



**ACME TOWNSHIP PLANNING COMMISSION MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
7:00 p.m. Wednesday, February 9, 2005**

Meeting called to Order at 7:02 p.m.

Members present: M. Vermetten (Vice Chair), B. Carstens, C. David, R. Hardin, J. Pulcifer
Members excused: O. Sherberneau (Chair), D. Krause, D. Morgan, E. Takayama
Staff present: S. Corpe, Office & Planning Coordinator/Recording Secretary

INQUIRY AS TO CONFLICTS OF INTEREST: None noted.

1. Public Comment:

Joe Kuncaitis, 7905 Sayler Road, asked if only the yellow-highlighted portions of the ordinance would be open for discussion, or if the whole ordinance can be discussed. Vermetten and Corpe responded that any portion of the ordinance section may be discussed; the yellow highlighting is present to help the Commission and public understand where changes have been made.

2. Public Hearings:

a) **Public Hearing regarding Proposed Ordinance Amendment #130 to Section 8.27, Wineries, of the Acme Township Zoning Ordinance:** Vermetten noted that the committee that originally wrote and subsequently reviewed the Winery ordinance included Herb Smith, Owen Sherberneau, Denny Hoxsie, Ken Engle, Rick Sayler and Doug White.

Public Hearing opened at 7:08 p.m.

Ken Engle, 6754 Yuba Road, stated that the primary changes to the existing ordinance come in Sections 8.27.6(2)J and later. In particular, Section 8.27.6(2)J.7 discusses ways that the maximum permissible area to be dedicated to retail and special events uses can be expanded if the landowner makes concessions in the form of additional setbacks and/or conservation easements. One change is that the amount of extra space that can be obtained has been capped, limiting the total amount of possible retail/special event space to 8,000 sq. ft. Additionally, Section 8.27.6(3) permits co-existence of a B&B on a winery property, but as currently written the allowable B&B space subtracts from the allowable special event space. Mr. Engle felt that there was never an intent to limit the size of a B&B, and it was recognized that if a B&B existed on a parcel before a winery was added, the wording might imply that the winery would have to be built to a certain minimum (and possibly larger than needed) size based on the B&B size.

Mr. Kuncaitis asked if a temporary tent is part of the maximum permissible special event space? Would the B&B portion of a joint operation constitute a separable 5-acre parcel? Mr. Engle stated that to operate a winery, an individual must have at least 40 acres of land under their control, and at least 20 of those acres must be within the parcel where the winery is built. It is his understanding that it is not necessary to have an additional five acres to operate a winery. Mr. Kuncaitis is concerned that there are no provisions that would prohibit a B&B from being sold off separately from the winery. What happens if the B&B should fail, and the maximum-allowable

amount of space for special events has otherwise been created. Corpe believes that the ordinance is silent on this point, and what would happen next would depend on how many acres the winery operator owns and how many of those acres are on the winery parcel itself.

Mr. Kuncaitis was also concerned about the requirements of Section 8.25.3(11) that require that any B&B be housed in a structure that “possesses some historical or architectural significance which would make it a unique location for such an establishment.” He feels that this language implies that a B&B should not occupy a new-construction building. Vermetten disagreed.

Pat Salathiel, 4888 Five Mile Road, expressed support for implementation of the winery concept in Acme Township.

Mr. Kuncaitis asked if it would be possible to modify the maximum allowable outdoor light pole height downward from the existing 20’ or from the proposed 12’ down to about 3’. The proposed Engle Ridge Winery property is on a high area and the light could be very intrusive to surrounding properties. Corpe suggested that the focus remain on the ordinance as it applies broadly to all agriculturally-zoned properties in the township. Mr. Engle’s specific application will be discussed at a later point in time. Hardin observed that the exterior lighting requirement specifies a maximum height, leaving the township with discretion to impose a lower pole height if a given situation warrants it.

Karen LeClair, 8393 Sayler Road, opposes the Engle application due to potential noise and light pollution, increased traffic concerns and the possibility that people visiting the site will intrude on the privacy of her private property. She generally opposes the more commercial aspects of the proposal and of what the ordinance allows. She does not oppose the concept of wineries themselves, and of the agricultural portion of the operation.

Denny Rohn, 9267 Shaw Road, expressed support for a winery ordinance for the township. She has a question regarding the maximum square footage allowed for special events. How would temporary tents be counted? Hardin stated that he believes Section 8.27.6 expresses a maximum square footage for special events, whether of a temporary or permanent nature.

Mr. Kuncaitis drew attention to Section 8.27.5(12), which states that installation of vegetation or fencing along boundaries with neighboring properties would be the joint financial responsibility of the winery owner and the neighbor. He believes it is unfair to make a neighboring property owner pay to mitigate a new visual or auditory nuisance created by the winery use. With all other commercial uses the full burden of the cost and maintenance of the improvements is the burden of the commercial user seeking the permit. Denny Hoxsie recalled committee discussions on this topic. Rick Sayler asked what would happen if the winery owner and the adjacent landowner couldn’t come to an amicable agreement on how to share the costs and responsibilities. How would the township decide the matter? Mr. Kuncaitis felt that it would be unfair to impose a potentially significant expense on the landowner who seeks to continue to use their land as they always have just because his neighbor would like to undertake a winery operation. David expressed appreciation for this concern. Mr. Engle noted that discussions also included the question of maintaining adequate air drainage for agricultural operations on either the winery or adjoining parcels. Perhaps both parties would have good reasons why no barriers should be created. Mr. Engle believes that placing the whole burden on the winery owner just because his neighbor wants a fence seems unfair to him. Vermetten noted that the

language in the ordinance says that a buffer “may” be required, which leaves each situation open to discretion. The language goes on to say that the costs should be shared; he believes that this is how such situations have traditionally been treated in the agricultural district. Mr. Kuncaitis challenged Vermetten to name an instance where a fence has been put up in the agricultural areas, and stated that he views the winery as essentially a “spot-zoning” imposition of a commercial use in an agricultural district.

Mrs. LeClair agreed with those in the audience who feel that the winery developer should bear the full expense of any buffer landscaping, terraforming or fencing that might be required. Mr. Engle asked what would happen if a landowner neighboring the winery wanted to keep horses. Who would pay to fence the horses into one property and out of another? David felt that the two scenarios are not comparable, because the keeping of horses is in keeping with the nature of the zoning district, while there are aspects of the winery operation that are more commercial in nature. He believes that the winery parcel developer should be responsible for the cost of mitigating the impact of the new operation on the neighboring properties. Mr. Kuncaitis feels that the existing language is too restrictive on the neighbors and should be softened. Hoxsie noted that if the entire burden of constructing the fence fell on the winery operator, he would likely place the fence about a foot within his property boundary and of any construction he chose, regardless of whether or not it was appealing to the adjoining neighbor.

Hoxsie feels it important for the township to recognize the importance of ordinances like the winery ordinance. Without it, an agricultural operation such as winery might be conducted in a far less carefully regulated way. If the people of Acme Township want to protect and preserve farmland, enhanced uses such as wineries and B&Bs may be necessary for agriculture to remain viable in the modern age. Mrs. Salathiel echoed Hoxsie’s sentiments. The alternative is for the land to be broken up in to 5-acre lots and developed as homesites that would also have an intense impact on the neighboring areas and the overall feel of the township.

Regarding special events, Saylor has concerns about 8.27.6(2)b, which permits only one special event on a winery parcel on any given day. He has been working closely with the farmland preservation/purchase of development rights movement in the township. He fears that if up to 365 events could be permitted per year, it could negatively impact the ability of the township to attract matching dollars to farmland preservation and where certain properties neighboring a winery would rank in terms of capturing those dollars. Saylor summarized American Farmland Trust’s position as: if an event is consistent with agricultural operations on a property, it should be allowed. Comings and goings throughout the day to a tasting room might not be bad in this regard, but events such as festivals or weddings that attract significant blocks of traffic at particular times of day suddenly don’t seem to be consistent with agricultural operations.

Jill Koester, 7450 Saylor Road asked how “special events” are defined, and whether or not the definition depends on the size of the winery. Corpe read the definition of “special events” from Section 8.27.3(10), and noted that the number of people who can attend will be a function of the size of the buildings and how many people the Health and Fire Departments will permit to occupy the available space. Mr. Engle emphasized the phrase “of a type frequently associated with wineries,” noting that there is a type of event that has generally been found to make wineries into successful businesses. He also noted that the Michigan Liquor Control Commission has very strict rules about what can and cannot occur in a winery/wine tasting setting relative to their permit process. Saylor asked Mr. Engle if he has a feeling for a “break even”

number of events a winery would need to host to keep the operation viable. Vermetten suspected that the answer might be different for each individual operation. Ms. Rohn recognized that in formulating the winery ordinance, the ordinances of surrounding townships such as Peninsula were examined. She asked if the committee looked into the average number of events per year wineries in those other jurisdictions are hosting. Mr. Engle stated that one individual who read the hearing notice in the paper observed that the township has reserved the discretion to entirely prohibit special events if they prove to generate too many nuisance complaints.

Mrs. LeClair observed that there has been discussion about weddings and knitting clubs using the winery for a special event, but what about a motorcycle club? Traffic from their arrival and departure could be very noisy. How does an adjoining property owner compare this disturbance to the ordinance and discover whether or not further actions should be taken by the township? Vermetten responded that if a nuisance is reported, a public hearing must be held. Corpe read the requirement language from the ordinance, noting that “nuisance” appears to be a very broad term implying that any complaint from a neighbor will trigger the requirement for further discussions about special events on the site.

Public Hearing closed at 8:10 p.m.

David asked why the phrase “and other beverages as permitted by Michigan law” has been proposed to be added throughout various portions of the text. There is a clear intent expressed that a winery produces wine and other beverages made from fruits or other agricultural crops. Hoxsie stated that the committee discussed other beverages that the Liquor Control Commission may now or in the future add to the list of things wineries are permitted to make. Vermetten agrees that leaving flexibility for the future as this list grows is a good idea, rather than having to amend the ordinance each time a new product such as a wine cooler is invented.

Vermetten expressed appreciation for the work and thought that has gone into creation of the original ordinance and the proposed amendments. He is concerned with the section that currently requires adjacent property owners to share the cost of construction of screening between the properties. He has heard this concern echoed this evening. Carstens can understand the desire for a neighbor to be provided with screening from the commercial aspects of the operation, but what if the neighbor doesn't want to look at rows of grapes? Vermetten noted that a boundary buffer is not absolutely required but may be required at the township's discretion. Hardin echoed Vermetten's concerns, feeling that a residential neighbor should not be billed for a fence to mitigate the effects of new development next door. He agrees that in general, when development occurs in the township the developer is expected to do what is necessary and required by the ordinance to mitigate the impact on surrounding land uses. Pulcipher could understand this point of view in relation to a new parking lot, but he is concerned about the individual who comes along and says they don't want to look at their neighbor's cherry trees. Vermetten understands the concern, but reads the intent of the language differently. He interprets it to mean that whether or not the screening will be required is at the township's option and not solely at a neighbor's option. He is confident that the boards and commission can hear the interested parties and make a sound determination as to whether the request for a screening device is appropriate or not. Mr. Engle stated that he believes state law governs the erection of fences between agricultural neighbors; Hardin noted that in some cases the neighboring land use is residential and not agricultural.

Doug White, 7626 Saylor Road, recalled that the committee's intent regarding the boundary delineation is in large part to prevent people who are visiting the winery

from easily trespassing into neighboring agricultural croplands and appropriating fruit for free from the trees. Mr. Kuncaitis agreed that neighboring farmers whose lands are in active agricultural production will have extensive shared boundaries and will often have a common goal and desire to share the costs. In contrast, a residential neighbor with several hundred feet of shared boundary should not be required to share the cost of the fence. Perhaps the problem could be solved by amplifying the language in the paragraph to recognize the two fundamentally different possible situations. David feels it is adequate to state that if two adjacent property owners come to a mutual agreement to share costs on their own, there is no problem, but in situations where the township believes it important to impose a requirement for a boundary the winery developer will always shoulder the costs involved.

Nels Veliquette, Country Hermitage and Cherry Country Cove expressed concerns about a tendency for people who move to 5-acre parcels in agricultural areas and express a desire to preserve farmland to come into conflict with the daily impacts of living next to an agricultural operation.

The Commission generally agreed that Section 8.27.5(12) should be amended to say only that installation of fencing, screening or landscaping to buffer may be required. The idea that the person seeking the winery permit would pay for the improvements would be left implicit, and by not mentioning a requirement one way or the other an opportunity still exists for neighboring property owners to come to an independent agreement.

Motion by Hardin, support by David to amend Section 8.27.5(12) to read “Installation of fencing, screening or vegetation may be required.” Motion carried unanimously.

Motion by David, support by Pulcifer to recommend approval of the proposed ordinance amendments as amended to the Board of Trustees. Motion carried unanimously.

3. Public Comment/Any other business that may come before the Commission:

Nels Veliquette hopes that the Planning Commission will address the 5 acre minimum lot size requirement for the agricultural district. He believes that this is a poor use of agricultural property, and that this is a poor size for a residential home site. Conflicts between land uses such as those expressed this evening by people who purchased 5 acre parcels to live in the country but don't want agricultural operations to evolve with the times will increase. One example of this situation are the properties on the south side of Brackett Road that are zoned agriculturally but are surrounded by high-density residential zoning. They requested a zoning designation change to match their surroundings which was approved by the Board of Trustees but defeated by referendum. The land has now been divided into 5-acre parcels. The Veliquettes found that farming the land they used to own on the corner of Dock Road and US 31 was very difficult due to conflicts with neighboring high-density residential properties along Deepwater Point Road. Agriculture is business, and the more neighbors a farm has, the more trouble it has. To date all of the burdens appear to him to have been placed on the farmers and not on the residential neighbors. David asked Mr. Veliquette to suggest some alternatives. Mr. Veliquette believes that agriculturally-zoned properties should be divisible into one-acre splits, possibly with a limit on the total number of such splits. A farmer could then sell a small piece of land to family members to homestead and help with the farm operation, or sell to a non-family member and retain more land in his agricultural use rather than having wasted as a large lawn on a 5-acre homesite. Hoxsie concurred, noting that

Tobeco Creek Estates is an example of a poor development that could have been done better with the same number of houses on smaller lots with land preserved if appropriate incentives were provided.

Ken Engle thanked the Commission and the members of the public who gave of their time to discuss the issue this evening. Carstens echoed the sentiments.

Corpe mentioned that a notice has been received from the DEQ stating that Highlite Inc is requesting a wetlands mitigation permit for the former Nash property at the corner of Crest Haven and US 31. The eastern third of the site, which lies at the bottom of a steep bluff and the Crest Haven neighborhood, is wetlands, and there is a relatively small pocket of wetlands in the middle of the property. The owners are seeking to fill the small middle pocket of wetlands and replace it with 1.5 times the size in new wetlands adjacent to the larger wetlands area on the eastern portion of the property. This request appears to be preparatory to an application for a new strip mall and gas station on this B-2, General Business zoned property. The township has 45 days from the January 27 notice date to file any comments with the DEQ, and the public has 20 days from the notice date during which to request that a public hearing on the matter be held by the DEQ. Corpe distributed copies of the notice to the Commission members in attendance.

Meeting adjourned at 9:02 p.m.