

BANKS TOWNSHIP PLANNING COMMISSION
February 18, 2003

PUBLIC HEARING: Michael Enterprises, Inc.

Chair Sue Kessler called the meeting to order at 7:30 P.M.

Members present: Nancy Ritsema, Marv Rubingh, Marion Williams. Bill Austin, absent

Public present: Kevin Elsenhiemer, Doris Pearl, Mary Campbell, Conrad Klooster, Dave Draper, Jerroll Drenth, Debi Dechow, Ron & Nan Karavas, Rick & Natalie Jason, Nancy Ferguson, Mike & Tina McDuffie, Nancy & Bill Zimmerman, Doug Boyer, Donna Heeres, Dan Wieland Antrim County News reporter ?

PUBLIC HEARING # 1 Michael Enterprises, Inc.

Sue Kessler stated the reason for the public hearing was to consider a special use permit application by the Michaels. Because the meeting was postponed because of weather on Feb 11, the applicants were not able to be present. The Michaels are seeking to establish a small business in the Atwood Village district. The business would be clothing embroidery, with a staff of two to five employees.

Doris Pearl: The applicants have provided what we have asked for, except for written documentation from M-DOT, according to Article 4.19, section 3: Prior to review by the Planning Commission: Any site plan for a commercial use proposing new or altered access drives onto U.S. 31 shall be accompanied by written documentation of consultation with the Michigan Department of Transportation.

I recommend the commission approve the application with the condition that documentation is provided.

PUBLIC COMMENT:

Mike McDuffie: I've talked with some appraisers in the last couple of days, and without exception, they feel it will lower the property values for the adjacent properties. We would like to minimize damages to our property. We also need to see that any restrictions are not only applicable to this application, but that they would continue with any change of ownership. As for the DOT--one of the things that occurred to me is that a better entrance would be on Byers Rd. If you talk to anyone, that's already a congestion point--its not a good place to have trucks come in and out.

Sue: If I'm not mistaken, you might be thinking of the next topic in the Public Hearing--the Atwood Village Manufacturing Zone.

Public Comment Portion closed at 7:45

Motion made by Nancy, seconded by Marion, that the commission approve conditionally, with full approval given upon receipt of written approval from M-DOT. Motion Carried

PUBLIC HEARING # 2 Zoning Ordinance Amendment, Village Rezoning

Mary Campbell introduced the amendment: What is being proposed is a request from the Township Board that this be considered as an amendment to the Ordinance. The request is to allow for manufacturing uses in a particular portion of what had been the village district. There are also some other uses that we are wanting to be allowed, so in an effort to do this in the simplest way, we decided to create a new zoning district for various districts. The new proposed district is entitled *Village Manufacturing District*. There are permitted uses that are outlined, and also special approval uses. It is added to the Schedule of Regulations, which includes the various setbacks. Because of creating a new district, it

created a logistical issue with the Ordinance, so there is some re-numbering of some other sections, outlined here. The area proposed for this is essentially at US 31 and Byers Rd. (See map attached) It does exclude 3 residential parcels.

The residential parcels are excluded because it would change the need for zoning permits, because the permitted uses would change. It would be a hardship to the property owners.

PUBLIC COMMENT:

Mike Mc Duffie: It can't help but hurt the people that are around --aesthetically and property value-wise, it may give jobs to some individuals in the township, but percentage wise, too few. In addition, its going to hurt our property values per se, and affect our salability down the road.

Tina McDuffie: Has Atwood always been a village zone? The Village Manufacturing District is different than the manufacturing district in the Zoning Ordinance. When the Master Plan was being developed, I was under the impression that it was being developed under an open space kind of concept. My concern here is that this parcel, right here on 31 becomes a manufacturing area--it just seems like a violation of that open space philosophy. I understand we need a manufacturing district. I don't understand why it has to be on 31. That's what most people see of our Township--US 31. Why would we put up a manufacturing district right where people are passing through--why can't it be on a road set back a ways. The open space that was discussed at the time of putting together the Master Plan would not have had the Manufacturing District right on the road. It would have it set back, trees in the front, it would have had a lot of other things going on. It would not have been right on the road for everyone to see.

Sue: In general, you would want a manufacturing area where trucks would have access.

Tina: There are lots of roads in Banks Township that are Class A roads, that trucks are allowed on. I don't think that's an issue at all.

Natalie Jason: Are they going to have access off Byers Road, or US 31

Doug Boyer: I've lived in that area for 25 years now. I know Mike expressed his views about property values. I have a concern about taking these properties that you over these 25 years have taken from agriculture use to people taking 50 acres and making it a residential piece, and had placed certain values on that piece. To put a manufacturing facility without a larger buffer zone than you have here--you have 3 homes within that area--the belief that you would have noise and 24 hour schedule in those operations, with trucks coming in and out, doesn't make a lot of sense when you've already put in residential zoning encumbrances on people in this area.

Mike: At what point would we talk about restrictions?

Tina: If you adopt this village manufacturing zone, why is it not pertinent?

Mike: Without controlling restrictions, don't open the door and let it in. People with views looking over this will be subject to noise, truck traffic, odors. All these are negatives, and if there isn't some control, why would you consider rezoning?

Public comment closed at 8:00 p.m.

Mary pointed out that a preliminary copy had been sent on to Antrim County for comments. The comments received were simply that they wondered if we wanted to add non-animal agricultural processing as a special approval use both in manufacturing and village manufacturing zone, and then the

other comment was with regard to dimensional regulations, but that actually is covered. These are preliminary comments.

Based on previous discussions, Marv asked to change 6.08.2 Permitted uses, I would like to see item 7 to read plant agriculture.

Motion by Marion, seconded by Nancy, to approve the Village Manufacturing Amendment with the language to read plant agriculture be sent on to the County Board for their approval. Motion carried.

PUBLIC HEARING # 3 Wind Turbine Generators

The third topic this evening for the evening is Wind Turbine Generators. Mary will introduce the language we have come up with.

Mary: You can see the standards that apply to Wind Turbine Generators. Those are set forth here--in terms of site areas, set-backs requirements, noise, various lighting, aesthetics. The approach we have decided to take is to allow Wind Turbine Generators in all zones. Because of the set-backs required, they would be self limiting. There is also a provision requiring the removal of any abandoned machines. There are a number of definitions with regards to these. Non-commercial are allowed. Commercial generators are allowed only by special approval.

PUBLIC COMMENT: 8:20 p.m.

Nancy Ferguson: I'm from Eveline Township. I've come to ask a few questions. One of the first questions is, why do we have to have an Ordinance? There's no law requiring it. It has been our position that because of lack of steady wind power in this particular area, they are not particularly suitable for our area. We really want to make sure everybody thinks of the trade-offs you are making for something that isn't going to run power. It is our feeling that at this point in time we all get to pay for them in tax subsidies, whether we want them or not. The companies that are buying the power are getting a tax credit, for green power, which means we are paying for it. Then there are the people who are kind enough to buy green power.

From that statement, I would go directly to the Ordinance you have written. I have a few questions about it--what is your minimum site for Wind Turbine Generation. (Answer--it has to meet the setbacks) I think that is a weakness. I think we need to address that with something stronger. The things that seem to mean the most with people that work with Wind Turbine Generation are distance, noise regulation, and that they put the money up front. Addressing your own ordinance, I'm on page 6, the wording is encourage. I would suggest that to be changed to the word "consider" instead of encourage. As you, our Township has no problem with residential WTG. On page 6 section 12.8.03.13--on your setback, I would urge you to reconsider those setback. The distance is not very big for something that might be 400 ft tall--it actually can fall off from that distance. Two things that we've had some documentation on is ice fling and blade throw. They don't throw the blades often, but I have seen a field of 48 of them with only 17 working, and many without blades. That happens to be in Hawaii. Ice fling is a problem in the colder temperatures--at the height these are, they can ice up, and when it warms up, they can fling it all the way up to a quarter mile. I would urge you to think of the distance of 1,320 feet or something around that distance for safety issues.

The distance issue also comes in with the one that's been the problem in Mackinac City. Kelly Alexander's issue is that he has to listen to the thing. He was asked if they could put them in, and he said okay, because they promised him they would not be noisy. The noise has been greater than what he expected, though not exceeding what they said, 60 decibels, which is what you have. In our township we are working on 50, but Denmark uses 40. There is an argument in favor of lowering that to 46 decibels--the oil pumps you see downstate--within a quarter mile of those, some townships are using 46 decibels.

46 Decibels is the maximum you can have in a federal office. Anything above that, your efficiency and your accuracy go down. There is some reason to re-think that.

On page 7, my concern is, what do you use for enforcement. What makes them come into compliance. On 7 g--my thought, no one else's--underground lines--I think they should all be underground.

On page 7, on landscape, section I, # 1, I think maybe you might want to put that at the outside of the property where it might actually block something. I have been to Germany, and Germany has a lot of streets that look like the flat road, and it really blocks the WTG. But from a distance, any thing that goes up 400 ft in the air, you can see from a minimum of 5 miles. We did a fly-over in Charlevoix to get the distance.

Page 7 # 3--"landscaping shall be designed to counter the effects of 'shadow flicker' on any..." When the sun comes through these things, you will get shadow flicker. Its annoying, and it may even be a health problem. It is a health problem to people who have vestibular disease for certain, which is more and more of us as we become senior citizens. It can also possibly be a problem for people with any form of epilepsy, mild or otherwise. You may remember strobe lights--you don't see them anymore because they can't do that.

Page 8, dealing with the sign--there's nobody at the end of the line when you call, and I think with WTG when something needs to be done, it needs to be done. It has to be a phone number where it reaches a manned line at the other end 24-7. Some WTG are computer run from a central district, and it might not even be that hard for them to do.

Page 8, the removal of the WTG. First of all, do you have something where up-front, they provide the money for removal? If not, I think its important to put it there. Traverse City's wind turbine in Leelanau County was supposed to provide for 150 houses, and 25 businesses. It is supplying 110 houses, and 15 businesses, which is 27% less than predicted for homes, and 40% less for business. I'm thinking we should put a figure in there that your wind turbine should produce at x amount less than you predict it will, you have to take it out. That will keep them from putting them in places where they will get their subsidies, but they aren't going to produce much energy. They will have to put them where they will produce well, which is not Michigan. Traverse City is producing at 15 % of availability, and Mackinac City is at maximum 25% availability.

The other concern I have is lighting. If something is going past the light that is on top, it is automatically going to strobe that light. Wind Turbines do two things--if they are not making energy, they are using it, because they are droning, trying to find the wind. When the wind gets up to about 10 mph, then it comes on. From 10 to 35 mph, it produces electricity, it produces. At 35 mph it shuts down, because it is too much wind.

Kevin: In the abandonment issue--As this board knows, abandonment is not something we can just declare, it takes non-use and intent. It's a two-step process. So what I am recommending is that we add a hearing provision in this section. Beginning at the underline: Any wind turbine generator or anemometer tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned. *(insert) The Township Planning Commission shall conduct a hearing following notice to determine whether in fact the wind turbine generator is abandoned. If the Planning Commission determines the wind turbine generator is abandoned, the owner of such wind turbine generator or anemometer tower shall remove the same within ninety (90) days of receipt of notice from the Township regarding its determination of abandonment.*

PUBLIC COMMENT: closed at 8:35

Motion to approve Wind Turbine Generators and Anemometer Towers by Marv, seconded by Marion.
Motion Carried: Marv, Marion, yea; Nancy, nay

REGULAR MEETING

Called to order at 8:45 p.m.

MMSC, Marion, Marv, Approval of January minutes as presented

Public Comment: Nancy asked if any of the commission had been to see the Mackinac City Wind Generator.

Correspondence:

Letter from Dan Barron
Letter from Thomas Pointner
Watershed Center Meeting
Sue Swain
Tim Underwood--Ellsworth Farmers Exchange

OLD BUSINESS

1. Dixie Ridge/Quail Ridge

Contact from Lenore Morgridge, as to whether or not we needed an opinion from an environmental expert. When Ms. Morgridge was here, we asked her to be much more specific. The issue of a performance bond continues to come up.

Kevin: In my opinion, in terms of a performance bond, your ordinance does allow the ability as a condition of a grant of a special use permit, a board of appeals variance, and possibly even a site plan review, the placement of a performance bond, which essentially requires that the plan laid out, the development defined, and approved by this board be completed. If it isn't completed to the satisfaction of this board, to the standards set forth in the ordinance and this board, that performance bond can be liquidated and used to go ahead and complete the development. They are common in industry, in larger developments. We are starting to see them used in smaller developments and they are relatively common in my practice. The downside is for your non-professional developers--meaning ma and pa developing the family farm into some home sites, which trigger review under your site plan review process--they may not be able to come up with the finances necessary to do that. Typically, whatever lending institution is involved in lending the money for the development will often provide a letter of credit, which I think our ordinance allows, and that is something that is done as the security of the entire project. The developer is not coming up with the total amount, typically. It is a cost, it is a theoretical detriment. The cost might be \$ 600. for a \$ 20,000 performance bond. If the developer has good credit, it may not cost him anything for the letter of credit. The cost is not going to be as large as the amount you are requiring. There are townships that do require actual deposit of dollars in an escrow account, pending completion of a project. I don't think we are ready to get into that at this point.

Marv: So, a letter of credit would be the same as a performance bond in our ordinance?

Kevin: Absolutely.

Sue: We have a concern that the developer would not move forward if we imposed the performance bond, and just build a private home, and then we would lose control over the erosion issue.

Kevin: You would lose that control, but with regard to the erosion issue, you are not the primary enforcement agency anyway. Everyone from the Antrim County Soil Erosion officer to the Army Corps of Engineers has been bandied about. Your control would be diminished, but there are other agencies more appropriately involved.

Advise from Kevin: It is appropriate to discuss procedural issues, but if we are getting into whether this is an appropriate condition to apply to this project, I would prefer that the developer and the public be told that this matter is going to be considered for potential action.

MMSC to send a letter to Dorian Lange restating that we requested a plan from an environmental engineer, and that we are requesting this be submitted two (2) weeks prior to our April 8, 2003 meeting or we will consider this project closed. Motion by Marv, Seconded by Marion.

2. Ordinance Language: in response to the request from the Township Board that we consider these:

a. mobile homes: we would be allowing the replacement of non-conforming mobile homes with newer, more conforming, but still non-conforming. It would be an incremental step to moving toward conformity. Question to Jerroll Drenth--do you have any immediate plans to develop the mobile home park that is in the plan. Jerroll's answer was that the plans are moving forward, within the next couple of years.

MMSC by Marv, Marion, that we approve the initial draft to send on to the attorney for legal counsel.

b. Recreational Vehicles the Township Board has asked that we allow recreational vehicles temporary occupancy shall be allowed a maximum of 180 days in one calendar year. The Board felt that 30 days was too short, and that basically 180 days was from Memorial Day until deer hunting. Question about parking for short term--would overnight or weekend visitors be in violation without permits? We will do some checking with the Health Department, to see if there is a difference between permanent and temporary parking. If you allow a short term--what is appropriate time frame for "short" term for guest? Mary will bring back revised wording. Doris & Kevin both stressed the difficulty of enforcement--virtually impossibility, and a zoning administrator's nightmare.

NEW BUSINESS:

Gould vs Coffman: (Kevin) The ZBA denied a variance request for this property, because this was a self-created problem. The property owners entered into negotiations to allow the Gould's to purchase a small piece of the neighboring property which would render the property in compliance with the set back requirements. They did not create a straight line, they created a jog. They've been trying for six months to convince me that we should allow this jog as a township under our land division ordinance. There is a bend or job in several of the other lots in the plat, although those lots are along the road, versus a side-yard as in this case. I've taken no position on this. The option I've been expressing support for is for them to go to Circuit Court to amend the plat, because this is more appropriately done through the Plat Amendment process. They are now seeking a land division, which is normally filed with the assessor. They went to the Planning Commission because the assessor/supervisor was not available due to illness. I spoke with Mr. Barron, and told him if he feels he has an allowable situation, to proceed in front of the assessor, who is now available. At this time, I suggest that the Planning Commission chair direct the secretary to provide the information to the assessor for action.

CONFERENCE: Michigan Township Association: Let Donna know who can attend, and she will make the reservations.

Meeting adjourned 10:00 p.m.


