

**Charter Township of Elmwood
Planning Commission Regular Meeting
Elmwood Township Hall (10090 E. Lincoln Rd)
December 19, 2023 at 6:30 PM**

A. Call to Order: Chairman Bechtold called the meeting to order at 6:30 PM.

B. Pledge of Allegiance: The Chair led the Pledge of Allegiance.

C. Roll Call: Present: Chris Mikowski, Doug Roberts, Kendra Luta, Rick Bechtold, Jeff Aprill, Jonah Kuzma, Nate McDonald

D. Limited Public Comment: None

E. Agenda Modifications/Approval: MOTION BY COMMISSIONER LUTA, SECONDED BY COMMISSIONER APRILL TO APPROVE THE AGENDA AS MODIFIED ADDING ITEM J.B- 2024 SCHEDULE. MOTION APPROVED 7-0.

F. Minutes- October 24, 2023: MOTION BY COMMISSIONER ROBERTS, SECONDED BY COMMISSIONER KUZMA TO APPROVE THE MINUTES OF OCTOBER 24, 2023 AS PRESENTED. MOTION APPROVED UNANIMOUSLY.

Minutes-November 15, 2023: MOTION BY COMMISSIONER KUZMA, SECONDED BY COMMISSIONER LUTA TO APPROVE THE MINUTES OF NOVEMBER 15, 2023 AS PRESENTED. MOTION APPROVED UNANIMOUSLY.

G. Consent Calendar: MOTION BY COMMISSIONER APRILL, SECONDED BY COMMISSIONER ROBERTS TO FILE THE CONSENT CALENDAR AS PRINTED. MOTION PASSED BY A UNANIMOUS VOTE.

H. Declaration of Conflict of Interest: None

I. Old Business: None

J. New Business:

a. Public Hearing and Deliberations. ZO 2017-04-17-a Zoning Ordinance Amendment to amend Section 2.2 Definitions to add definitions for "Active Farm Operation", "Festival", and "Special Event Facilities", amend Section 5.4 to allow for Special Event Facilities within the Agricultural-Rural Zoning District, with a Special Use Permit and to renumber the subsequent uses within the Land Use and Zoning District Table; amend Section 9.8 H to include standards and regulations specific to Special Event Facilities.

Chairman Bechtold read the statement to open the public hearing.

Public hearing opened at 6:37 p.m.

Staff noted the Gallagher's who are the applicant were present even though the Township has essentially taken over the application, with the Gallagher's permission, and in the packet, she did include the additional memo received from the Township Attorney. All of the proposed modifications have been made to satisfaction of the Township Attorney with one further modification being on page 2 of 3, under h2f where it currently reads "requirements pursuant to Article 6 of the Zoning Ordinance...", he recommends they add the word "applicable", so it reads "**applicable** requirements pursuant to Article 6...".

Chairman Bechtold asked if they would need separate motions for each definition or could they be grouped. Sara Kopriva with Beckett and Raeder replied, it could be one motion.

Commissioner Roberts wanted clarification on p. 2 h2jiii, "tear down shall not occur after one hour..." which means essentially from the termination of the event until 1 hour, subsequently that's all the time they have to tear it down. Sara Kopriva clarified, or they have to do it during regular hours, they just can't do it later.

John Gallagher 9300 Breithaupt Rd. talked about the square footage requirements. If you had a 40 -acre parcel which is minimum, and 30 acres=approximately 1,300,000 sq. ft., then the 2.5% would leave you with 30,000 usable feet. They know somebody with a Special Event Center and took a rough look at what their roads would be like. Their roads would be about 10,000 sq. ft., parking would be about 80,000 sq. ft., and the event center itself not including toilets or cook tent which is mandated by law, just looking at the tent puts it well over 100,000 and best- case scenario at 2.5%, those people would only have 30,000 sq. ft to use. That would leave you maybe a 2-track, not a fire approved road or park on a main road and bus people in, it's impossible in his mind to try to do it at 2.5%. He thinks they're trying to identify something that is the environment in which you can't be subjective, we have to take everyone as a separate case, but if he were near a commercial district that had other amenities to help him with his special event center and he was surrounded by commercial, there would be one scenario. Another scenario might be, in the middle of 100 acres surrounded by same ownership, he doesn't know how to incorporate the language, but he thinks it's relative and would make a lot of difference if he was in their seat as to whether they were trying to use it as a commercial venue or if they were trying to preserve a farm. He thinks they are there to preserve farms. He's heard that from the Planning Commission, he's heard it from the Chairman, he just can't get it in text. As for sound, if someone complains about an event being too loud, and what they're talking about is, "annoy, disturb, injures and endangers comfort, repose health, peace or safety of any reasonable person". He asked who's going to define "reasonable person". It also says "normal sensitivities", he has allergies and his hearing is very good, he can hear a hoot owl ½ mile away. Those are so subjective, he asked how do you get your hands around that, let alone the fact, "peace or safety". So, someone complains about noise and the Zoning Administrator warns the event they're being too loud, they get a warning, a couple weeks go by and the same person complains again and the special event gets a fine, then that

person complains again, and the Township shuts the event facility down but they have other events scheduled, so they go to court. He wouldn't want to be the Zoning Administrator who walks into court and the special event says they weren't being too loud and have the court ask the ZA, what evidence they have. They would have the one person who complained, and how do you quantify that. It's an unenforceable situation. With those 2 issues, his recommendation, unless that can be amended to the satisfaction of the Planning Commission or functionality, which he doesn't know if it was already published, and you don't change the intent, if you could or felt that could be proper, if not, it should be denied and have another workshop to discuss those specific issues if not all of them.

Commissioner Kuzma said, on sound, aren't they looking at the memorandum from Young, Graham, and Wendling that said that's the verbiage that seemed appropriate. Sara Kopriva said, yes, that's the verbiage they've used in court to go with because you either have to do that or decibels and with decibels you run into its own trouble because you have meters and testing and things like that. The courts have held up the "reasonable person" standard for that enforcement.

Chairman Bechtold talked about the investigative piece using John Gallagher's example. A citizen calls to complain, wouldn't it be prudent on behalf of the enforcement agent to get as many specifics from the complainant as possible and would the Township move ahead with enforcement on just the information of it being too loud. Sara Kopriva said if someone called her, she would say get video or proof. Staff said evidence is incredibly important.

Chairman Bechtold thought the collection of evidence would be key. As far as square footage, when they came up with the 40 acres, they wanted enough real estate that there could be room for parking and setup versus somebody buying a barn on a 2-1/2 acre lot and having people park on the right of way of a county road or neighbors' yards. He asked Sara Kopriva and Staff if in that calculation would you include the road because if it's going to be an event venue on a piece of agricultural property, you want the road in and out of there safe enough for the attendees to get there and for emergency vehicles to get in and out if needed. Staff said that's a good point. She was reviewing the language again and when she saw access, it almost penalizes somebody if they place the facility in the middle of the parcel, which would theoretically allow for more buffering and less impact to the surrounding area.

Commissioner Aprill thought they started with a larger parcel so the 2.5% made sense. He said a 40- acre parcel isn't that big. If they're truly interested in saving farm land, they need to relook at it and look at specific parcels. He thinks they're missing some key parts and it's premature to send it through.

Sara Kopriva said last month when they left it, they were still talking about the acreage size and that 2.5% and what was included or not included and what felt good in protecting the neighbors in that calculation. The 2.5% comes over from the old Ordinance, but it didn't

have that active farm land component as a part of that, so it was 2.5% of the total acreage of the property, so it is more restrictive in this draft than it was prior, including the drive.

Commissioner McDonald said the other thing they looked at in the Township were the number of properties that have the capabilities of having a special event on their 40-acres.

Commissioner Aprill said one of the requirements is “shall not exceed 2.5% of the area used for the active farm operation.” If you had 40-acres and only 20-acres was farmable which is quite common, then it’s even smaller.

Commission Luta said she feels like they’re trying to do all of it and for something like this it’s just really difficult and that 2.5% has always been her kicker of if you want to do this and help people then make it successful and set them up to be successful with it, but they’re in this in between part where if you increase the acreage, then you’re limiting them out of people who have access to be able to do it and if they increase the percentage, then they’re taking away from the ag component that they want to keep in it. Commissioner Aprill agreed.

Commissioner Kuzma wondered if contiguous was included. Staff clarified, when permitting a use in the Township, the use is just on that one parcel, not adjoining parcels.

Commissioner McDonald said they talked about if someone has neighboring parcels, then they could combine them.

Commissioner Aprill said it’s a tough one and he agrees with Commissioner Luta, if they’re going to do this, they need to figure out how they can do it to make it help somebody, but they need to look at a 40-acre parcel and see what it is and see what they’ve got with that.

John Gallagher said it helps save a farm if you can help supplement a farm.

Chairman Bechtold said one of the key components for him was the operative word, farming, where it’s zoned agricultural.

Commissioner Mikowski noted at the last meeting she had made a comment that this is an up-and-coming thing so she went ahead and looked up 4 different Townships in the area and what their Ordinance’s are. Two of them don’t have special events in their Ordinance, but Bingham and Suttons Bay do. They do not have requirements for the 2.5%. One is 40-acres and the other is 25-acres, but they use the words commercial farm and in their definition of commercial farm; a farm which has produced agricultural or horticultural products worth \$2500 or more annually for at least 3 of the past 5 years. She also made a map of some of the special events; most of them are wineries, golf course, or farm, but there are 18 in a small area. So, if a special event is up and coming, you have 2 Townships that don’t have them, 2 Townships that do and have been successful at it, she doesn’t understand why they have to have the 2.5% in there. She understands the acreage

minimum, but they already require a setback so if you take that into consideration, plus access if they keep that in there, then the spot where it would actually be, you're talking less than ½-acre. She discussed active farm vs. commercial farm with Staff but because they had it in the Ordinance prior and had all the requirements for the figures of how much they did, they didn't want to get back into that.

Chairman Bechtold added with that in their earlier discussion was making sure the farming entity was registered with a farm services administration, but the Attorney felt that might be a problem with others who were farming but weren't registered.

Sara Kopriva thought the dollar amount goes back to the old Ordinance and could cause some trouble. She wondered if they went the other way, instead of 2.5%, have a certain number of square feet devoted to the use or a certain percentage of the property needed to be agricultural production.

Chairman Bechtold asked what would be a reasonable amount of land for what's in production.

Sara Kopriva noted this would be an accessory to ag use instead of the use standing on its own.

Commissioner Aprill said the tough thing is if you look at a square 40, he just did some calculations, it's 1320 ft. on the side provided you don't count the road right of ways or easement, so that leaves 920 ft. in the middle of the square 40 and the tough thing would be to get an event center in the middle of that because it may be the best piece of ground, and to actively farm a 200' wide strip around that 920' in the middle would be difficult. There are a lot of requirements they have that in a real world may not work at all.

Chairman Bechtold said he's been approaching this from the standpoint of the crops that are on this piece of property are to support the whole overall agricultural operation of the farm versus having just enough sod turned to meet the minimal requirements of the Ordinance to have the event center. He's seeing a connection to the overall farm operation. Commissioner Aprill said the issue he has is usually the first 200' of a farm if there's a farmstead is where the barn is. It's cumbersome to try to make it work on any particular piece. He thinks they need to spend time with it if they're going with 40-acres. They don't have a lot of requests for it, but he's not sure they want a lot of requests for it either. If they're going to put it in the Ordinance, let's make it work for somebody.

Commissioner McDonald said he also thinks they need to work on some of those other concerns John Gallagher pointed out about reasonable, and do they need definitions on those items.

Chairman Bechtold said what he's hearing is they are at a point where they need more information.

Public comment opened at 7:23 p.m. No public comment was given.

Public comment closed at 7:25 p.m.

Chairman Bechtold asked the Commissioners if they felt more information was needed. Commissioners Roberts and McDonald agreed they needed more information with clear definitions. Commissioner Kuzma didn't agree that they needed to talk more unless they want to be more restrictive or less restrictive. They have something in front of them they just don't agree with the amount 2.5%, maybe they have issues with sound, he brought up contiguous but Staff clarified that. In general, do they want these, he thinks that's where some people are at.

Chairman Bechtold said some of the points they questioned were the access.

Chairman Kuzma asked if they could change the percentage to a higher number or remove it.

Commissioner Roberts asked what if they increased the acreage.

Commissioner Mikowski said if you increase the acreage there aren't any parcels large enough. Staff didn't recommend increasing the parcel size, but said if they wanted to increase the percentage that may serve the same purpose.

Commissioner Aprill said they didn't have a map that shows the 40-acre parcels.

Commissioner Mikowski noted some of the acreage have multiple parcels but you can only use each parcel as its own.

Sara Kopriva offered to create a map to show parcels that are 40-acres and above. But, as they discussed, they'll have to make sure they don't create an Ordinance for something that doesn't exist.

Commissioner Aprill said they need to assess 40-acres and decide if that is an adequate size.

Sara Kopriva noted in the old Ordinance if a building existed, it was given relief from that setback, so if that's something they're thinking about is an existing building, maybe allowing closer setbacks under certain standards and requirements versus someone building new which would need more restrictive setbacks. The balance is between this commercial use, these special events, and the compatibility with the neighborhood and neighboring properties. The Planning Commission and Township need to decide what the balance is between allowing agricultural properties to put these events on and neighboring properties and the impact on the neighboring properties.

Chairman Bechtold asked if he called for a motion to close the public hearing and get into deliberations, and in some cases, they substantially change the text do they have to convene another public hearing with the revised text that would emanate out of their deliberations.

Sara Kopriva replied, they could revise the text, but they're looking for more research and information for the next meeting, so she's not sure they'd want to continue a public hearing at the next meeting. It would be nice to continue it so they don't have to republish it, but she's not sure they'll be ready for additional public input at the next meeting.

MOTION BY COMMISSIONER APRILL, SECONDED BY COMMISSIONER ROBERTS TO CLOSE THE PUBLIC HEARING AT 7:34 PM. MOTION APPROVED UNANIMOUSLY.

The Commissioners went through the amended text and deliberated.

Sara Kopriva will create a topographic map with calculations of 40-acre+ sized parcels and percentage calculations of 2.5%, 5%, 10%, 15%, and 20% to bring back to the next meeting.

b. Meeting schedule for 2024: The meeting time for 2024 was changed to 6:30 p.m. The November 2024 meeting will be November 12th and the December 2024 meeting will be held December 10th.

MOTION BY COMMISSIONER APRILL, SECONDED BY COMMISSIONER LUTA TO APPROVE THE MEETING DATES AND TIME FOR CALENDAR YEAR 2024. MOTION PASSED UNANIMOUSLY.

K. Discussion on Zoning Ordinance: None

L. Comments from the Chair: Chairman Bechtold thanked the Commissioners for their preparation, thorough discussion and good questions. He also thanked the applicant for providing them with thoughtful comments, and wished everybody a Merry Christmas and a Happy New Year.

M. Comments from Planning Commissioners: Commissioner Aprill said he's not sure what they're waiting for, but would seriously like to look at their Zoning Ordinance in the Resort/Commercial district and tighten that up.

N. Comments from Staff: Staff said hopefully at the next meeting they'll have an introduction for requirements on density.

O. Public Comment: Sue Jones-letter submitted, Jack Kelly

P. Adjourn: MOTION BY COMMISSIONER MCDONALD, SECOND BY COMMISSIONER KUZMA TO ADJOURN MEETING AT 8:19 PM. MOTION PASSED UNANIMOUSLY.