

WEST TRAVERSE TOWNSHIP
REGULAR PLANNING COMMISSION
WEDNESDAY, JULY 12, 2023

Chairperson Mooradian called the meeting to order at 7:00 p.m.

Roll Call: Green, Osetek, Moore, Wallin, Hollerith, Mooradian

Absent: Utinen

Visitors: Annie Mooradian, Mary Beth Nielson, Betsy Costello, Gail Kozlowski, Sharon Armstrong, Garon Gopigian, Kristi Hollingsworth, Keiran Fleming, Naomi Singer, Jim Bartlett, David Berryman, Ken Lane, Joanne Snyder.

The Pledge of Allegiance was recited by all.

Approve Agenda as presented or with additions: **Wallin made a motion to approve the agenda as presented. Osetek seconded the motion. All yes.**

Public Comments:

Approval of June 14, 2023, Regular Meeting Minutes: **Green made a motion to approve the June 14, 2023, Regular Meeting Minutes as presented. Hollerith seconds the motion. All yes.**

Unfinished Business

- a. Case #03-2023: to consider a request to amend the approved Special Use Permit for Pond Hill Farm to allow for an increase in the number of permitted attendees from 300 to 999, and for the construction of additional parking area, at 5699 South Lake Shore Drive, Harbor Springs, MI 49740. The property is more particularly described in tax parcel #24-16-12-33-100-001.

Zoning Administrator Lane recaps the case.

Lane states that additional documentation requested from the last meeting was received, he has a letter from the Executive Director of the Little Traverse Conservancy, an emergency response plan and an incident plan which are all included in the meeting packet.

Lane discussed his analysis memo with the board. Lane states “this property is in the A1A district, my opinion as in reference in the memo they meet a lot of structural, dimensional standards. The site plan that was submitted meets the graphic requirements under the zoning ordinance.” Lane states “in terms of site impact statement, section 504.2, that is labeled for discussing with the applicant.” Lane continued those items in the application that Pond Hill says they aren’t changing what they are doing and there shouldn’t be any increased impact.

Lane stated, “section 506 site plan review standards; the majority of these I determined to be satisfied.”

Lane states he did not reach a conclusion on subsection “H”, which deals with drainage. Lane states “my thought was they are increasing the parking area and I don’t think it’s going to be the impervious surface, it may or may not have an impact on drainage and I thought that is something the Planning Commission should discuss.”

Lane states in subsection “K”, Pond Hill is increasing the number of vehicles on site and the number of attendees, so it may require them to seek additional permits and approvals from other agencies. Lane states that the Planning Commission can condition its approval on verification that they have that.

Lane states “in terms of the Special Land Use Review Standards in Section 604, I determined them to be satisfied, but I wanted to alert the Planning Commission of subsection “A2” that they should ask the applicant for some assurance that if the increase is requested or approved, it is not going to create an adverse effect or a nuisance on surrounding properties.”

Lane states “in subsection “B” deals with vehicular/pedestrian circulation on the site.” Lane states that additional information has been provided since the May meeting.

Lane states that lastly “subsection 733 is a supplemental development standard associated with the special uses, again I found a majority of them were satisfied.” Lane stated he wanted to bring subsection “E” to the attention of the board, which deals with hours of operation for events. Lane continued “in June 2022, they were granted a deviation to have extended hours from 9:00am to 11:00pm and that deviation was stipulated that the Planning Commission would revisit it after a year to make sure it was still acceptable.” Lane stated “similarly with subsection “F” for amplified sound. They were given a deviation to go to 11:00pm, the Planning Commission should review that. Lane states “subsection “K” for ingress and egress, there was a deviation for 1 driveway, an entrance in and out. That was predicated largely in part on the 300-attendee limitation. Now that they are asking to go up, that will need to be reevaluated.” Lane states Pond Hill provided a different plan on how people are going to get in and out of the site.

Lastly Lane states he received some written comments, which are included in the packet.

Mooradian asked Berryman if he had clarification on any areas of the application that were marked N/A, labeled no change in operations, or no anticipated impacts? Berryman states there has been no change.

Betsy Costello who lives at 5284 Seven Mile Point Ridge Drive states they have been customers and friends of Pond Hill Farm. Costello states they have 1 ingress and egress from Seven Mile Point which is M-119 and she is very concerned about the traffic.

Costello is concerned about EMS being able to come out if all the roads connected to M-119 are clogged because of excess traffic.

Garon Gopigian who resides at 6975 Hughston Road. Gopigian asks Lane “if there is an event that is not agritourism related, it can still be consolidated into that, if it’s an antique fair but they still serve farm to table food, what does that mean?” Lane states “the antique fairs would not be considered agritourism.” Gopigian states “even if they have food served that’s farm to table it doesn’t combine the two?” Lane states “it does combine the two. They would have an event, that would dictate a maximum attendee number.” Costello states with the current situation would be 300 max. Lane states yes.

Elizabeth Costello asks about how the number of attendees will be monitored by Pond Hill and the Township. Dyksterhouse is concerned about what the plan will be and the amplified sound. Dyksterhouse states they can hear the music from their property. Mooradian states that the amplified sound did come up at the May meeting and he answered it with a section of the code in the commercial events. Mooradian reread the section of the code on amplified sound. Mooradian states it is complaint based. Gail Kozlowski asks, “what happens to a complaint like that?” Lane states “the process would be if I received a complaint, I investigate it. If I can verify the complaint, I send a warning letter to give the person a chance to comply with the ordinance. If we don’t get to that point, the next step would be to contact the township attorney and issue a citation.”

John Cupps (Fire Chief) who resides at 631 E. Lake Road comments on Costello’s concern about EMS vehicle’s ability to respond due to an influx in traffic on M-119. Cupps states “emergency vehicles will not have a problem getting to your house, regardless if Pond Hill has an event or not.”

George Snyder who resides on Greenway Drive in Birchwood asks if Pond Hill Farm can have concerts and how do you control 1,000 people when it could be 2,000 people that show up. Mooradian states that is what the board will have to deliberate about.

Mary Beth Nielson who resides on Greenway Drive asks if Pond Hill Farm is selling out of the events they are having now. Mooradian states “one of the requirements in the code would be to monitor it and the applicant would have to provide the township board with that method.”

Dyksterhouse asks what about the egress being on conservancy land. Mooradian states the conservancy director is present and they will discuss it with him in deliberations.

Joanne Snyder states that if there are special events downstate and there are violations, it takes a long time after the complaint is received to get the problem under control. Snyder wants to know how 999 people are going to be accounted for.

The board deliberates the case.

Mooradian states they should start with the Little Traverse Conservancy and MDOT recommendations. Moore asks for clarification on Lane’s synopsis. Moore asks, “any

applicant that applies for an outdoor gathering permit would have to have a piece of land with a special use agreement.” Lane states that the question that was posed if both an outdoor gathering permit and special use permit would be needed if Pond Hill sold to someone else and they would. Moore asks, “the applicants themselves have stated that the only time that any of this would apply when they need these large numbers are for their fall festival and no other times.” Moore continues, “they have also stated that they would in fact need approval for more people than 999 to accommodate their fall festival.” Moore states “my question is why are we even considering this?” Moore states “if they know they need more than 999 for the fall festivals and there is an avenue to achieve that through the outdoor gathering permit, why are we even considering it as a planning commission, as a special use permit?” Mooradian states we have to consider it because there is a petition that has come forth. Lane states “the condition of the current SUP is a cap at 300, that was an expressed condition of the valid special use permit.” Lane states “if they go over 300, that is an expressed condition that needs an amendment to the special use permit.” Lane states “if they got an outdoor gathering license, that would be a question for the township attorney.” Lane states “in my opinion if they do not amend the special use permit to go up to 999 and they just have the outdoor gathering permit and they had an event that exceeded 300 they would be violating the zoning ordinance.” Berryman states “which is why you told us to do the 999 to begin with.” Mooradian states “do we have anything in writing?” Lane states “no, the attorney does not want to put it in writing.” Moore asks if it contradicts what was said. Moore states “my understanding is the outdoor gathering wouldn’t require a special use permit with a certain amount of people attached to it.” Lane states “correct, but they already have a special use permit that caps them at 300.” Moore states “I don’t get why 999 would be any different. Why are we even messing around with this middle number?” Mooradian states “they have a right to petition a different attendance number.” Mooradian states “I want to clarify something, Berryman said we are requiring it. In May Lane addressed this issue at the beginning of the meeting. We have an email that was in our packet in May from Dave Berryman, and he is responding to the President of Birchwood which stated that the Planning Commission directed Pond Hill to apply for the 999 SUP in the previous meeting.” Mooradian states “we’ve never directed Pond Hill to go to 999. I don’t know where those orders came from, but it was not the Planning Commission.” Berryman states “it wasn’t expressly directed, but in the prior year at the meeting at the high school, you guys said we would like you to come back and do the 999. You can go back to your minutes and look at it.” Berryman states “it also doesn’t answer your question, we exceed 300 every so often and the 999 is for the fall festival numbers.” Mooradian states “I think what Moore is saying is you don’t need to be 999 to get an outdoor gathering permit. Dave Green made that comment in May that they probably should apply for an outdoor gathering permit.” Mooradian states “you say there are no changes being made and you say you don’t except for the fall, so the question we are hearing is why are we looking for such an increase on a day-to-day basis for 365 days a year.” Moore asks Berryman “are you saying you have more than 300 outside of the fall festival?” Berryman states “I would say it’s possible to see over 300 outside of fall festival.” Moore states “that is the first time that has ever been stated by your side.” Green states “Pond Hill Farm has experienced unbridled growth and unregulated growth and it has really been a key area of concern for your Township Board to get them under

the proper compliance and the proper special use permit. Pond Hill had no regulation at all until last June and we know that 300 is not adequate for their current operations. That was a steppingstone to get us where we are tonight.” Green states “your board is concerned, as you are. We are trying to get this moved to where we can have an expectation of what we expect.”

Mooradian states “it has been out of compliance for a long time, we crafted the code in 2019, otherwise they wouldn’t be able to operate.” Mooradian states it was not dealt with by the township 5-10 years ago, but it doesn’t make it right. Green states “if they have submitted a request for a permit for 999 people, so that is what they are going to have to live with it, if approved. We have to impose that upon them in the conditions for approval.”

Moore states “I feel you are speaking for the Planning Commission a bit; I didn’t view our previous decision as a steppingstone. I also thought our previous decision was indeed a fair compromise to make this thing work. Jimmy Spencer told us that they could work with those numbers and have a reasonably successful business.” Moore states “if you are concerned to getting them where they feel they need to be, 999 isn’t it as far as the information they have given us. Based on the last meeting, them saying they viewed 999 as just some middle step they needed to take them to the real numbers they wanted.” Mooradian states “there seems to be a misunderstanding that they have to be at 999 in order to apply for an outdoor gathering. Outdoor gathering can go from anybody in the community. It’s based on a number of 1000 people or more. For them to do the fall festival, if they have SUP which they currently have for 300 people, it does not prohibit them from applying to the Township Board for the outdoor gathering.” Mooradian asks “why haven’t they done that in the past few years?”

Mooradian states “we have heard from the applicant and the applicant has put it in their application, not only verbally but in their written application. They talked about no changes, and they only need it for the fall festival.” Berryman states “when you are referring to the no change, why don’t you actually refer to what it is. You are asking if there were changes in stuff like drainage.” Mooradian states “even in the incident plan it talks about weddings up to 250 people and then in September/October they have larger gatherings. We have to look at the Little Traverse Conservancy letter, MDOT recommendations and attendees.”

Hollerith discusses the letter Kerian Flemming wrote to Pond Hill Farm. Hollerith states “in point 7 in the letter you said in the event the LTC determines the conservation easement is no longer complimenting the adjacent farm business in the future, or if the farm business is no longer in operation. The use of the driveway and trails would be revoked.” Hollerith states “obviously you would take legal actions in that particular case because the conservation easement is quite detailed.” Hollerith asks Lane “what impact would that have if they were in violation on the special use permit?” Lane states “the special use permit would be subject to revocation.” Hollerith states “beyond the 1-year stipulation that’s currently in the code it would be a violation of the terms.” Lane states “the lawyer stipulation was just for the sound and the hours of operation.”

Hollerith asks Berryman “just reviewing the application, regarding noise and traffic I assume that would mean that it was current use?” Berryman said that was correct. Hollerith asks, “what other events would potentially tip it over the current gathering limitations?” Berryman states he can’t think of one off the top of his head. Berryman states “we have never had a concert or a ticketed event out there. We don’t have any plans of having a concert. It is a valid concern that keeps getting brought up. The special use permit is basically to help us run a day-to-day business. If we have to exceed those numbers, I don’t disagree with Mr. Green, an outdoor gathering permit would be something we should probably comply with.” Berryman continues “when it comes to fall fest this year, maybe the answer is we should come back to you guys and pay the permit fees and we all understand these numbers are exceeded. We will apply for that permit properly.” Hollerith asks, “are there any future expected use that you are not currently doing on the property that you see yourself doing in the future?” Berryman states “we are simply trying to run the business.” Mooradian states that Holleriths question on point 7 in the conservancy agreement is not a perpetual thing and a special use permit is. Mooradian states “in our revocation of the special use permit is when they are out of compliance with the perpetual condition, not a temporary condition.” Mooradian states that is one of the problems he has with the Little Traverse Conservancy. Mooradian states “the beginning of the letter starts with accommodating large volumes of farm visitors that occurs infrequently and periodically throughout the year. Typically, it has been the fall fest is how it’s been presented to us.” Mooradian states “this is really a perfect setup for the outdoor gathering. This letter from the conservancy, really sets them up for the outdoor gathering license. It allows them their farm activities, which is fall festival, the pumpkin harvest to do these numbers that we can’t do on a special use permit.” Mooradian states the letter is good, but not much for a special use in his opinion. Mooradian states “when you look at item 3, he says the existing east/west trail and driveway are existing pathways both allowed structures in the conservation easement, provided they don’t exceed the defined physical limitations.” Mooradian states “this prevents any further improvement of the west entrance, so they can’t meet the MDOT recommendations. The MDOT recommendations were put in front of us and they basically forced the township to make a decision, we can ignore it or we can recognize it.”

Mooradian discusses item 5. Mooradian states “for the purposes of farm visits and or agritourism. Mooradian states “agritourism is a commercial use for us. So, they are a special use, agritourism and event facility. That is commercial use, not farm activity.” Mooradian stated “we were presented last year that they would have daily farm visits and shut down for events at night. That plan has changed this year; it’s not how they presented the most recent application.” Mooradian reads aloud “commercial activities” on page 5 of the easement agreement. Mooradian states “section 5 does not talk about some of the other activities that we are doing with agritourism and commercial events.” Mooradian states “this is a great letter for them to layer up with their requests to the Township Board for their outdoor gathering. What works for the SUP, parking, deviation of hours, traffic ingress/egress at the curve?” Mooradian states “they don’t have 2

egresses, no recommendation from MDOT that the main entrance is satisfactory. MDOT is not going to make them change it because it is an existing condition.”

Flemming states “the conservation easement does not do a lot of things that people hope it does. How we define the agricultural use of the business is not the same as how you have defined it. When we have an easement like this where they can’t pave the east or west road, you can’t make the western entrance widen 20’. Those are things that are tricky to find in the easement.” Flemming states “after that it comes down to the conservation values, and we have done an in-depth analysis about this, and it was different last year. We are not saying they can’t use those roads, what we are saying if they do that the business still has to be a farm business as defined in the letter. If that ceases to happen, we withdraw that permission. I assume then that puts into effect whatever happens in zoning.”

Moore asks Lane, “did our attorney have any opinion on the letter from the conservancy?” Lane states he did not share the letter with the attorney. Moore asks Flemming “did your attorney have any opinion on the letter?” Flemming states “yes our attorney reviewed it.” Moore states “I have some concerns, there is a definition in the easement for the rights associated with the agricultural zones and it says the owner maintains the rights to use the agricultural zones for the propagation of crops. It doesn’t go beyond that; it doesn’t name other commercial activities that are adjacent to growing crops. It specifically mentions that’s what is allowed. We have a letter from the conservancy and then a legal document that is registered with the county saying basically opposite things.” Moore states “it specifically says that it doesn’t allow commercial activity. It has one exception specifically defined later in the easement. It would be hard for me to approve an SUP that goes with the land in perpetuity knowing there is a legal document at the county that doesn’t allow what we are saying.”

Mooradian asks Flemming “you mentioned you don’t look at it from the zoning standpoint, but in our code, we talk about if there are any restrictions, such as deed restrictions, covenants, or anything that might be on this land. It does address it in our code and that is why we are addressing it.”

Wallin asks Berryman about Pond Hill Farms Facebook page that shows a musical series. Wallin states that they are very specific in the letter from the conservancy of what the farm provides and there is nothing about music series. Berryman states “why do they have to approve anything on a music series?” Berryman states “at the last meeting the committee brought up the use of the east/west road and egress.” Berryman asks if that had been covered. Mooradian states “we would need to have proper documentation that it is acceptable.” Berryman states “your zoning administrator deemed it proper.” Lane states “I don’t know if I would go that far; I accepted the letter that you provided. It’s for the Planning Commission to deem whether it is proper or not.” Green states “wasn’t the intent of the letter to make sure that Pond Hill had the use of that driveway and trail that’s within the easement.” Mooradian states “the intent was for them to codify the use in a perpetual way.” Green states “we need to make it a condition of the approval that they have access. As long as the driveway easement access located within the conservation

easement remains available to Pond Hill for patrons and emergency access. That is a condition for approval.” Lane states “if the permission was ever revoked or invalidated because it was determined that it conflicted with the agreement if the Planning Commission was so inclined you could condition your approval on that letter stating in full force. If it ever becomes revoked or invalidated, then the special use approval is subject to revocation as well.” Green states “I think we are just trying to read too much into it. What we are really after is to make sure they have access.” Wallin states he received the emergency response plan and made contact with Mr. Blanck. Wallin states the Department of Homeland Security approved it and it meets the Emmet County Emergency Management criteria. Wallin states it meets the basic needs. Berryman states they talked to the Fire Chief John Cupps about doing a few emergency drills a year. Mooradian and Wallin state it’s the first time they have heard of this. Wallin asks Berryman “who is going to train the employees of the plan?” Berryman states he or the Spencer’s will. Wallin asks who is going to monitor the 999. Berryman states they will have employees at the entrances keeping track. The board discuss the parking. Berryman states “the driveway has changed, we added the approaches, widened the front of the driveway so two cars can go in and out.” Mooradian states “we asked for MDOT permit or MDOT approval.” Moore states “I do not see anything different being presented today. Everything in the packet, the plan, the new parking lot design; even to an extent the letter from the conservancy because it’s so conditional, makes a lot of sense for a large gathering permit.” Moore continues “we are making this decision and we made a decision a year ago that was heavily considered that’s going with the land for a long time. A year ago, we thought that this was the safe number, we are not being presented anything new and we are being asked to triple the number.” Mooradian states “there is a desire by the applicant to increase their daily attendance to 1000 people.” Green states “you want to deny the application? Make a motion to deny to it, see what happens. Go ahead.” Mooradian states “if he wants to make a motion, then we will let him make a motion.” Green states “He will make a motion, that is what he is telling us he wants to do; he doesn’t know why we are here.” Moore states “I want to get other peoples opinions on it.” Mooradian states “Yes, I think we should have the conversation.”

Osetek asks Lane “the way I see this SUP, it’s for an agribusiness and an events business; almost 2 things. If the business gets sold and the agribusiness withers away, does that invalidate the SUP?” Lane states “it might, depending on the conditions. The SUP runs with the land, but so does the conditions.” Berryman states “it would definitely invalidate the conservancy.” Osetek asks about security with Pond Hills larger events. Wallin states what they have already meets the basic criteria.

Hollerith states “I wish there were some elements of the outdoor gathering ordinance that were in the SUP, specific to traffic control. In fairness to Pond Hill, they did improve both entrances. Mooradian states the yellow lines on the plan represent the no parking areas.

Moore states “I think approving this would create a liability in the future and I don’t think it would negatively impact their business.” Mooradian states “we need to address the parking.” Mooradian points out the modifications on the plan. Moore states “there are

aspects of the new parking I like, but I would not feel comfortable approving more than 100 to attach to our 300 number. I don't think it makes sense to approve anything more than that." Lane states "there are limitations currently with the SUP. There is a 300-attendee limitation, I don't know that an outdoor gathering license overcomes that. That would be a question for the attorney." Lane continues "I think if the 300 is not increased, even if the board issues an outdoor gathering license for more than 300 people you potentially violate the zoning ordinance and the SUP." Mooradian states "because their daily attendance is over 300." Lane states "again the SUP has conditions in it, and one of the conditions was the site plan that was connected to the approval in June of 2022. It did not have any of the east parking. I don't know that they can add the east parking lot in the increased attendees simply through an outdoor gathering license." Mooradian states "they can't go on a perpetual basis, but they can for whatever their request is." Moore states "on that logic even if we approve 999 and they went for an outdoor gathering permit, then they would also be in violation of approving 999. Lane states that is correct. Moore states "why would we put ourselves as a township in that position?"

Moore states "I have a potential motion that would factor in the parking. I think we should keep the numbers where they are as far as the parking goes. We could keep the parking as is, plus the newly added handicap, and maybe one more row. That would keep about 20 spaces of handicap and 20 extra spaces of regular." Hollerith states "but you are not increasing the number?" Moore states "I wouldn't increase the number." Green states "I am prepared to make a motion right now. It will move the question."

Green makes a motion to recommend approval to the Township Board of Trustees Case #03-2023: to consider a request to amend the approved Special Use Permit as submitted by David Berryman on behalf of Pond Hill Farm located at 5699 South Lake Shore Drive, tax parcel #24-16-12-33-100-001 to allow for the construction of an additional parking area as depicted on the site plan dated April 2023 and to allow for an increase in the number of permitted Pond Hill Farm event attendees from 300 to 999. Because of the applicable standards of West Traverse Township Zoning Ordinance have been met and conditioned upon; subject to the driveway and crossing easement located within the conservation easement remains available to Pond Hill for patron and emergency access. Also subject to the total number of onsite parking spaces, including employees being limited to 375. Hollerith seconds the motion.

Moore states "I think that any increase is basically saying that the work we did over 2 years and voted unanimously to approve what we did last year is basically saying its wrong by a factor of 3 and the concerns we rose for safety are meaningless and we are wrong." Green states "this vote isn't over; it still has to go to the board for approval. If they agree with you then they will decline it."

Roll call: Green – yes, Mooradian – no, Osetek – yes, Moore – no, Wallin – yes, Hollerith – yes.

New Business:

Proposed: July 12, 2023
Approved: August 9, 2023

- a. Zoning Administrator Report – None.
- b. Township Board Representative Report – Green states the rezoning was approved.
- c. Correspondence – None.

Planning Commissioner Comments (open discussion) -

Public Comments:

Next Meeting: Planning Commission Regular Meeting, August 9, 2023, 7:00 PM

Adjournment: **Wallin makes a motion to adjourn.**

Respectfully Submitted by:

Dawson Moore, Secretary

Transcribed by:
Paige Fisher