

VEVAY TOWNSHIP PLANNING COMMISSION
Regular Meeting/Public Hearing
Wednesday, February 3, 2016
Vevay Township Hall – 7:00 p.m.

MINUTES

Members present: Jack Cady, Richard Lacasse, John Lazet, Pattie McNeilly, Ilene Thayer, Wayne Uzzle, and Bruce Walker.

Members absent: None.

Other Persons present: Supervisor Jesse Ramey, Treasurer Shaun Sherwood, Clerk JoAnne Kean, Trustee Doug Shaw, Legal Counsel David Revore, and State Representative Tom Cochran.

I. Call to Order: The meeting was called to order at 7:00 p.m. by Chair Thayer.

II. Pledge of Allegiance

The audience joined the Commission in reciting the Pledge of Allegiance.

III. Set/Amend Agenda

The agenda was accepted as submitted

IV. Approval of Minutes: Regular Meeting January 6, 2016

No amendments were offered.

MOTION Cady, seconded by Walker, to approve the January 6, 2016 regular meeting minutes as submitted.

CARRIED 7-0.

V. Brief Public Comment

There was no public comment.

VI. Recess to Public Hearing

- a. Special Land Use Permit Application Request from Doug and Tami Shaw

Tami Shaw – distributed and read a list of proposed activities, such as association meetings, family gatherings, kids birthday parties, team building events, weddings, and receptions.

Representative Tom Cochran, 418 Coppersmith Drive, Mason – he is supporting the Shaws request. They have been at this for over 5 years now. A lot of small farms are looking to stay in business, and he is a real believer that a purpose of government is to help people. He has visited their farm; they've done a lot with their events, and have a beautiful facility. Approving the application would be one means for people in cities to understand where food comes from.

Weddings are a big thing throughout Michigan. He is at a loss to understand why this couldn't be done as other businesses would also benefit. He has talked with several of their neighbors and no one has complained. QUESTION - He was asked of the status of the legislation he referenced in his letter sent to the Township last October, in which he stated the Legislature would over-ride local control of barn rentals. RESPONSE – He is a believer in local control, and never intended to convey he has concerns with local control. He's talked with Farm Bureau and they support small farms. The legislation has been referred to Committee, and is probably not going to move too quickly.

Jeff Oesterle, 2061 Tomlinson – supports the Shaws, and has been working with the Farm Bureau on expanding agritourism opportunities. People in general seem to be losing their touch with roots and how farming operates. He has been to two weddings held on farms, one in an orchard but photographs taken inside, and the other at sheep barn in the Chelsea area. They are beautiful venues. The agricultural community needs to embrace this type of operation.

Rick Fernberg, 974 West Dansville Road – supports the Shaws. This issue has been going on for 5 years. Most people in Vevay feel this should have been resolved a long time ago. We need this compromise, and to get this done. He has talked with the Township, and if the neighbors don't have an issue with it, it should be done. If the Ordinance needs changing, then do it. There is no reason not to do it. It keeps getting put on the back burner, but enough is enough. Everyone wants it except for a few folks; there is no reason to not approve this application.

Mike Mullin, 1734 Rolfe Road – their property borders the Shaw farm, and he supports their request. He's never had any problems with noise or anything else. They keep the property well maintained and operations are not an eyesore.

Jay Jenkins, 2661 Tomlinson Road – does the Zoning Administrator have an opinion on this? It's been going on longer than 5 years. People talk about agricultural roots, but the list submitted by the Shaws is not about outside events, but renting the barn. Looking online, agritourism is about the farm itself, not just renting a barn. This just keeps coming back; when does it end? This could set a precedent that could be very difficult to regulate on other properties.

John Coy, 2183 Coy Road – supports the Shaws. A near neighbor this past spring had to go to Aurelius Township for a graduation party on a farm. People should be able to utilize a farm venue in the Township.

Carl Woodard, legal counsel for the Shaws – approval of the application requires a review of the basis of determination, the Zoning Ordinance, Sec. 16.03. Accordingly:

1. The Special Land Use shall be designed, constructed, operated and maintained in a manner harmonious with the character of adjacent property and the surrounding area. As has been demonstrated by their current operations, the barn and operations will continue to be operated in a harmonious nature with the surrounding area.

2. The Special Land Use shall not change the essential character of the surrounding area. As there will be no new buildings or development, none of the proposed activities would change the essential character of the surrounding area.

3. The Special Land Use shall not be hazardous to adjacent property, or involve uses, activities, materials or equipment which will be detrimental to the health, safety or welfare of persons or property through the creation of hazardous or potentially hazardous situations or the excessive production of traffic, noise, odor, smoke, dust, fumes, glare or site drainage. Nothing proposed will be hazardous to adjacent property, or involve uses, activities, materials or equipment which will be detrimental to the health, safety or welfare of persons or property. There will be no hazardous or potentially hazardous situations or the excessive production of noise, odor, smoke, dust, fumes, glare or site drainage. The traffic will occur on a light traffic road. Their current operation is an indication of how this basis of determination is fully met by the proposal. As to the concern of the use of alcohol, the VFW hall currently serves alcohol and there are no problems with that operation.

4. The Special Land Use shall not place demands on public services and facilities in excess of current capacity. This really isn't applicable as there would be no need for any increase in either public services or facilities.

5. The Special Land Use shall be in general agreement with the Township Master Plan. As to agreement with the Master Plan, there is nothing in the proposed use that conflicts with anything in the Master Plan. What is proposed is only a small business doing occasional business. On page 1-4 the Master Plan references five points from a public survey that indicates a desire to maintain the rural character of the Township; this proposal is occasional only, probably week-ends, and only a barn.

- This will not involve the current high quality of life.
- The survey talks of preserving the rural nature of the community, and this will do so.
- Farmers need this. A lot of people in Michigan have no idea what country life really is, and this is a wonderful place to bring family and kids.
- While residents consider the amount of commercial development adequate, this is minimal and doesn't change the nature of the Township.
- This proposal has nothing to do with industrial development.

6. The Special Land Use shall comply with all site plan review standards. The proposal does.

In summary, there is an erosion of the family farm across the country as we move to corporate farming. We are losing a significant part of our culture, and exposing people to our farming roots is exposing people to their history. This proposal is consistent with the Right To Farm Act and the GAAMPs, which specifically notes social events. Right To Farm is for farmers, and the intent is to encourage agritourism. While the Township has discussed this for years, this is the first application to allow for barn rental, and it deserves approval.

Greg Shaw, 1668 West Dansville Road – there was comment as to other businesses that could benefit from this proposal. People might stop to eat in town, stop at Merindorf to buy meat, visit the downtown. Once they see Mason, people will be back.

b. Received Written Public Comment

The Township had received email/letters of support from:

- Roseleen Ambler “if no alcohol is involved.”
- Nick Johnson (via telephone call)
- Jeff Oesterle
- Paul and Candie Oesterle

VII. Adjournment of Public Hearing and Recommencement of Regular Meeting

There being no further public comment, the public hearing was adjourned at 7:43 pm and the regular meeting recommenced.

VIII. Reports

A. January 2016 AGS Building/Zoning Report

The written report indicated that there was one (1) building/zoning permit application, involving the finishing of a basement. Four authorizations to enforce the Ordinance are pending: response to a blight violation is potentially leading to a court filing; a dangerous building remains in violation though an agreement has been reached to remediate the violations; and AGS has sent letters to two property owners who do not have building permits for their projects.

B. Correspondence from former Clerk/resident Susan Kosier

Ms. Kosier sent a letter dated January 11, 2016, referencing the January decision by the Commission to recommend the Board eliminate the annual SLU permit review and the associated fee. She expressed her support for continuing to have regular reviews of SLU permit operations, especially as some past operations have led to expensive enforcement actions. She also encouraged the use of the Zoning Administrator, AGS, to conduct regular reviews.

C. 2015 Planning Commission Annual Report

The proposed report incorporating the changes from last month had been previously distributed.

**MOTION Cady, seconded by Lacasse, to approve the 2015 Planning Commission Annual Report as submitted, and to forward it to the Township Board and office.
CARRIED 7-0.**

D. Blue Grass Rezoning and SLU permit Update – Memo from Supervisor Ramey

Just prior to the November, 2015 Planning Commission public meeting, Neil Sheridan and Eric Harter had asked that consideration of their rezoning petition for 781 Hull Road, and the SLU permit application for vehicle repair at that address, be postponed. Supervisor Ramey indicated in his memorandum that Neil Sheridan is requesting that a public hearing still be held on his petition to rezone the parcel at 781 Hull Road to Highway Service. He has withdrawn the SLU permit application for vehicle repair operations at that same address. Supervisor Ramey requests the Commission to schedule a public hearing on the rezoning petition, perhaps in March or April, depending on other work before the Commission.

MOTION Cady, seconded by Walker, to schedule a public hearing on the rezoning petition for 781 Hull Road during the regular Commission meeting on April 6, 2016.

CARRIED 7-0.

IX. Pending Business

**A. Special Land Use Permit Application Request from Doug and Tami Shaw
Re: Social Event Venue**

Chair Thayer – commented that the Zoning Ordinance does not permit rental of buildings in the Agricultural District for social events, weddings, and parties. The Commission cannot go against its own Ordinance to recommend a non-permitted use. To consider this SLU permit application would necessitate changing the Ordinance for the entire Agricultural district. She noted the extensive time spent in 2014 and 2015 looking into amending the Ordinance to allow this use. A planning consultant assisted the Commission with various draft proposals and researching the issue. After discussing the ramifications and issues for several meetings the Commission decided to not recommend amending the Ordinance. Concerns included no mechanism to enforce problems with noise and alcohol, this would impose a commercial, potentially traffic-intensive business in the Agricultural District, and barn rental would have to be allowed everywhere within the Agricultural District.

Comm. Lazet – stated that as a governmental body, we have to play by the rules. We do not have the option of making up rules as we go along, or of ignoring rules we don't like. When the Commission spent four months a year ago considering barn rentals, he learned that the Shaws and the Township are parties to a court order. A lawsuit had been filed, and to settle it, the Shaws and the Township stipulated to the following: "...rental of any building on (Shaw's) property ... including but not limited to use for fraternity parties, dances, class reunions, family reunions, business or other meetings, weddings or wedding receptions, is not permitted." The Shaws agreed to this and the court ordered it. Further, the case was dismissed with prejudice, meaning it cannot be brought again, but the court retained jurisdiction for purposes of enforcing the order. So even if the Ordinance were amended to allow for barn rentals, this order would prohibit the Shaws from renting their barn. As a Commission, we do not have the legal authority to violate a court order, and cannot recommend that the Township violate the order.

Comm. Lazet - The Legislature has written law that specifies and limits how the Township can enact its own Ordinances. His experience is that there are two general opinions of the law: one, that people can do whatever is not prohibited, and two, that people can only do what is permitted. The Court of Appeals has settled this interpretation in the case of *Bracelin v. Allegan Township Zoning Board of Appeals*. The Bracelins had spent 5 years developing a motocross track, and residents complained. The Bracelins then successfully applied for a SLU permit from the Planning Commission. That decision was appealed as a motocross track was not a permitted use in their Ordinance. The Court of Appeals held "The ordinance does not expressly provide for a motocross track as a special use in an agricultural district. Therefore, the planning commission was without power to grant petitioners a special use permit for a motocross track. Accordingly, the circuit court properly affirmed the zoning board of appeals' decision nullifying the special use permit because it was not authorized by law." In plain English, we can only approve uses specifically permitted by the Ordinance, and barn rentals in the Agricultural District are not permitted. As a result, the Court of Appeals has clearly ruled that this Commission does not have the legal authority to approve the application tonight.

Comm. Lazet – commented that just last week (January 27) the Agriculture Commission voted on the 2016 GAAMPs for Farm Markets, and did not include social events under the protections of the GAAMPs. He read from the newly approved GAAMPs where they expressly state that “social events” are subject to local regulation, clearly meaning Township zoning and ordinance. He encouraged the Shaws to submit comments to the Farm Market GAAMPs board when they ask for public comment later this summer or fall. A few years ago the Commission went through the entire Ordinance to ensure that every provision was in compliance with the GAAMPs. If the GAAMPs were to ever protect social events and barn rental, he would work on language to recommend bringing the Township Ordinance into compliance with those new GAAMPs. But the GAAMPs today do not protect nor advocate for social events in agricultural districts.

Comm. Lazet – noted that this issue was discussed at great length a year ago during the Commission meetings in October, November, and December of 2014, and January, 2015. Language for several variations of building rental was discussed and ultimately rejected as it would commercialize the entire A-1 Agricultural District with potentially attending negative and harmful impacts on surrounding parcels and the Township. Barn rental cannot legally be limited to the Shaws. He also publicly noted in 2014 that there was a court order prohibited the Shaws from renting their barn.

Comm. Lazet – further commented that the Township’s Zoning Administrator has indicated that the SLU application cannot be reviewed nor granted because the “rental of any structure or social events are not identified as either a permitted or special use within the Agriculture District”.

Comm. Walker – pointed out that the Shaw’s’ current SLU permit #120 prohibits rental of their barn. He asked legal counsel of the impact on the Commission of the court order prohibiting rental of the Shaw’s barn, the lack of social events as a permitted use in the Ordinance, and the Court of Appeals decision prohibiting planning commissions from authorizing SLU permits for non-permitted uses.

Mr. Revore – He generally agreed with the comments by Commissioner Lazet. The Ordinance does not allow for barn rentals for social events in the Agricultural District. It could be amended to allow for such a use, but the Shaws still could not rent their barn as they would be bound by the court order. As long as the court order is in force and the Ordinance does not allow for social events in the A-1 Agricultural District, the Shaw’s application cannot be approved. To Commissioner Walker’s question, based on the court order, the state law governing zoning ordinances and planning commissions, the lack of social events as a permitted use, and the Court of Appeals decision, he advised that the Commission does not have the legal authority to recommend approving the SLU permit application. He further advised that the Township should not violate the court order, and should comply with law.

MOTION Lazet, seconded by Uzzle, that:

- **as the Shaws and the Township are subject to a valid court order based on a stipulation that both parties signed on August 24, 2011, which specifies that “...rental of any building on (Shaw’s) property ... including but not limited to use for fraternity parties, dances, class reunions, family reunions, business or other meetings, weddings or wedding receptions, is not permitted.”;**

- as the court retains the authority to enforce the order, and advice from legal counsel is that approval of the SLU permit application by the Township would constitute a violation of the court order;
- as the Shaws and the Township both signed their current SLU permit #120, which expressly prohibits the rental of any building;
- as Legal Counsel and the Zoning Administrator have both pointed out that under state law the Planning Commission lacks the legal authority to approve the SLU permit because the Zoning Ordinance does not allow for hall rental as a permitted use in the Agricultural District;
- as the Court of Appeals has ruled in an almost identical case that “The ordinance does not expressly provide for (this specific activity) as a special use in an agricultural district. Therefore, the planning commission was without power to grant petitioners a special use permit for (this specific activity). Accordingly, the circuit court properly affirmed the zoning board of appeals’ decision nullifying the special use permit because it was not authorized by law.” *Bracelin v. Allegan Township Zoning Board of Appeals*, COA docket #259758; and
- as the GAAMPs for Farm Markets adopted by the State Agriculture Commission on January 27, 2016, expressly do not extend the protections of the Right To Farm Act to social events and do not promote social events;

the Commission forward the Shaw SLU permit application to the Board with the recommendation that the application be denied as the Township has no legal authority to approve the application.

CARRIED 7-0.

B. Discussion on draft Planning Commission by-laws

Commissioners received a copy of the most recent draft in their packet for the meeting. The Commission asked to have the office add the date of adoption to the header of the by-laws.

MOTION Cady, seconded by Walker, to adopt the by-laws as submitted.

CARRIED 7-0.

X. Any Other Business

No other business was discussed.

XI. Additional Public Comment

There was no additional public comment.

XII. Adjournment

There being no further business, the meeting was adjourned at 8:14 p.m.

John Lazet, Secretary