Board recommended denial. Minutes from those meetings were distributed.

Ken Nowicki, representing Kery Ridge LLC, stated that they do not agree with the Township recommendation. He wrote a letter which was distributed to the members. He stated that with the operation limited to weekdays, the mining would be occurring for 65 work days. A driveway permit has been issued by the Emmet County Road Commission and was distributed. He interprets the Ordinance as 90 days for the operation, however, based on recent topographic data; he thinks they’ll be able to complete the process including restoration within 90 days from the time the first load is hauled from the
Steve Neal asked if the standard requiring the drive be 25’ from an intersection has been met? Michalek stated that because it is directly across from the road, it does meet the standard.

Alexander asked why the Township thought it would be longer than 90 days. Nowicki stated that it will be completed within 90 days. Michalek read the standard of the Ordinance. He interpreted that the use, mining, would be limited to 90 days. Eby stated that in the past they have separated into mining, hauling and restoring. Laughbaum stated that they could come back and request an extension. There was discussion regarding the operation itself, the different interpretations and the level of the operation.

Neal asked if there has ever been this amount of traffic this close to a property line and a residence. Scott responded that there have been mining operations approved which have included crushers that have been as close as the road is to residences. There was discussion regarding the intensity of the use.

Gregory stated that the distance of hauling is very short. That is quite unique.

Neal stated that he understands the Bear Creek Township Board position and feels it is supported by the Ordinance. There was discussion regarding the letter presented by the applicant stating that the Township acted illegally. Michalek stated that the Township cannot act illegally, as they are a recommending body.

Neal stated that trucking and mining are not clearly defined. He’d be concerned with allowing 18,000 trucks within 100’ of the residences. Is the trucking part of the mining operation? Anderson stated that trucks can drive up and down the street regardless of the process. There are many trips with a narrow window. Is it better to have it over a longer period of time or during a short period of time, no weekends, no early mornings or late nights?

**Public Comment:**

Christine Parker, 1675 Intertown Road stated that the highest point and deepest point will be next to her property and the tree not shown on the map bordering her property and the proposed mining site is the tree that a body is buried under. She is concerned with the survey. The property has not been properly surveyed, she would like it properly surveyed. She is also concerned with dust. She questioned if the bond will be adequate to clean the inside and outside of houses because of the potential dust that is not controlled. She is concerned with traffic safety. The 18,000 trucks could stop essential services and the possibility of an accident due to a slow down is great. Why here, she asked? The only positive factor for the mining is the proximity to the delivery site. The material is not rare, it is available elsewhere. Lears Road would be used if the mining were done from another site. This is a commercial operation. The application should be a Level III mining permit. Do not allow the poor planning of developers to cause a rushed decision. Parker then pointed out Section 2100 Special Use Permit paraphrasing the standards. The use must have non-detrimental impact to surrounding uses in the district with regard to traffic and hours of operation. A lot of people walk on the road and will be negatively impacted. Comprehensive Plan – the use does not agree with the Bear Creek Township Comprehensive Plan. And, the traffic must be able to enter and exit the property safely. The entrance drive is an integral part of the operation and will have visibility impediments. She urges the commission to consider carefully what they may be approving.

Nathaniel Denay, resident on Cemetery Road is concerned with the access road. There will be a bottleneck at the busiest point on the property. There will be a bottleneck at the busiest point on the property. The attractive views that will be lost will be a violation of the goals of Emmet County. Preserve the values of the people of Emmet County. Resort Township has asked that the use be denied. Traffic increases can cause an accident. He raised concerns with the road repairs that will be necessary, who will fix Anderson Road? When and with what money? The road is degrading rapidly. There are existing mines that could provide the resource needed to fill the Lowe’s site. Enforce our ordinance correctly. This is a commercial mining operation that doesn’t seem to fit the intent of the Ordinance. Do not approve the use.

Roger Furgeson, nearby property owner, asked about the closing of Anderson Road. He knows a lot of people travel that road. For safety reasons, he would rather see it closed than open. He does not want to see someone get hurt. He thinks the bond amount is way too cheap. Who’s going to fix Anderson Road? He asked if other haulers will be removing dirt from the operation. Can they mine from there in the future?
End of Public Comment. Planning Commission review:

Scott stated that this case is not about the Strathmore development, this Planning Commission voted to turn down that development numerous times. Control was taken away from the Planning Commission and that site cannot have a bearing on this review.

There was general discussion and comments. What is the recourse if 90 days is exceeded? Who will interpret what they’re doing. Could a Stop Work Order be placed on the site? How long would it take to post a Stop Work Order? Michalek explained that Enforcement action would be conducted with Civil Counsel assistance. All conditions would need to be followed.

Neal asked what is allowed outside of the time of operation. He feels that the drive is part of the mining operation.

Katie Derrohn asked if a time limit can be placed on restoration. Eby added that the Soil Erosion Officer reviews reclamation. Laughbaum stated that reclamation is weather driven. There was discussion regarding the time frame of reclamation. The plan seems to be complete including reclamation within 90 days. Laughbaum stated that, as he reads the Ordinance, no permit is needed unless the operation is within 300’ of a residence. Michalek stated that the 300’ applies to the mining operation itself, not the access road. Scott stated that there are no roads that require a 300’ setback. There was additional discussion regarding the road access.

Neal asked what is wrong with Bear Creek Township’s stance. Have they acted illegally, as stated in a letter from the applicant? Eby stated that the Township can never break the law because they have no zoning power. The Planning Commission looks to the Township for community input. The issues have to be reviewed, not necessarily the vote itself. Their issues have been debated. Scott stated that he’s been in a situation where his Township recommended denial and the Emmet County Planning Commission approved the permit.

Laughbaum stated that it is a hard decision and he appreciates all of the comments. He stated that what they desire is allowed for in the code. He has a driver’s license and he can drive, but there are limitations. The limitations are safe guards. There are civil and criminal courts if the operation is not in compliance with an approval. His job is to read the code and decide if the use is allowed or not. We all mourn the loss of what used to be here. It was a nicer time when he was younger. We live by the law, this has been in force for over thirty years. There has been disagreement, but there has not been an effort to change these provisions. The use is an allowed use and should be approved with conditions.

Alexander stated that Bear Creek Township is concerned with the Road Commission and their issues. A Road Commission letter was previously issued. Nowicki read the letter from the Road Commission approving the access. Michalek spoke with the Road Commission prior to the approval, they are familiar with the request and the size of the proposed operation.

Scott made a motion to approve Case #27-06, Derrohn supported the motion and the following discussion occurred prior to the vote:

Neal thinks it’s a bad idea. There has been miscommunication and a history of unethical behavior, including the written comments which may be slanderous.

Alexander appreciates Neal’s concerns. He added that in the history of the county, there has not been a mining operation that will be monitored and scrutinized as much as this one. He has visited some of the locations where they have done work in the past. Taking all of the facts into consideration, the road work, paving to minimize dust and the history has shown that they do very good work and will leave this property as good as they can. He believes that they will do their job to the standards or exceed what is expected of them.

Neal stated that corners have been cut. It is a risk to enter into a relationship that started off on the wrong foot. There is a great deal of pressure on the developer. They know the business. It’s a bad foundation with limited recourse. Enforcement options are time consuming and difficult to pursue.

Alexander stated that there is a lot of pressure not to drop the ball.
Eby stated that the cases with the most pressure have resulted in the most detail by the applicant. This project is breaking ground in more ways than one. This is going to a higher standard than many. There was additional discussion regarding the review.

Scott made a motion to approve Case #27-06, Kenneth Nowicki for Kery Ridge, LLC for a Special Use Permit for a temporary mining operation on a 20.9 acre property located at the south of Intertown Road across from the south end of Anderson Road, Section 18, Bear Creek Township, being tax parcel number 24-01-19-18-300-032 because it meets the standards of the Zoning Ordinance as shown on the Site Plan dated 5/16/06, the accompanying Project Narrative, and subject to the following additional conditions:
1. The mining operation will be active for no more than 90 calendar days on one parcel and the extraction operation will be a minimum of 300 ft. from any off-premises dwellings.
2. All setbacks must meet minimum standards required – 300’ from off-premises dwellings and 50’ perimeter setback.
3. An improvement guarantee, submitted on June 6, 2006 in the amount of $70,000, will be held for restoration and reclamation of the site.
4. Restoration shall include rough grading and seeding.
5. Slopes not to exceed one foot of vertical elevation change for every four feet of horizontal distance per Site Plan.
6. Developer will not burn vegetation. Stumps will be chipped/ground.
7. No on-site processing of earthen materials is allowed.
8. Sedimentation and dust suppressants are required as identified on the Soil Erosion permit PSE 06-017.
9. Access road to be paved to 280’ from Intertown Road.
10. Visual buffers from the access drive to include earthen berms and privacy fencing.
11. Top soil is to remain onsite until restoration is complete and improvement guarantee is released.
12. Hours of operation to be 8:00 a.m. - 6:30 p.m. Monday thru Friday.
13. Orange construction fencing proposed along property lines, except south line and easterly most property line to be installed prior to excavation.
14. Gate required at access drive for security purposes.
15. No lighting allowed.

Derrohn supported the motion which passed on the following roll call vote: Yes; Eby, Scott, Gregory, Laughbaum, Anderson, Derrohn, Alexander. No; Neal. Absent; Jones.

2. Case #8-06 Kery Ridge, LLC, SPECIAL USE PERMIT, Open Space Plan, 4623 Howard Road, Section 29, Bear Creek Township

Legal Notice: A request by Kery Ridge, LLC for a Special Use Permit for a Site Unit Condominium Open Space Plan on property located at 4623 Howard Road, Section 29, T34N-R5W, Bear Creek Township. The property is zoned FF-1 Farm and Forest and is tax parcel number 24-01-19-29-300-022. The request is as per Section 2102-14 of the Zoning Ordinance.

Kenneth Nowicki withdrew Case #8-06.

3. Case #8A-06 Kery Ridge, LLC, SPECIAL USE PERMIT, Open Space Plan, 4623 Howard Road, Section 29, Bear Creek Township

Legal Notice: A request by Kenneth Nowicki for Kery Ridge, LLC for a Special Use Permit for a level-III resource mining extraction operation on a 32.16 acre property located at 4623 Howard Rd, Section 29, T34N-R5W, Bear Creek Township. The property is zoned FF-1 Farm and Forest and is tax parcel number 24-01-19-29-300-022. The request is as per Section 2102-10 of the Emmet County Zoning Ordinance.

Kenneth Nowicki withdrew Case #8A-06.

A brief break was taken.

4. Case #6A-06 Jack Flynn, SPECIAL USE PERMIT, Septage Storage and Transfer Facility, 2360 River Road, Section 17, Bear Creek Township

Legal Notice: A request by Jack Flynn for a Special Use Permit for a Septage Storage and Transfer Facility on a property located at 2360 River Road, Section 17, T34N-R5W, Bear Creek Township. The property is zoned FF-1 Farm and Forest and is tax parcel number 24-01-19-17-100-013. The request is per Section 2205 of the Zoning Ordinance.
Case #6A-06 was tabled at the request of the applicant. There was no public comment.

5. Case #28-06 Terry Meyer, SPECIAL USE PERMIT, Accessory Building as Main Use, 4028 Division Road, Section 2, Cross Village Township

Legal Notice: A request by Terry Meyer for a Special Use Permit for an Accessory Building as a Main Use on property located at 4028 Division Road, Section 2, T37N-R6W, Cross Village Township. The property is zoned FF-2 Farm and Forest and is tax parcel number 24-05-08-02-400-013. The request is to allow a 24'x24' accessory building, per Section 2201-2 of the Zoning Ordinance.

Michalek explained the request for an Accessory Building as a Main Use on a property located on Division Road in Cross Village Township. The building is near the dense tree line, it is sited in such a manner that a main use could be constructed in the future. Township recommended approval.

Scott made a motion that Case #28-06, Terry Meyer, Special Use Permit for an Accessory Building as a Main Use at 4028 Division Road, Section 2, Cross Village Township be approved with the condition that an affidavit that the building will be used for personal use be recorded with the Register of Deeds. The motion was supported by Alexander and passed by the following roll call vote: Yes; Eby, Neal, Scott, Gregory, Laughbaum, Anderson, Derrohn, Alexander. No; none. Absent; Jones.

III Public comments:
There was no public comment.

IV Other business:

• US-31 Road Construction – Sign Review:
Staff distributed and explained the off-premises sign issue. MDOT has provided indication that no more road closures are necessary during the road construction process on US-31. There was discussion about the need for directional signage. By consensus, the Planning Commission indicated that there is no need for allowing the signs to remain, as the road has been opened. A policy should be prepared and presented for consideration for future guidelines regarding projects with detours around businesses. There were questions from the public. The purpose of a policy will be to enforce consistently.

• July 6, 2006 – meeting to begin at 7:00 p.m. – staff to present changes made to the Michigan Zoning Enabling Act.

V Adjournment
Eby called the meeting adjourned at 9:18 p.m.

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James Scott, Secretary                       Date