EMMET COUNTY PLANNING COMMISSION
REGULAR MEETING MINUTES
THURSDAY FEBRUARY 4, 2016, 7:30 P.M.
EMMET COUNTY BUILDING
200 DIVISION ST
PETOSKEY, MI 49770

MEMBERS PRESENT: John Eby, Dan Plasencia, Bert Notestine, James Scott, Tom Urman, Kelly Alexander, Steve Neal, David Laughbaum, Shawn Wonnacott

MEMBERS ABSENT: None

STAFF: Tammy Doernenburg, Monica Linehan

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

II Minutes of January 7, 2016
Alexander made a motion seconded by Urman to approve the minutes of the January 7, 2016 meeting as presented. The motion passed unanimously by voice vote.

III Cases

1. Case #PSUP15-0003 Dick Huaere Land, Inc., SPECIAL USE PERMIT-Private heliport, 1780 Commerce Ct, Section 26, Bear Creek Township

Legal Notice: A request by Dick Huaere Land, Inc for a Special Use Permit for a private heliport on property located at 1780 Commerce Ct, Section 26, Bear Creek Township. The proposal is to use the vacant lot as a helicopter landing field for private use only. The property is zoned I-1 Light Industrial and is tax parcel number 24-01-16-26-275-108. The request is per Sections 1301-8 and 2405 of the Zoning Ordinance.
Packet items: No new information

The case was deferred until the March, 2016 meeting at the request of the applicant and township while the potential ordinance changes are discussed.

2. Case #PSPR15-0002 John Cupps, FINAL PUD & SITE PLAN REVIEW, S. State Rd, Section 14, Friendship Township

Legal Notice: A request by John Cupps for a Final PUD and Site Plan Review for property located approximately 500 feet north of W Stutsmanville Road on the east side of S State Road, Section 14 of Friendship Township. The property is tax parcel 24-06-12-14-300-016 and is zoned PUD-2 Planned Unit Development and FF-2 Farm and Forest. The Preliminary PUD was approved in 2002 allowing for commercial uses. The Final PUD proposal is to allow for a fire wood cutting operation and a 50'x60' storage building. The request is per Article 17 of Zoning Ordinance 15-1.
Packet items: No new information

Doernenburg explained that the applicant has requested postponement while he reviews what he plans to do on the property. She has spoken with the applicant and he plans to now apply for a Special Use Permit for an accessory building as a main use in the FF zoned portion of his property. He will need to provide a site plan and the township will need to review the new request. This case will be heard at the March 3, 2016 Planning Commission meeting.
3. **Case #PREZN15-0002** Jay Wheatley & Jamie Dunson (Wheatley), REZONE: FF-1 to B-2, 2283 US 131 Hwy, Section 18, Bear Creek Township

**Legal Notice:** A request by Jay Wheatley and Jamie Dunson Wheatley to rezone their property located at 2283 US 131 Hwy in Section 18 of Bear Creek Township. The property is currently zoned FF-1 Farm and Forest and is tax parcel 24-01-19-18-100-028. The request is to rezone the property to B-2 General Business per Section 27.11 of Zoning Ordinance 15-1.

**Packet items:** No new information

Doernenburg explained that this is the second hearing on this case and summarized the details that were covered at the last meeting including showing the zoning map and pointing out adjacent uses. She noted that the Future Land Use map in the Emmet County Master Plan shows the vicinity as high density residential uses and commercial. A letter of support from an adjacent property owner has been received. Neighbors in opposition were present at the township meeting. No new information has been submitted. The township recommended denial. Photos of the property were shown. The current request is for a single property rezoning from FF-1 to B-2.

The applicant and/or representative was not present. Eby opened the floor to public comment.

Jim Scollin stated that he is a neighbor and was at the township meeting. The vote was unanimous to deny the request there. He agrees with their decision and feels that the letter from MDOT that stated that the requested access for commercial use is not their first choice for the property is a correct judgment. Scollin stated that he hopes that the Master Plan is kept in mind and stated that spot zoning is never a good thing.

Alexander stated that the sole purpose of this rezoning request per the applicant last month is to make the property more saleable. Neal stated that he did not have any plans for development last month. Notestine stated that David Coveyou made a statement at the township meeting regarding this area being a transition zone between residential and commercial uses and feels that a PUD with multiple properties should be what this applicant looks at in order to maintain that transitional area. Urman stated that the MDOT letter and the encouragement of infill of other B-2 zoned properties in the County were the township’s main points of discussion. Doernenburg read from the township minutes as to the reasons they listed for denial: the standards of the ordinance for a rezoning have not been met including: the Master Plan does not support the rezoning; the uses permitted within the proposed zoning district are too intense based on the limited access, there is no shown demonstrated need for B-2 Zoned property in Emmet County (as there are several vacant properties zoned business), rezoning at this location would encourage additional commercial development to the south which is not the desire, and MDOT letter received 1/6/16 did not support the rezoning. Laughbaum stated that he doesn’t think that anything will stop the applicant from selling the property to the right investor. He visited the site and feels that traffic is precarious in that area especially from the south. There is high potential for accidents if there would be a lot of traffic entering and exiting that property.

Urman made a motion to deny PREZN15-0002, Jay Wheatley and Jamie Dunson Wheatley, rezoning at 2283 US 131 Hwy, Section 18, Bear Creek Township from FF-1 Farm and Forest to B-2 General Business, tax parcel 24-01-19-18-100-028 because the standards of the Zoning Ordinance for a rezoning have not been met including: the Master Plan does not support the rezoning; the uses permitted within the proposed zoning district are too intense based on the limited access, there is no shown demonstrated need for B-2 Zoned property in Emmet County (as there are several vacant properties zoned business, rezoning at this location would encourage additional commercial development to the south which is not the desired, and MDOT letter received 1/6/16 did not support the rezoning and because the Bear Creek Township Planning Commission and Board recommended denial. The motion was supported by Neal and passed on the following roll-call vote: Yes: Eby, Neal, Notestine, Scott, Wonnacott, Laughbaum, Urman, Plasencia, Alexander. No: None.
4. Case #PPUDF16-0001  Duane & Kristi Schuil, PUD-Amendment, 2800 E Mitchell Rd, Section 3, Bear Creek Township

Legal Notice: A request by Jessica Moore for 2240 Mitchell Park LLC (Jack VanTreese) for Site Plan Review at 2240 Mitchell Park Drive. The property is zoned B-I Local Tourist Business and is tax parcel 24-01-19-04-201-001. The request is to construct an addition to the existing office building per Sections 10.01 and Article 20 of Zoning Ordinance 15-1.

Packet items: Request & location map, tax parcel map, application, impact statement, site plan checklist, zoning evaluation, 2008 site plan, 1/11/16 site plan

Doernenburg presented this case. The zoning map was shown. She explained that the entire PUD is 80 acres while the subject parcel is 20 acres and is zoned R-1. The permitted uses on the parcel are residential and related accessory uses south of the subject parcel. The subject parcel on the original PUD doesn’t identify specific uses however the approved plan shows residential, agricultural, open space, and trail usage on this property. Currently the site is used for residential and agricultural purposes (grape vines, fruits, and vegetables) and the agricultural uses are regulated by the Michigan Right to Farm Act. The proposal is to utilize the existing barn as an event center for up to 99 people and a winery. Doernenburg noted that the property is impacted by wetlands. The non-motorized path from the original plan is not on the proposed plan but after speaking with the applicant, can be added back to the plan. Doernenburg explained that the new zoning ordinance does not allow for PUD overlays, rather calls for a rezoning of the property and then uses/restrictions identified. She noted that per the PUD process standards the pre-application meeting was held with the applicant, the existing conditions map was not provided but because all buildings exist on the property the existing approved site plan can be used. The fire department did review the request and indicated that they need to see that the access drive will support 75,000 pounds; they will provide this in writing. Acreage to be allotted to all uses on the parcel have been identified. A letter of support has been received from the property owner and signed by adjacent property owners. Objections have been shared at the township meeting by neighbors including noise, hours, and the impact to the neighborhood. The township has requested postponement in order for items such as hours of operation and number of events to be established, the non-motorized path put back on the site plan, the access drive reviewed by the Road Commission, as well as concerns from neighbors addressed. The current plan and photos of the site were shown. Parking area and access drives were pointed out on the proposed site plan. Doernenburg stated that the options tonight are to recommend approval to the Board of Commissioners, postponement, or denial.

Pete Schwartzfisher, representing the applicants, stated that there was considerable discussion which brought about some of the neighborhood concerns. What they are doing is operating a farm vineyard and orchard on the front of this PUD on their personal property. They want to put the winery in the lower level of the barn. There is a lot of work to be done to bring the barn up to the required standards. The Schuils have had a lot of requests to have them consider holding events on their property and realized there was a major need for this. The township has asked for some additional information and they didn’t have the information from the Fire Chief regarding the driveway. In regards to neighbors, some think it is great and others have concerns about noise. The applicants are trying to formulate some ideas to address some of their concerns. The property has been worked on a lot for the last few years which creates a real asset for the township versus a run-down property. They have installed some berms to the back and west with trees at the request of the neighborhood. They are willing to work at it, they live there and are part of the community as well. They want to make this work and run a business within their community. Schwartzfisher stated that they are part of the whole PUD however only the access road off of Mitchell has been built. The barn that they propose to utilize is about 350-400’ from Mitchell Rd., 400’ from Little Cedar Drive, and 1,300’ from the east property line. It is not right on top of the subdivisions. There is a lot of work that needs to be done to the barn which could help with the noise issue as well. He stated that Jim Malewitz and the applicant are both available to help answer questions and alleviate concerns.
Urman asked Jim Malewitz about the storm retention. It is on the original plan in the location where the drive is located on the proposed plan. Is this acceptable and will it be moved? Malewitz stated that he did not design the previous plan but would be happy to look into it and address it before the next meeting. Neal asked if there will be lighting and signage to deal with on the property. Schwartzfisher stated that there is no proposed site lighting other than some exterior lights on the barn which will be down lit. Kristi Schuil stated that she has no plans for signage at this point in time.

Eby opened the floor to public comment.

Becky Lipchik, Meadow Lane, asked if the owners have written approval for this use from Little Traverse Conservancy because she has a copy of the August 12, 2005 conservation easement that she read from that states the purpose of a conservation easement (protect natural habitat, natural features, etc.) and uses that may interfere with the stated intent are expressly prohibited (any commercial activity except those associated with agricultural activities). She read the definition of commercial, industrial, and easement. Lipchik stated that in section five of the easement paperwork they mention water quality. She stated that there are wetlands on the property. She read the permitted uses in the easement as retail/wholesale agricultural uses and roadside stands. Other agricultural practices may be permitted with Conservancy written approval. Lipchik stated that she believes that the consent and approval from the Conservancy is needed for the currently proposed activities. She stated that in regards to wetlands on the property, water quality is a great concern. Large events could harm the wetlands and vehicles create soil erosion to the detriment of the property. The types of discharges from the winery are also of concern. This property is on a septic not a sewage system. These items should all be addressed. Lipchik stated that this should not even be considered until permission is granted from the Conservancy. She is concerned about usage creep stating that if this is approved many others may ask to be allowed to do the same things, the maintaining of buffer zones as established in the Master Plan, and enforcement; if approved, who would be responsible to monitor for hours, noise, etc. Lipchik stated that she and her neighbors have already had issues last summer with noise and had to call 911 to report excessive noise with no resolution. She has four kids and they haven’t been able to sleep at midnight because of all of the noise. She stated that she would challenge any one to be in her shoes and handle this any differently. Lipchik passed out a handout that details the number of sleep hours that young children should get and the detrimental effects if they do not get their sleep. She stated that it is not fair to have to deal with noise from their venture causing sleep deprivation in a residential neighborhood. Lipchik read from the City of Petoskey’s noise ordinance stating that noise from radios, music, etc. is a nuisance especially between the hours of 11pm and 7am. Lipchik stated that she knows that Emmet County has a strict decibel level restriction for wind turbine noise at the property lines. She stated that the concern for noise levels regardless of where it comes from is noted and appreciated but feels that Emmet County and Bear Creek Township need to put into place some quiet hour ordinances although she noted that is a separate issue. Lipchik stated that she feels that the ideas for event center and the winery are fine ideas but that this is not the right place as it is a residential zone surrounded by both established and projected residential neighborhoods and not on land protected by a conservation easement.

Ms. Dunneback, Little Cedar Drive, stated that she supports what was said by Ms. Lipchik and feels that this is beyond disturbing. There have been parties until 5am this past summer and has heard that they are booked again for this coming summer already. This occurs during the four best months of the year that we deal with all of the winter weather for. She doesn’t want her family to dread the summer because they have to listen to the noise every weekend.

Ms. Casteel, Little Cedar Drive, stated that she agrees with the previous comments.
Ms. Millstead, Little Cedar Drive, stated that she also agrees with the previous comments. She has a four year old son who needs more sleep than what is listed on the chart that was passed out.

Julie Holder, Bay Township, stated that she knows the applicants and the investment that they’ve been putting into this property. It is an incredible asset to the County. Mrs. Schuil has done a lot of work and takes care of the property; she doesn’t want anyone to hurt her property. Holder stated that as a business person she feels that small business is good for the community and should be encouraged. Farms and farming in this community are very valuable. There are a number of others doing similar events but she doesn’t think that any of them have the asset in the County like the Schuils do. Holder stated that it is very worthy of consideration. She lives on a lake and understands summer and being a good neighbor and thinks that Mrs. Schuil does too. Everyone wants good neighbors and wants to be a good neighbor and she hopes that the neighbor part can have some compromise so that we can have this beautiful asset.

Lipchik asked that if we are worried about good neighbors, why did it happen last summer with no apology. Why weren’t the rules and regulations of hours of operation and number of events brought to this meeting as was discussed at the township meeting? Where is the consideration?

Plasencia asked Doernenburg about the conservation easement. Is this something that we can deal with or is it like a deed restriction? Doernenburg stated that she was aware of the conservation easement but the ordinance prohibits us from enforcing it or deed restrictions. She stated that she did indicate to the applicant that she should check with the Conservancy before they applied for this request because it made no sense for them to come to this board if they didn’t gain the approval from the Conservancy first. The applicant indicated that she had done this. It is a private agreement that we cannot enforce or require documentation from the Conservancy, but she does understand that it has been addressed between the two parties. Alexander asked if that documentation had been provided and Doernenburg stated that she doesn’t believe she’s received it. Alexander asked if any of the neighbors had contacted the applicants instead of 911 when there were noise issues. Lipchik stated that the applicants have an unlisted phone number. She stated that was the first number she looked for. Plasencia stated that this is not the only place where these types of activities occur. There may be a compromise on times. Even Camp Petosega hosts events but they have strict noise and quiet time rules. Notestine stated that at the township level Urman tried to get their board to determine their decision on the rezoning first and then get into determining uses and limitations. The township board thought that was backwards but Notestine feels that it is indeed the correct way to look at the case. If limitations are set first, you’ve basically said yes to the rezoning. Urman agreed stating that they need to determine the rezone; whether they want to allow these types of uses on this property. The surrounding zoning is R-1. They can do some of the agricultural activities under the Right to Farm Act but this request is a commercial venture. Urman stated that he’d like to see what the general feeling from this board on the rezoning is so that he can take it back to the township for discussion. Doernenburg stated that the Right to Farm Act has pretty much remained the same over the years except that they revisit the GAAMPs (generally accepted agricultural management practices) every year. Because of this, Doernenburg stated that she has to know what the GAAMPs are and what the changes are; which makes enforcement difficult. Doernenburg explained that the Mackinaw Trails Winery building that they use for weddings was issued a permit under the GAAMPs that existed at the time and the interpretation of the use. Therefore that use is grandfathered in because it was permitted before the interpretation changed. This use was never permitted on this property and therefore has to adhere to the current standards which state that social events on a farm are to be regulated by the local jurisdiction. If others are operating in this manner they can continue the use due to being grandfathered in under previous interpretations. Wonnacott stated that in a non-commercial situation, they could have 100 of their friends over for a barbeque every weekend. The neighbors have the same issues (noise, people, and traffic) but there are no laws or regulations that say they can’t do this. What
are we trying to do?  Are we trying to restrict the commercial use or the number of people on the property?  Doernenburg stated that this was also brought up at the township as to whether it would be better to allow and be able to set parameters or to not allow and have no control over parameters.

Alexander stated that there are still laws in regards to noise.  Doernenburg stated that those that were read applied only in the City of Petoskey.  Bear Creek Township does not have a noise ordinance. Urman stated that he feels that the requested use is different than having a party.  They have their property rights but so do the neighbors that have purchased property in a residential neighborhood assuming that is what the neighborhood would be.  We need to determine if it is a good fit per the Master Plan.  Laughbaum stated that Doernenburg is correct that the Right to Farm Act does not cover their requested activities.  If there wasn’t a conservation easement there would be wall to wall houses or people mining topsoil.  He stated that right now he feels that it is a good use of the property.  Whomever put the easement in place shows that they want to keep the property nice.  He stated that Wonnacott has a good point; there is no control on the activities now.  We could approve, place parameters onto the project to protect the neighborhood, and have a nice addition to the community. Doernenburg stated that she did have a conversation with the applicant regarding the hours of operation and number of events and suggested to her that she bring that information prior to the next township meeting.

It was the consensus of the board to defer this case for further township review.  It will be heard again by this board on March 3, 2016.

Lipchik asked how anyone could enforce the fact that the applicants having 100 friends over every weekend were indeed friends of theirs.

Mark Drier asked if the farm was there first or the neighborhoods.  Eby stated that when permission was granted to develop, the farm was inactive.  Drier asked when the PUD was put in.  2004.

Lipchik asked what do wedding receptions as an event have to do with agriculture except that they are in a building in the shape of a barn.  This would be giving permission for the applicants to open a dance hall across the street because it looks like a barn.

Laughbaum asked about the trail; is it there in perpetuity?  The trail isn’t there now, who would build it?  Doernenburg stated that it wasn’t the intent to have someone build the trail but rather to allow for the easement should a trail be able to be built through that property.  Notestine stated that the township has been trying to extend a trail system out that direction but if the easements aren’t in place already, they are hard to get all at once when you’re ready to put the trail in.  Doernenburg stated that Louie’s Market has a similar easement stipulation for a trail.  Laughbaum asked about the position through a wetland.  Doernenburg explained that the location is conceptual and is not set in stone.

IV  Public Comment: None

V  Other Business:

• Proposed Ordinance amendments
  o Heliport and helipad –Doernenburg stated that Draft #6 was emailed and on desks tonight for review.  It has been reviewed by Kevin Nelson who supports either version of the text.  Stephanie Ward from Mead and Hunt (Pellston Regional Airport’s Consultant) and Kathy Abbott (Emmet County Civil Counsel) also reviewed and support the text options.  She stated that she feels that there is a discrepancy in the text and that setback from off-premise structure used or intended to be used for human
occupancy listed in the alternate table should read 500’ instead of 250’. The other table option allows the Planning Commission to require deeper use setbacks. Doernenburg stated that if the specific setbacks in the alternate table are adopted, Mr. Huvaere’s request likely would not comply. Laughbaum stated that he is comfortable setting specific setbacks (alternate table option) and if they can’t be met, the applicant could go to the ZBA to request relief. Eby stated that he could live with the alternate table option as well and he doesn’t think that they should be landed within 50’ of a building. Neal asked if the required documentation that we would have submitted to us would include diagrams of takeoff/landing and flight paths to define the setbacks or would it be defined as as to where it sits when it’s on the ground. Doernenburg stated that the information that they are required to provide to the FAA is information that they would be required to submit to us as well. This allows the direction of flight to be limited. Alexander asked about a helipad as this term was removed. Doernenburg read the definitions of helistop and heliport. Notestine asked if all pilots are the same as far as qualifications. If they fly recreationally, are they required to be certified the same way? This may determine skill level and whether they are able to maneuver properly to meet the required setbacks. Neal asked about the statement from Kevin Nelson that they are allowed to operate for sometimes three years without being certified as a helistop/heliport by the FAA; does this put the County in a liability situation if we approve before the FAA does? Doernenburg stated that Kathy Abbott supported the text. Laughbaum asked if the helipad can be elevated on a building. Yes; a helistop can be on a building. The setback is from off-premise buildings. Scott stated that he does not know enough about this to know what a safe setback is. Alexander stated that we should then err on the side of caution. Neal stated that it seems to be going in the right direction. The current request is not looked at now and we are looking to come up with solid language for an ordinance first. Alexander made a motion to publish the text amendment with the alternate text table and changes discussed tonight for public review. Doernenburg noted that this only means that it will be published for public hearing and the townships notified. Changes can still be made if necessary. The motion was supported by Neal and passed unanimously via a voice vote of the members. There was some further discussion with Kevin Nelson regarding the FAA process of approval and the certification question. Nelson stated that the FAA requests plans 90 days ahead of time but can take sometimes 1-2 years before the first visit to the site and up to 3 years for a final certification. With this, it has to show the location of other airports and/or heliport/helipads which is what they are primarily looking at. Alexander stated that it seems that if there was an issue, they’d be notified within that first ninety days correct? Yes.

o Airport Overlay District – Doernenburg stated that she met the Kathy Abbott & Kelly Atkins, Pellston Regional Airport manager who is taking the recommendation to the airport committee for possible modification of language. She stated that they both feel that the language should be corrected.

o Minor ordinance changes: Doernenburg explained that since we are proposing a text amendment, there are a few minor changes to the ordinance that need to be made as well. A handout with three oversight issues from the old ordinance to the new was distributed. A change will be made to the notes to section 19.00 5) to change the governing body over height variances to the ZBA and not the Planning Commission, to Section 26.11 Home Occupations, add Level II and Level I to the text, and to the I-1 and I-2 zoning districts add outdoor sales of automobiles, trucks, motorcycles, ATVs, marine craft, farm implements, contractor’s equipment, and similar units. Scott made a motion supported by Notestine to publish these minor corrections for public hearing. The motion passed unanimously via a voice vote of the members.
• **Enforcement Report**-Distributed. No discussion.

• **2015 Annual Report**-Doernenburg went over the highlights of the Annual Report and offered printed copies to anyone who wanted one as they were emailed. Alexander made a motion supported by Wonnacott to present the Annual Report to the Board of Commissioners. The motion passed unanimously via a voice vote of the members. Doernenburg noted that due to a lengthy agenda, she will likely wait until March to present to the Board.

• **Election of Officers**-Current 2015 slate: Eby-Chair, Urman-Vice Chair, Scott-Secretary. Wonnacott made a motion supported by Alexander to keep the current slate of officers for 2016. The motion passed unanimously via a voice vote of the members.

VI  Adjournment

There being no other business Eby called the meeting adjourned at 9:00 p.m.

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James Scott, Secretary        Date