

Submitted by: S. Longstreet

Approved: \_\_\_\_\_

**MARION TOWNSHIP  
ZONING BOARD OF APPEALS  
JULY 1, 2019**

**MEMBERS PRESENT:** Larry Fillinger, Linda Manson-Dempsey, Larry Grunn, and Ed Galubensky (alternate for Dan Lowe)

**MEMBERS ABSENT:** Dan Rossbach; Dan Lowe (absent due to conflict of interest)

**OTHERS PRESENT:** Michael Kehoe, Township Attorney; John Enos, Carlisle Wortman; Dave Hamann, Zoning Administrator

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**CALL TO ORDER**

Larry Fillinger called the meeting to order at 7:30 p.m.

**MEMBERS PRESENT**

The members of the Zoning Board of Appeals introduced themselves.

**APPROVAL OF AGENDA**

Linda Manson-Dempsey motioned to approve the agenda as presented. Larry Grunn seconded. **Motion carried.**

**CALL TO THE PUBLIC**

Jean Root, 723 E. Davis Rd., said that Davis Road was never intended to handle as much traffic as it does, and dust control is an issue. There are a significant amount of buses, etc. There have also been a number of accidents. She doesn't expect it to be paved, but she does expect it to be safe. She said you can't have commercial entities on roads that don't support them.

Tim Ryan, 459 E. Davis Rd., agreed with Ms. Root's comments, and said he wasn't aware that Davis Road was a busy route when he moved here in 2013. It's very dusty and the road gets pounded by truck traffic.

Kevin Sisk, 500 E. Davis Rd., said he feels that anything that would add to the amount of traffic would be a detriment to his standard of living.

**APPROVAL OF MINUTES**

**March 4, 2019 Regular Meeting:** Linda Manson-Dempsey motioned to approve the minutes as presented. Ed Galubensky seconded. **Motion carried.**

**OLD BUSINESS**

**ZBA Case #05-18—AJR Group, Inc. and Cornerstone Land LLC c/o Myers & Myers PLLC, 915 Michigan Ave., Howell MI; Interpretation of 3.02 Definition of Agricultural-based Tourism/Entertainment Activities**

Roger Myers, legal counsel for AJR Group and Cornerstone Land, was present on behalf of the property owners; he said the township's attorney has written authorization from his client to represent them. He asked to clarify the purpose of the hearing. Some of the public comments about Davis Road aren't a coincidence, as his client's property borders Davis Road. However, his client's proposal doesn't include the use of Davis Road, so he hopes the road commission or whomever will address the concerns mentioned, but has no bearing on this petition. The question is whether the ZBA has the authority to interpret the ordinance in a manner that approves his client's proposed use of their barn facility for weddings and related functions as an ag-tourism use. His understanding is that the ZBA does not have the authority and the abstract question before the ZBA is the interpretation of whether wedding and related activities are within the scope of the definition of ag-tourism within the township zoning ordinance. Mr. Kehoe said even a decision that would be favorable to Mr. Myers' client would not automatically grant them the ability to use the facility. Mr. Myers would like it clarified for the record that the ZBA does not have the authority to grant that relief; all the ZBA has the authority to do is interpret the ordinance in an abstract manner in the context of what has been applied that would be applicable to all property within the township. Mr. Kehoe agreed with that statement. The scope is really more a clarification and interpretation of the ordinance and specifically, Section 5.05 B 3 which says the ZBA has the authority to "classify a use that is not specifically mentioned as a part of the use regulations of any zoning district so that it conforms to a comparable permitted or prohibited use, in accordance with the purpose and intent of each district. Where there is no comparable permitted or prohibited use, the Zoning Board of Appeals shall so declare, the effect being that use is not permitted in the Township until or unless the text of the Zoning Ordinance is amended to permit it." His client is asking the ZBA to decide whether the wedding and related facility uses that they are seeking are considered an ag-tourism use under the zoning ordinance. Mr. Myers believes that they are; it's not a residential use, it's not an industrial use, it's not a mini-storage use, and the only comparable description of that use is ag-tourism. If the ZBA doesn't believe it's comparable to ag-tourism, they have to decide which use it is most comparable to, or decide there is no comparable use, and is therefore not allowed in any district.

Larry Grunn asked Mr. Myers if he has contacted the Department of Agriculture. Mr. Myers said no. Mr. Grunn asked if Mr. Myers wasn't curious about how they define event barns. Mr. Myers said they have no regulatory authority over event barns.

John Enos gave the ZBA members an overview of their responsibilities, one of which is to interpret the zoning ordinance. The township board is the legislative body. The township took a lot of time and effort to create the ag-tourism language. The township board and the master plan both indicate a desire to preserve rural character. The primary uses include but are not limited to a working cattle ranch; raising and sale of sheep, hogs, and chickens; a working agricultural farm growing corn, hay, alfalfa, and sorghum; a fishing pond; farm market; single-family home; therapy riding; u-pick fruits and vegetables; seasonal festivals. The township board does not believe that weddings, anniversaries, corporate events within an enclosed building meets the definition. They support ag-tourism in a myriad of ways, but specifically do not want event barns.

Linda Manson-Dempsey said that ag-tourism is related to what the farm produces, or something like a corn maze.

Jean Root, 723 E. Davis Rd., said she is a former Planning Commission member and is familiar with the language and she's spent many hours working on it. She said the one zoning district the applicant's attorney didn't mention is commercial, and that's what this is. She said farm-to-table is a social movement, everyone has farm-to-table food and it isn't just this type of use. In regard to Davis Road, even though it's not part of the request, the traffic from these types of events will still use the road. The township needs to consider the health, safety and welfare of everyone, not just this property owner. In regard to this specific project, this building was never approved for public use, it was approved as a residence. Although she likes the idea, this is not the place for it.

Tim Ryan, 459 E. Davis Rd., said he couldn't agree with Ms. Root more. Fireworks, drinking, loud music is a commercial use. Mr. Ryan said this is Crystal Gardens in a wooden skin.

Kenny Martz, 333 E. Davis Rd., said he moved in last July. Last August, there was a huge party at the ranch and the sound really travels. They don't want large parties in the area every weekend; he referred to the Special Events application and would like to see that kind of information.

Kevin Sist, 500 E. Davis Rd., agrees with his neighbors and would like the township to maintain the rural characteristics.

Cheryl Range, 4899 W. Coon Lake Rd., is a Planning Commission member and wanted to point out that a lot of the information in the packet from previous PC meetings were mostly from prior to July 2016. At the end of July 2016, PC members attended a seminar on ag-tourism and events barns, etc. She said it was made very clear that wedding and event barns are strictly commercial because they are not attached to Right-to-Farm and not part of ag-tourism. Municipalities that have permitted event barns are having a lot of trouble with surrounding neighbors.

Susan Schooley, 459 E. Davis Rd., referred to the letter she submitted to the ZBA. She said she has attended as many meetings as she could since 2016 and there hasn't been any lack of clarity in the development of this zoning ordinance. The language was carefully crafted and relied on best practices elsewhere. She said Marion Township is not alone in dealing with this, and shared several articles about wedding barns. She encourages the township to hold the line on allowing event barns.

Larry Fillinger closed the Call to the Public at 8:15 pm. He submitted two letters that were received prior to the meeting to be added to the record.

Roger Myers said the scope of what the ZBA is deciding isn't specific to his client's property. The Planning Commission has twice recommended the inclusion of his client's proposed use. It would be farm-to-table events; they wouldn't be using outside food. The township board approved the ag-tourism uses in Rural Residential when they approved the language. His client's property is already properly zoned as Rural Residential, and ag-tourism is allowed in Rural Residential. The question is whether farm-to-table events should be included. If they are commercial enterprises, they should be allowed in all commercial zoning districts. Any commercial property could be farmed and have farm-to-table events. When his client sought a rezoning to commercial that would specifically limit the use to farm-to-table events, the township PC recommended approval; the county recommended denial because they felt it was more appropriate as part of ag-tourism.

Mike Kehoe said this a little different situation for the ZBA. He suggested the ZBA make sure that whatever decision they make is supported by reasons, statements, etc. Although this may have been recommended by the PC and the LCPD, they are only recommending bodies. The township board has the authority to make the ultimate decision. In the ordinance, the language that's there states "classify a use that is not specifically mentioned as the use regulations." He believes that lends itself more to uses that aren't in the zoning ordinance.

Linda Manson-Dempsey said she believes that ag-tourism should be related to the primary agricultural use of the property. She doesn't believe this type of use is what the township board has in mind.

Larry Grunn said the Planning Commission has done a tremendous amount of work on this over the past couple years.

Ed Galubensky agrees with the township board and what they've spelled out. An event barn is commercial.

Larry Fillinger said the township board focused on the actual uses within ag-tourism and specifically excluded event barns.

Cheryl Range, 4899 W. Coon Lake Rd., wanted to state that the board members who did vote for the language for ag-tourism did not attend any seminars, and another one didn't have time to look at the packet, but still voted.

Kenny Martz, 333 E. Davis Rd., said the new subdivision that's going to be built on the other side of the event barn will be much more impacted by this activity.

## **Motion**

Linda Manson-Dempsey motioned that the Zoning Board of Appeals does not feel that this use meets the spirit and intent of the township zoning ordinance which is clearly spelled out. The Marion Township Board of Trustees,

in crafting their definition of Agricultural-based Tourism/Entertainment Activities, did not consider an event facility that hosts weddings, retreats, corporate meetings, anniversaries, etc., to meet the intent of either the approved definition and in so doing the intent of the zoning ordinance. The Zoning Board of Appeals upholds the definition of Agricultural-based Tourism/Entertainment Activities as intended by the Board of Trustees. As written, the definition does not include an event facility as a permitted or accessory use as part of an agri-business as defined in the Marion Township zoning ordinance. Such a use was specifically deleted from the zoning ordinance definition by the township board. Larry Grunn seconded. Roll call vote: Galubensky, Grunn, Fillinger, Manson-Dempsey—all yes. **Motion carried 4-0.**

### **NEW BUSINESS**

None.

### **CALL TO THE PUBLIC**

No response.

### **ADJOURNMENT**

Linda Manson-Dempsey motioned to adjourn at 8:37 pm. Larry Grunn seconded. **Motion carried.**