TYRONE TOWNSHIP PLANNING COMMISSION APPROVED PUBLIC HEARING MINUTES

Steve and Kathy Mathews For Heavenly Scent Herb Farm Agri-Business Special Land Use Permit - Article 4.03, 22.05.R, etc.

February 10, 2009 7:30 p. m.

PRESENT:

Planning Commission Members: Chairman - Dave Hanoute, Vice-Chairman - Mark Meisel, Secretary - Laurie Radcliffe; Commissioners: Gary Butler, Steve Hasbrouck, Ed Kempisty

ABSENT:

Joe Fumich

CALL TO ORDER: 7:30 p.m. by Chairman Hanoute.

Chairman Hanoute told the audience that comments would be limited to two (2) minutes because of the number of persons who wanted to address the Planing Commission.

READING OF THE PUBLIC NOTICE: The notice was read aloud by Secretary Radcliffe

CORRESPONDENCE:

Mr. Hanoute noted that most of the correspondence was favorable to the Agri-Business and requested attachment of the correspondence to the Minutes

PURPOSE OF THE HEARING:

The purpose of the Public Hearing is to receive comments regarding the request of Steve and Kathy Mathews, representing Heavenly Scent Herb Farm, for an Agri-business Special Land Use Permit to sell herbs raised on the site and hold public events featuring herbs.

COMMENTS FROM THE APPLICANT:

Chris Christenson, the Applicant's Attorney, told the Planning Commission that the request was pursuant to Zoning Ordinance Special Land Use Section 22.04 - General Review Standards and Section 22.05 Private Events. The event must be consistent with the Master Plan, and the Master Plan indicates that anything done in the Township should be done with the goal of maintaining the rural character of the Township.

The request of Heavenly Scent is to continue to run the business that has been in place since roughly 1988, and to file for a special events permit for the wedding season April 1, to November 1. They propose to have weddings on site, to conduct the weddings and receptions outdoors near the barn, that all music will cease by 12:00 midnight, and all guests will be gone no later than 12:30 a.m. They request that they be limited to 250 guests with all parking on site.

Mr. Christiansen said the last time there was a discussion, there were concerns about parking across Tipsico Lake Road and that has been reconfigured so all parking will be contained on site. There was a concern about the use of alcohol. All the alcohol on site will be served by properly permitted, licensed and insured individuals. They reviewed the State of Michigan MCL 436.1913 and he talked to Dan Bragdon at Enforcement. Heavenly Scent does not supply the alcohol and doesn't charge for the alcohol. That will be supplied by the person who rents the property. The State of Michgan has told us, if it is not open to the public, it is a private event and there is no charge for the alcohol, no license is required. They consider it more like an open house or graduation. Any café will have to comply with state and county requirements if they do expand into the existing barn as previously contemplated. That has been tabled because of the economy, but they would like that included in the permit so there is no confusion in the future. They will obviously have to meet with all of state and local requirements.

One of the questions asked the last time was if the request is consistent with the Master Plan as well as the Ordinance, Under Section 6 (22.05.K., p 22-21) it is contemplated for this specific property that this type of entertainment would be conducted because it does not specifically exclude weddings. If the Township approves the use for a season, they should not be required to apply for a seasonal permit again.

At the last meeting there were complaints about noise, but they have tons of letters from very near neighbors who have no complaints. He used photos to show the wedding and reception location behind the barn line and existing tree line. On the other side is a 4 foot berm and a green house and then the site moves up to the house where there are mature trees. Your noise ordinance calls for decibel testing, and you might want to test for that in the future. This has been going on for two years, and they have had 10 events per year. They are requesting approval for up to 25 events per year.

COMMENTS FROM THE PLANNER:

Township Planner Sally Hodges of McKenna Associates, asked the applicant to clarify exactly what is being requested. The Agri-Business section of the Ordinance (22.05.R.6) lists private events as a Special Use. That section of the Ordinance permits more intense commercial uses on property that is otherwise used for farming and food production. It was the understanding and the intent of the Planning Commission that special events would be incidental to the primary agri-business use of the property. There are more special events held on the property than just the weddings. As the Planning Commission considers the frequency, duration, and impact of the special events, they should keep in mind how all of the events relate to the primary agri-business, and whether they are the purpose of the business or are accessory to the use.

Mr. Christenson said that the Ordinance specifically references that participation in Township wide events open to the public shall be allowed (22.05.R.5). The other events are not open to the public. If they hold 25 events during the 365 days of the year, there are only 25 nights where there would be any inconvenience or difference in the use of the

property. That means 93% of the time, there is no change to the characteristics of this use. Normally, they only have ten events, so 97 % of the time they are not using their property for a special use.

Ms. Hodges said she begged to disagree with the applicant on the relationship of public events and private events. They are called out in the Section of the Ordinance (22.05.R. 5 and 6), that details the requirements for an Agri-Businesses which is by its nature a special use. The reason she brought up the different events that are being held is because the special use descriptions should be more specific, so the Planning Commission can understand not only the frequency of weddings, but the other types of events, the traffic involved, and the extent of the uses. We understand there is an existing business, but there is no documentation of what has been approved and what is existing. The applicant should address all the uses.

There are requirements and standards in the Ordinance for relating the events to the agribusiness. One of the specific conditions for an agri-business facility is that there be no adverse effects on adjacent property and that the facility and site be designed in a manner to maintain the rural and agricultural character of the property. These are conditions the Planning Commission needs to take testimony about and give consideration to.

Ms. Hodges noted that one of the requirements for a Special Use Permit is a complete site plan. The documents submitted are in two pieces. There is an overall plan, but the last time we met with the Mathews we noted there was parking in the right-of-way and discussed this with them. They submitted another drawing to the County, but that drawing was never combined with the drawing showing the facilities and the lay-out and how the site would operate. That needs to be done.

Mr. Christenson said the plans were re-drawn and as it turned out, some of the parking spaces were in the County road right-of-way. The drawing was revised and the parking was removed, but it should be noted that the parking has been there that way for ten years. At your request, we will have it scaled back to meet the property lines. Ms. Hodges said the parking still had to be addressed on a single site plan for the record, not in pieces. When it comes in, we will make the confirmation.

Ms. Hodges noted that the Township Ordinance is specific about when a traffic study and traffic assessment is required. One of the standards is based on peak hour traffic volume. We don't have specific information about the number of vehicles but knowing how traffic flows at a wedding, the guests usually arrive within an hour and leave within an hour. There are always vehicles coming and going, but there is a considerable volume of vehicles within a narrow time frame. Pending confirmation of the application, she recommends submission of a traffic assessment that meets the requirements of the Ordinance and indicating among other things, how traffic will be managed entering and leaving the site.

Mr. Christenson said they did provide traffic information supplied by Livingston County. It indicates that in 2006, the overall traffic along White Lake Road in front of the property had dropped to approximately 1430 cars per day. Back in 2003 it had 1670 per day. He can

assure the Township that 250 guests will not all be driving separately. With even 250 cars or less, traffic will still be below the peak hours in 2003. Ms. Hodges said if he was referring to the volume on the public street she would agree, but the Ordinance addresses the use that generates the traffic. We aren't asking for a traffic assessment for the county road, we are asking about the impact your operation would have on the traffic circulation.

Mr. Hanoute said the assessment should address a time factor. Everyone will be going and coming at the same time essentially and that is when the impact will occur. Mr. Christensen said there were ten events each year over the last two years, so you would have only ten days when there would be these fluctuations in the traffic. If that is a condition of approval and you want a traffic assessment done, he would like to hear that. He wanted to know what the conditions of approval were or if there is going to be a denial.

Mr. Hanoute said the Planning Commission couldn't say if it would be approved or denied at this point. They have to wait for all the information so they can assess it. Mr. Meisel explained that the traffic impact isn't so much that they are doing ten events a year, or that it is one day of the month. The issue is that for a period of time which may extend for thirty minutes, an hour or two hours, there will be additional traffic which could adversely impact the ability of people to navigate the roads. If you have forty-five cars there and they all leave at once, who will manage that.

Ms. Hodges said they should also clarify the type of lighting associated with the wedding use and other events, since they are going after dark. Mr. Christenson said there was lighting in the tent. The water was lit and the parking lot was lit. The location of the lights is shown on the site plan. There is minimal impact to the septic system as they use portapotties brought in for the event and then they are taken away.

Ms. Hodges suggested using a parking standard of three persons per car (25.11.B.1) and all of that should be delineated on the site plan. The location and type of parking lot lights should be shown.

PLANNING COMMISSION COMMENTS:

Mr. Kempisty said he would like to address alcohol use, specifically MCL436.1913. He said his reading of it conflicted with Mr. Christenson's interpretation. Mr. Christenson referenced Item 1, A and B, and Item 5. The first item says, "A person shall not do any of the following: maintain, operate, or lease, or otherwise furnish to any person, any premises or place that is not licensed under this act within which the person may engage in the drinking of alcoholic liquor for consideration." 'For consideration' is a legal term which means the exchange of money or something else. He called Dan Bragdon at Enforcement (517.322.1370) and went line by line over the statute and Mr. Bragdon determined that the requirements don't apply and the Mathews don't need to apply for a license.

Mr. Kempisty said he didn't think the Liquor Commission has any jurisdiction over this type of an application. We have a Memo that was sent out recently that starts out, "The Liquor Control Commission has received numerous inquiries regarding the legality of non-licensed

businesses allowing consumers to consume alcoholic beverages in their establishments and numerous enquiries regarding non-licensed businesses offering free samples of alcoholic beverages to consumers." Mr. Christenson said that was one of the things he and Mr. Bragdon talked about. That was a provision for facilities serving the public. Offering free samples to the general public is the distinction. The Mathews hold private events, which they consider similar to a graduation party or something along those lines. This is a private event, not open to the public, and there is no consideration flowing either way.

Mr. Kempisty said, the language stated that, "The law would not permit a wedding reception, retirement party, open house or other similar event that is held in an unlicensed facility. Therefore the attendees and guests are not charged any fee whatsoever." Mr. Kempisty said he had also called the Liquor Control Commission and was told they don't regulate this type of environment. It is up to the local authorities. Mr. Kempisty said he questioned whether the Mathews could serve liquor. Mr. Christensen replied that it was up to him to decide if he is the local authority.

Mr. Hanoute didn't think that alcohol should be an issue this evening. If the Mathews are granted a Special Land Use Permit, they will have to abide by all laws. That would be a condition of the permit. If there is a law or an ordinance in the Township that prohibits it, they will have to live by that, and if there is one in the state they will live by that. Mr. Christenson agreed.

Mr. Hasbrouck asked about any other events they hold that are not weddings and if all the things they do there would come under the Special Land Use Permit. He had heard that they held wine tasting events where you had to pay to attend. He asked how that would come under the liquor control rules. Mr. Christenson apologized for not researching any of the other events. His focus was on the wedding Special Use application. As the Chairman stated, whether this permit is granted or not granted, they will still have to follow all of the rules.

Mr. Hanoute asked Mr. Christenson if he thought a more complete application request should have been provided if there are other events aside from the weddings. Mr. Christenson said, "No, because the other events have been ongoing for 20 years. This is a Special Use Permit request because they thought they were allowed to conduct weddings and have been doing it for 2 years.

Mr. Hanoute said they will be observed more closely in the future, especially in regard to the Special Use Permit. They will only be able to conduct those activities which are set forth in the Special Land Use Permit, so they should expand upon that if there are going to be other activities. Mr. Christenson said the Ordinance already has a provision in it for events open to the Public so those don't have to be included in the Special Use Permit. That is his interpretation. The Township may have a different interpretation.

Mr. Hanoute recalled that the Planning Commission had asked them to explicitly state their request and outline all the activities when they came to the Public Hearing. You have to be very definitive about the activities that are going to be conducted under the Special Land

Use Permit, not just a general category called Special Events. You could have a horse race or a poker party there next week.

Mr. Chirstenson told the Planning Commission a request has been outlined for additional Special Events and weddings. With regard to the events that have been ongoing for the last 20 years, they did not file a request. Mr. Hanoute said he had been going over this request since 1991. You suggested that they had temporary permits and they didn't. He asked Mr. Christenson when they received their Special Land Use temporary permits that he referenced in his application. As a Planning Commission member, Mr. Hanoute suggested that Mr. Christenson needed to expand on the Mathews' request, and specifically indicate the types of events they hold there.

Mr. Meisel referred to a printed list of the 2008 activities held by the Mathews that lists 18 different events throughout the year—Ladies Night Out, Wicked Witches Wine Tasting Night Out, painting Christmas Ornaments, and a bunch of other things. The Chairman's point is that the business is currently a green house growing herbs with a lot of other activities going on there. You are looking to continue those activities which we have stated we believe are not consistent with the Ordinance as it is currently written. The suggestion is being made that if you fully disclose all of those uses, the public and Planning Commission will be able to understand your intended uses and separate rumor and innuendo from what you want to do. Mr. Christenson said that looked like the Planning Commission already had a list of activities. It sounded like a flyer for the entire year.

Mr. Hanoute said that the problem was that the information was not submitted by the Mathews as part of their request. Mr. Christenson replied that other than nit-picking, he doesn't see any point in coming back again or in the Planning Commission making a request for an activities list. If the Planning Commission already has that information and the Mathews want to conduct their business as they have for 20 years they only need special permission for the weddings.

Mr. Hanoute asked Mr. Christenson if he was saying that he wanted the Planning Commission to use the brochure as a complete application. Mr. Christenson said he didn't feel it was necessary to provide the information because of the Ordinance. Those are events open to the public, not private events, so he doesn't believe permits are necessary. Mr. Hanoute asked if he meant that he didn't feel it was necessary to specifically delineate the uses. Mr. Christenson said that those are events open to the public and the weddings are private events. We are asking for a Special Land Use Permit to expand the uses to allow weddings.

COMMENTS FROM THE PUBLIC:

Mr. Hanoute asked members of the audience to limit their comments to 2 minutes.

Scott Dietrich, 13505 White Lake Road, said he made a complaint because of all the noise from the weddings and presented Mr. Christenson with an example of wine sales made by the Mathews. He lives in the valley that comes from the lake. The weddings are conducted

in the summertime when it's light until 10:00 or 11:00 at night and his wife and 11 year old daughter like to walk down the street in the evening, but not when 250 people have been drinking and driving around. The Mathews provide two restrooms at their site. They don't have the facilities to handle the sewage. They have a wetland to be protected from runoff and they don't have a retention pond. The dirt driveway was put in 10 years ago, but the blacktop was put in over the last two years.

They came down here about food, but they never came back . When my wife and I went there to shop, they told us they weren't going to do the food because there was too much red tape. For the last two years they proceeded to go on with all their business, and their Attorney comes here and claims they thought it was approved. The area is Farming-Residential and we don't need an Agri-Business. The herb farm is fine and he has been proud to have them down the road. But now at 10:00 at night, he can hear people on the patio talking through microphones while he is sitting in his living room and it sounds like they are in the woods next to his house. He wants them to go back to the way they were when they had their herb fairs. There are bathroom issues, runoff issues, and parking issues.

Jeanine DeLong of East South Holly Road, Fenton, said she has been associated with Heavenly Scent for a long time and has been to several events and they do have portapotties because she has seen them. People right now need to be bringing money into the area. Keep a control on it, keep a check on it, but at the same time think of how many people you know who will come in here and say this is a nice place to live and possibly buy a home here. You are trying to bring in revenue, but with this going on you are just chasing it away. Keep it a bedroom community, keep it guite, keep it the way you want it.

Robert Butter, 1060 Rose Center Rd, said he lives across the road from the Mathews. When they have events, he can hear the noise. He has lived there for 22 years and they make a lot of noise, especially in the last two years when it is late at night. If you like their kind of music, you're probably OK with it.

Roselle Jones, 19300 Tipsico Lake Road, said she lives across from the Herb Farm and has absolutely no problem with what they are doing. The noise doesn't bother her whatsoever, and the traffic hasn't affected anything. She probably causes more traffic because she has two children and leaves her house probably 20 times a day.

Ginny Richards, 6090 Bullard Road, asked the Board to take into consideration some of the apple orchards during their peak season for their special events. You can't get down the road, but that is what part of this is about...a thriving agricultural business bringing revenue into our area and letting people enjoy some of these events. She can't imagine that the Mathews traffic is any more horrendous than the orchard traffic.

Janet Tidderington, a resident of Highland, said she couldn't believe that in these economic times, that any organization would complain about a business that is growing and employing more people. They bring in 100 to 200 people ten or twenty nights a year to drive our streets, drive to Fenton, and possibly come back. She can't tell how many people

have come through after a wedding and told us they came back to shop the store. You are trying to stifle a growing business. If you are going to regulate these weddings are you going to regulate every open house that is held, every graduation party that is held, every wedding that is held in someone's back yard?

Tammy Peterson, 13675 White Lake Road, said that even with the widows shut, they did hear the weddings at night, the loudspeaker, the MC and that. You don't hear it hour after hour, but you do hear it until about 11:30 or 12:00. It's not just the weddings, it is tour buses and mini-buses from retirement homes. There is constant traffic with local people going to work and coming back, the gravel train tandem trucks, the lawn services, and the contractors. The road is only two lanes wide and she doesn't want to have to pay to make it wider.

Robert Harris, 11077 Hartland Road, said if the Mathews follow the state guidelines and you guys don't approve it, you better stop every open house, every wedding, and everything else that goes on. When his daughter graduated he had over 200 people at his house and he served booze. There was no charge for it, so don't tell me what I can't do from now on.

Bob Anger, 13695 White Lake Road, said he considered himself a close resident and there were two issues he wanted to talk about—traffic and noise. He can hear the noise, but he can live with it and it doesn't bother his wife at all. The traffic issue is what really annoys him. There is more traffic now because we paved the road, but every time these people have an event, there are all kinds of garage sale signs that go up to take advantage of the traffic and he is one of them. In a few years, he is going to sell his house, so he likes the traffic going up and down that road.

Sorin Peterson said he hears a little noise, but he tends to ignore it. He understands Scott (Dietrich's) problem because he is right at the end of the valley and whatever noise there might be goes right down that valley. He lives higher up and what bothers him more is school buses. They make a lot of noise and come to a lot of stops.

Barbara Bardon, Director of the Livingston County Convention and Visitor's Bureau in Howell said that Heavenly Scent has been in business for 20 years and they have lived in the community for over 50 years. They have created the premier agricultural tourism destination in the State of Michigan. They have made substantial personal investment in improvement of their facilities. You cannot stop development. Responsible development is your charge. These people have made a life for themselves and their family. For these reasons, any community would welcome this kind of inconvenience because of the type of economic impact and jobs they give to the citizens that live in this community. She respectfully urged the Planning Commission to think of the big picture. There will always be inconvenience. Do responsible development and create jobs and allow your citizens to continue living here. They deserve your support and should have earned your respect.

Don Peitz, 13520 White Lake Road, said he hasn't kept track of the events that have been held down there. Certainly he has heard something, but his elevation is higher than some of the others in the area. Talking about a change is not necessarily talking about economic development. The problem is that there is a change in what has been happening down there. It was a very nice facility, something that has been welcome in the community. You can address how great it is if you are on the outside of living in the community. Any economic development and the development of a community is by the citizens of that community. The citizens have a say in how this Township will be governed, how economic development will be guided. If we speak to ten events a year in a residential community, what about limiting the events to Tuesday and Wednesday nights during the week. It is a farming residential community. I have a big piece of property that has been my home and it hasn't been used for anything else. Maybe he wants to think about doing something that is farming, residential, and agricultural. He has to be governed by whatever the Township Zoning Ordinance allows. We need to think about us as a community, and then what goes on in that community above and beyond what has been happening till now. Because it is a change----weekend weddings at night. They will want to fill up every weekend. That is their objective because it is their business. That has to be considered.

Karl Gill, 8374 Bennett Lake Road, said he lived on a road where there were two bars. The bars aren't responsible for it, but if you happen to get hit on the road by a driver coming from that bar, that would be important to think about. The person who owns the place the drinker was at is just as responsible as the ones holding the beer.

Dick Confer, 13569 White Lake Road, said he has lived here for 41 years and remembers when the Mathews raised hogs and cattle. He doesn't know how many here have lived next to a hog farm in the summertime, but if we don't let them make a living doing what they are doing, they will have to make one someway. If they go back to farming, believe me the neighbors will really be in here complaining. They have a lot of land. The way they are living now is the best it has ever been.

Elizabeth Geisler, said she has been an employee of Heavenly Scent Herb Farm for almost one year and counts it a blessing to be there. All of the customers dearly love the shop there and go in the garden and they always get wonderful feedback and no complaints. It's the best job she has ever had. She thinks all of you should get things addressed and get back to your priorities. Just think of things in your life that have meant a lot to you. A lot of people who shop here have shopped here for many years. It is a place where they like to bring their children to run around and enjoy the beautiful gardens. She doesn't understand why all this has to happen. She prays that you all can get your priorities straight and you can come to a conclusion so they can get on with things because she loves her job. She prays that you can all make the right decision so you can sleep good and they can get on with their business.

Betty Carlson, 11600 Hartland Road, said she didn't hear any noise, but she had a wedding at her house for her son several years ago. She told the musicians to turn down the speakers down and limited the decibels going on in her back yard. She also told her professional bartender to cut off anybody who had enough to drink and she also took out

a million dollar liability policy. You can take care of the problems and still allow the business to go on. She has friends who shop at Heavenly Scent, because they think it is the best kept secret in the state of Michigan. She would rather hear the music once in a while than a dog barking all the time.

Bob Schmuck, 11177 Foley Road, wanted to comment about change. He has seen change and a lot of it he wished he hadn't seen. He was born here over 84 years ago and has seen, every time a new person moves into the area, they wish they were the last one to move in. We can't stop that. He used to ride his sled from his front door to the creek. Now he has to wait for 2 or 3 cars before he can get out of his own driveway. People love to come to Tyrone because it is a nice place, but if he had his wishes he would want it to stay the same. Everyone who comes here wants to be the last one, but you can't fight progress.

Walter Cords, 13455 Lakebrook Drive, said he could almost throw a ball to the Herb Farm. He has no problem with the request and his wife enjoys it because she has a garage sale every time they have an event there. It is a blessing in disguise and the noise is not a problem because he keeps his windows shut and the air turned on. They are good people and he has talked to them and anything you do to deter this is detrimental to the benefit of their family.

Catherine Confer, 13569 White Lake Road, said she did not believe that traffic was the real problem. She wanted to bring up the issue of the noise. There is a neighbor, and she is not complaining about the neighbor, who has many parties and has loud music and sometimes that music can be mistaken for music from the Herb Farm. When the Herb farm has had their driveway full of cars in the evening, we have driven down there and intentionally listened to see if we could hear the noise and we could not. We couldn't hear any of it because of the hills and the barn.

Steve Mathews, 13730 White Lake Road, the owner of Heavenly Scent, said he had never met Scott Dietrich. His wife was jogging down the street one day and asked about the Café and he told her they didn't have the funds right now. In regard to traffic control, they have two parking attendants and Steve is one of them. From the time the first car comes in until the last car leaves, if you come down to that parking lot he will be there. If you notice, the wedding time is almost contradictory to the time that school is in session. The count of traffic is going to be less than it is during school time.

He has been in the same house for 52 years and seen a lot of changes. This is something they have built and shared with the community. If they want to come and enjoy it, they can. When our business hours are open, they can come and relax. We have already had weddings there. We thought we were O.K., but didn't know we weren't O.K. You have already seen two years of how it has been. We have weddings at our place for people from as far as England. It just happened to be that the groom was from England. The mother of the groom said to him and his wife Kathy she thought she would be out in the middle of a field and that this was the best wedding ever. If the noise is an issue, we can work with that. If a neighbor really has a problem, they can come down and talk to us and there are a lot of things we could work out.

Mr. Mathews said he wanted to thank everyone who came and showed their support.

Sharon Tinker, 13382 Foley Road, said she was a very close neighbor of the Mathews. She had no issue at all with the music, in fact she enjoyed it. She feels it is a celebration when someone is getting married and it touches her heart. Heavenly Scent is a wonderful place to go, and our community is better for it.

Eric Schoenberg, 12273 Center Road, wanted to comment about the road travel. The Township should have thought about traffic before they opened the gravel pit. Center Road gets bombarded with trucks seven days a week.

CLOSING PLANNING COMMISSION REMARKS:

There being no additional remarks from the Planning Commission, the Hearing was closed at 8:36.p.m.

Laurie Radcliffe, Secretary

Tyrone Township Planning Commission

Barbara Burtch, Recording Secretary

Tyrone Township Planning Commission