

EATON COUNTY BOARD OF APPEALS MINUTES
March 1, 2022

Call to Order: Ms. Claudine Williams, Director of the Community Development Department, called the meeting to order at 6:00 p.m. in the Board of Commissioners Room, Eaton County Courthouse, 1045 Independence Blvd., Charlotte, MI.

Pledge of Flag: The Pledge of Allegiance was given by all.

Roll Call: Nikki Chmielewski, Donald Chase, April Stopczynski, Charamy Cleary and Jeremy Whittum

Staff Present: Claudine Williams and Brandy Miller

Nominations and elections of Board Chairperson, Vice Chairperson and Secretary.

Ms. Williams asked for nominations for Chairperson. **Member Cleary** nominated Member Chmielewski. **Member Chase** seconded. **Member Cleary** moved nominations be closed and a unanimous ballot cast for Member Chmielewski. **Member Chase** seconded. Motion carried.

Member Chmielewski assumed the responsibility of presiding over the meeting.

Member Chmielewski asked for nominations for Vice Chair. **Member Cleary** nominated Member Chase. **Member Stopczynski** seconded. **Member Cleary** moved nominations be closed and a unanimous ballot cast for Member Chase. **Member Stopczynski** seconded. Motion carried.

Member Chmielewski asked for nominations for Secretary. **Member Cleary** nominated Member Stopczynski. **Member Chase** seconded. **Member Cleary** moved nominations be closed and a unanimous ballot be cast for Member Stopczynski. **Member Whittum** supported. Motion carried.

Elections were closed.

Agenda Approval: A motion was made by **Member Stopczynski** to approve the agenda for the March 1, meeting. **Member Cleary** supported. Motion carried.

Minutes Approval: A motion was made by **Member Whittum** to approve the minutes from the December 7, 2021 meeting as written. **Member Chase** supported. Motion carried.

Communications: None

Public Comment: None

BA-2-22-1: Request by Hamlin Township, Mark Howell, and Vance Saunders for a review of the Planning Commission's decision regarding CU-12-21-11, MMHP, LLC, which allows for an Agricultural Business (hemp processing) per Section 14.1 of the Zoning Ordinance, located at 6924 Peck Road (parcel 160-018-400-055-03), Section 18, Hamlin Township.

Staff Report: Ms. Williams read the staff report into record and a Site Plan Review response from the Eaton County Road Commission into record.

Applicants Statement:

Applicant Mr. Mark Howell, 6421 Peck Road, stated he would like support to keep the township free of industrial operations. He asked the Board to overturn the Planning Commission decision and stop spot zoning.

Applicant Mr. Phil Bombrys, Hamlin Township Supervisor, 6463 S. Clinton Trail, stated seven (7) of the ten (10) Townships he visited passed resolutions supporting Hamlin Townships appeal of MMHP's Conditional Use Permit application. Mr. Bombrys passed out the resolutions and some photos to the Board. He stated this is the first time in fourteen (14) years he has served at the township, that they have recommended denial of an application. He added they did so by resolution with detailed findings, which is the highest level of action the township board can take on the matter. Mr. Bombrys stated MDARD does not control where hemp processing facilities are located. He said 14.1 of the Zoning Ordinance does not allow industrial activities and only allows processing if in county of food, feed, fiber and alcohol. He added the producing CBD oil is not any of these things. Mr. Bombrys said 14.1 does not allow for this use in the agricultural district, if it belongs anywhere it is in industrial. He stated the Planning Commission ignored 14.1 and 9.3.6 of the ordinance because of their fear of a lawsuit, but they may have one anyway at the taxpayers expense. He added once we allow industrial in the agricultural district, there will only be more. Mr. Bombrys said he warned the Planning Commission MMHP will grow and use more than the approved two buildings. He said their secret plan is to use all of the buildings on the property. He stated Mr. Barrows knew he was not allowed to have the business; he tried in Ingham County and was denied so he moved the business to Eaton County. Mr. Bombrys said they did not even ask or apply for the proper permits and operated illegally for two years. He added only when Hamlin Township forced the issued and filed a complaint did they comply; however, they are still operating outside of what they applied for. He directed the Board's attention to the photo's that were passed out. He said if they are there working daily, they are operating. Mr. Bombrys asked the Board to please reverse the Planning Commission decision and cease the operation of this business. Mr. Bombrys stated a lot of the paperwork the Board received was not factual. He said Mr. Gruesbeck sold the property to Mr. Haynes via land contract; Mr. Haynes sold the property to via land contract to Mr. Barrows and Mr. Barrows then transferred ownership to MMHP, L.L.C. Mr. Bombrys stated he believes they had Mr. Haynes apply for the permits in his name because he is a farmer and they thought they could slide by. Mr. Bombrys said he wonders what else is going on and these concerns should have been enough for the Planning Commission to deny.

Member Chase asked if there was a meeting with MMHP before the Township Board meeting. Mr. Bombrys said no. **Member Chase** asked if MMHP attended a Township Board meeting and if there were a lot of people present. Mr. Bombrys said yes, they attend a regular meeting and there were some people there including MMHP's attorney. He added they did have a special meeting also that Community Development Department Staff attended.

Applicant Attorney, Matthew Kuschel from Fahey Schultz Burzych Rhodes PLC spoke on behalf of all the appeal applicants; he passed out a folder of information to the board members. Mr. Kuschel went over what was in the folder he passed out. Mr. Kuschel stated we were not here about industrial hemp, we are talking about industrial hemp processing and is it appropriate in an agricultural zoned district per the ordinance. He said the Eaton County Zoning Ordinance allows for processing in the Industrial District and that is where this business should go. He stated the goal of the ordinance to be interpreted as written, there are specific

definitions and specific uses. He read the definition of an agricultural business from Sections 14.1.1 and 14.1.2; he also read the definition of a farm from Section 5.3.6 the ordinance. Mr. Kushcel said this reinforces farming is about plants and animals and not processing. He said we are here this evening to talk about processing, not hemp. Mr. Kushel also read the definitions for direct and necessary from The American Heritage Dictionary, which is listed as the book to be referenced for definitions in the Zoning Ordinance. He stated this leaves a very strict definition that the business must be directly dependent upon the community and absolutely essential for growing plants and animals. Mr. Kushel stated this hemp processing facility could be done in an industrial district and allowing it here is creating a carve out in the agricultural district. Mr. Kushel 14.1.2 B. from the ordinance in reference to a processing facility. He said first you have to meet the definition of an agricultural business and then be processing food, feed, fiber etc., and you must be processing for more than one farmer. Mr. Kushel asked who is growing hemp; who are the farmers; per the Federal Farm Service Agency there are zero hemp farmers in Eaton County over the last two years. He stated one grower in the last four years with 108 acres of hemp does not make this facility absolutely essential and would only be one farmer. He said the farmer is not reliant on the processor, the processor is reliant on the farmer. He added per page two of the minutes from the Planning Commission meeting the hemp is coming from Traverse City outside of Eaton County and noted they will also process from Ingham County. He said MMHP has stated their market is not Eaton County, it is Mid-Michigan. Mr. Kushel stated per the ordinance an Agricultural Business must be directly dependent on the existing farming community and cannot be dependent on future use; they must serve something that already exist. Mr. Kushel stated Community Development Staff has said reporting to the Federal Farm Service Agency is voluntary, but that is not true it says shall report and those that do not are not compliant. He added MDARD also has a technical bulletin stated it is mandatory to report. Mr. Kushel asked if hemp processing facilities are necessary, absolutely necessary. He said according the FSA report hemp growers stated their greatest need was dryers and their lowest need was supply chain. He stated according to the report processing is not an issue that is absolutely essential to hemp growers of Michigan. He added industrial hemp can be processed at a marijuana processing facility which are already serving the Mid-Michigan area. Mr. Kushel said there are also sufficient hemp processors, according to MDARD there are one hundred and ten combined processor/growers; sixty-seven of those are processing their own and at three are processing for other growers. He said per MDARD's most recent report from 2020 there are thirty-three independent processors available, therefore, it is not essential in Eaton County or in Michigan.

Mr. Kushel said he would like to move on from the definition to permitted uses of a processing facility. He stated processing may occur for food like corn, or feed for humans and animals; hemp is not a food or animal food. He said hemp and CBD are not food and cannot be added to food per the FDA and MDARD and Farmer's Markets. He also stated hemp could not be put in animal feed as it is generally not recognized as safe and additionally is not lawful to add to commercial feed product. He said MMHP is not processing fiber or alcohol and does not have more than one farm operator. Mr. Kushel said per the 2019 FSA report there was one signature block indicating one farmer and one farmer in Eaton County claimed he grew on 108 acres, but did not appear to report it. He said the Staff Report for MMHP indicates there are six hemp farmers in Eaton County, but MDARD could not provide or corroborate that information when he asked. Mr. Kushel stated processing industrial hemp is not agricultural and we are here to discuss processing, not hemp. He said the Right to Farm Act only covers farm products grown on a farm, processing activities are not protected under the Act. Mr. Kushel referenced two court of appeals cases looking at farm products grown on a farm

County of Mason v. Indian Summer Coop, Inc. and Charter Township of White Lake v. Ciurlik Enters.

Mr. Kushel stated CBD is not food, feed, or agricultural, it is industrial. He said per an Executive Order (EO), the State of Michigan is moving the regulation of hemp processing facilities to the recreational marijuana division. **Member Cleary** stated the EO does not take effect until April 13, 2022 and until that time MDARD is still the regulating authority. Mr. Kushel said that was correct. **Member Cleary** pointed out that as of today March 1, 2022 MDARD was still the regulating authority. Mr. Kushel said that was correct. He noted hemp growers will still be regulated by MDARD, but processing is being moved because it is not agricultural. He said it is going the Marijuana Regulatory Agency because hemp and CBD outputs supply the commercialized marijuana supply chain. Mr. Kushel talked about a new proposed rule allowing marijuana processors to convert THC from hemp into marijuana products and then covered items in the folder he passed out earlier.

Mr. Kushel explained the building on this property used to be part of a potato farm. He said they processed potatoes, meaning they put them into bags. He said they were not slicing and dicing, they took a local product grown in the fields, put them into bags and shipped them out. He noted there was a difference in the processes. Mr. Kushel explained what the surrounding area looked like; to the east is a 154 acre field, to the west is an 84 acre field and a 32 acre field. He said there are also residential homes mostly on large lots with tillable land. He stated having industrial hemp here is different from having potatoes; no one is going to come and think they are going to get their hands on something at a potato facility, but if there is hemp people will be looking for those products. Mr. Kushel stated this area is zoned for agricultural preservation and this is not a farm product. He said the zoning ordinance recognizes grain elevators and feed lots as separate permitted uses which are defined; extracting does not meet this definition. He said controlling industrial development is a goal of the county.

Mr. Kushel explained the legal minutia of the application; he said the Township is appealing with aggrieved parties. He said the others parties are north of the property and are aggrieved because they will be impacted differently than if it were a vacant farm field. Mr. Kushel asked the Board of Appeals to reverse the Planning Commission decision. He said this is not an agricultural business permitted by Conditional Use Permit (CUP), it is not consistent with the text of the ordinance and should be reversed and CUP found void.

Member Chmielewski stated MMHP has said they will not be growing or drying but Mr. Kushel noted an issue with odor; if they are not doing those activities then there would be no odor. Mr. Kushel explained there are different odors at different stages; mostly during blooming and drying, however, it does still have an odor once dried.

Member Whittum asked about the 300 foot radius for neighbors. Mr. Kushel explained that was not a determination to prove aggrieved.

Applicant Mr. Vance Saunders, 6698 Peck Road, stated his fear is in the apparent deceit from MMHP in the past maneuvering around laws and how that will affect their future use. He stated he does not want this in his backyard.

Applicant Ms. Sandy Osborn, Hamlin Township Assessor, 6463 S. Clinton Trail, gave a brief background of her experience. She said she has personally inspected the facility/property and found it to be mixed-use, consisting of a residence an industrial building and other large barns.

She explained the classification is determined based on the most predominate use, which in this case is the large industrial building used for commercial processing, not agricultural. She cited Michigan Compiled Laws 211.34c and 211.9. Ms. Osborn said the owner she mailed the most recent tax assessment to is Mr. Haynes; if there is a change in ownership by law this change should be filed. **Member Whittum** clarified the tax act was different than zoning. Ms. Osborn said that was correct. **Member Whittum** asked if they conflicted at times. Ms. Osborn said yes, at times they do conflict.

Member Chmielewski invited any speaker in favor or opposition to the request to make public comment.

Speakers in favor of the application:

Barbara Rogers, County Commissioner, stated she is a lifelong resident of Hamlin Township and this business concerns her greatly. She said processing should be viewed as a support business only. She stated they are producing hemp oil, they do not plant or cultivate or even process their own hemp. Ms. Rogers said this is no different than a grain elevator or the ethanol plant in Barry County. She said if the potato farm built an alcohol processing plant that would not have been allowed. She added apple orchards to not distill or make apple sauce. She stated she thinks this is spot zoning and asked the Board to please support Hamlin Township's application.

Mark Perkins, 7632 Houston Road, said it is with disinclination he is here to speak on behalf of a Hamlin Township official, but he felt compelled to be here to speak. He said residential property owners depend on elected officials to protect their citizenry from noise traffic and other things and noted there is a reason for a zoning and a zoning ordinance. Mr. Perkins said people understand zoning and the Conditional Use Permit (CUP) because we all inherently support freedom. He added CUP's present a reasonable change but questioned how a multi-million dollar hemp processing facility could be considered reasonable. Mr. Perkins said citizens should not have to see this board or argue with elected officials. He said residents rely on local officials to protect. He added as an observer he sees it as blatant indifference or disrespect to the township by approving MMHP's CUP. He said the recommendations of the Township are almost always respected, why were they overlooked this time. Mr. Perkins stated that is why he is here, to support the local Hamlin Township officials. He added for everyday citizens to find out rural communities now have industrial is frustrating. He also noted the financial hardship to the Township for having to litigate this matter. Mr. Perkins questioned the need for environmental assessments and noted none had been done. He said they are not against the industrial processor, but are against where it is operating. He asked the Board to please respect and support Hamlin Township's decision.

Speakers in opposed to the application:

Marcus Baldori, 2267 Mt. Hope, attorney for MMHP, stated the core of the issue seems to be is hemp processing an agricultural process. He said this debate is better suited for federal or state agencies or an appellate court. Mr. Baldori said he would like to address some of the applicants comments. Mr. Baldori stated MMHP has been proceeding in good faith with MDARD. He added MDARD considers processing hemp agricultural. He additionally read a quote from the FDA stating they regulate hemp just like any other substance they regulate. Mr. Baldori said it was stated that seven counties support the appeal, what does that mean. He said it was mentioned the business was taken out of Ingham County because it was

industrial, that is not true; the building there were using caved in under the weight of snow. He stated the comments about the operating hours are not true; they have an active building permit and contractors are working in the building, the business is not operational. Mr. Baldori asked the Board to please focus on the scope of the appeal and what was presented in the appeals brief and not the extraneous information. He stated in reference to the memo/bulletin moving licensing for hemp processing from MDARD to the Marijuana Regulatory Agency (MRA), they are moving it due to understaffing at MDARD as the MRA has more capacity to regulate. He noted this was not relevant and additionally was not effective yet, so it should not be a pertinent this evening. Mr. Baldori referenced the Staff Report comments in reference to MDARD and said for the Planning Commission to rule otherwise would have contradicted not only our state agencies, but other agencies as well. Mr. Baldori stated in reference nuisances, MMHP has been happy to address issues that have arisen. He said immediately after the Planning Commission meeting MMHP installed light barriers and there is no smell due to the filtration system in the building. He added this was all discussed at the Planning Commission meeting. Mr. Baldori stated there are local residents that grow hemp that would like it processed. He noted there may be thirty-three applications for processors, but to their knowledge there are only three or four and none of them are in mid-Michigan. Mr. Baldori noted after the December 8, 2022 Eaton County Planning Commission meeting Hamlin Township filed an appeal application of the decision. He said he found no record of a Township vote to file the appeal and when he asked the Township they then held a special meeting on voted on it. He stated this is an indicator of how the process is being handled. Mr. Baldori said the Township Supervisor has been making every effort to stop the business at the expense of the township residents. He stated they do not know why there is so much pushback from the Supervisor and noted they are will to correct anything needed.

Member Whittum clarified Mr. Baldori meant seven townships, not seven counties when he talked about the resolutions in support of Hamlin Township. Mr. Baldori said that was correct, he meant seven townships.

Robert Bennett, MMHP partner, stated in reference to 14.1.1 they have statements from farmers in Eaton County stating they need a place to process. He stated the Township Supervisor, Mr. Bombrys, has a personal vendetta against their company MMHP as he continually harass them with surveillance and picture taking. Mr. Bennett said he believes the Township appeal was filed without their township board approval. He added Mr. Bombrys is accusing them on being shady and he is doing it himself against MMHP.

Member Cleary asked how many affidavits they had. Mr. Bennett said they had two.

Kyle Barrow, 6266 Omara Drive, Hamlin Township, spoke on behalf of MMHP. Mr. Barrow said he was open to answering any questions about their processes or procedures. He noted a lot was covered that is not relevant that he does not think he needs to address. He stated this is about zoning. Mr. Barrow said Mr. Bombrys has had an open invitation to visit the facility to verify any of the claims he making and he has never been. He said if you do not show up and look how do you know.

Member Chmielewski asked about the hours of operation. Mr. Barrow stated they have not operated their business so no hours of operation are taking place. He said they do have an open building permit and contractors are in and out as result.

Member Stopczynski asked about outstanding building drawings. Ms. Miller informed the board all MMHP plan reviews have been submitted and approved. She added inspections are occurring as recently as today.

Member Chase asked about the end material after processing; what is the condition of the biomass. Mr. Barrow stated it is a distillate isolate which is in powder form. Mr. Barrow said they have sent the biomass to MSU for testing and found it has the same properties as alfalfa which can be used for feed for animals. He said they would either be selling or just giving it away. He added it was stated the biomass could not be used for feed, however, if you google there are several examples. **Member Chase** asked about other waste material; how would it be disposed of. Mr. Barrow said they would rather give the waste away. **Member Chase** asked if the waste was hazardous or if it had hazardous properties. Mr. Barrow said no.

Alex Lebedovych, 11834 Columbia Hwy, stated he grew hemp and it still sits in his greenhouse waiting to be processed. He said when he started there were only ten processing facilities in Michigan and it discouraged people from growing. Mr. Lebedovych stated he planted all of his hemp by hand between 9:00 p.m. and 4:00 a.m. He said to say it is not agricultural because it is used for oil is like saying corn is not agricultural because it is used for fuel. He added if the Planning Commission has the right to issue the CUP, the Board of Appeals should not undue it, as there is no argument given otherwise this evening. Mr. Lebedovych said he hopes the facility does not destroy the serenity of the township, however, the question is did the Planning Commission have the right to issue the CUP for an agricultural product.

Mr. Barrow added to his previous statement. He explained the processor license is actually a processor handler license; to distribute you must have the process and seller license. He said when they say there are thirty-three processor licenses in the state, thirty of them are brokers that buy and sell worldwide. Mr. Barrow said there are only four active processors they know of. He added it would be difficult to find a marijuana processor willing to take hemp; those facilities have lines and lines of marijuana to process. He explained a large-scale marijuana processor may process five to ten pounds of marijuana at a time and hemp is processed thirty to fifty pounds at a time. He said it takes a few minutes to process hemp; it takes about an hour and a half to process marijuana. Mr. Barrow stated this is not a relevant argument, the process is not relevant, this is about zoning.

Ben Tirrell, Eaton County Planning Commission Vice-Chairperson, explained the Planning Commission looked at the CUP application as a two-part process. He said they first looked at the definition of 14.1.1 to decide if this was an agricultural enterprise; they decided there was a preponderance of evidence from MDARD and the USDA to show hemp was an agricultural product. He said they additionally discussed at length directly dependent upon the agricultural community and if the hemp had to all be grown in Eaton County. He said they determined there are people in Eaton County that would use the processing facility as evidenced by speakers this evening.

Brian Ross, Eaton County Planning Commission Chairperson, stated before the Planning Commission meeting on December 8, 2021 he received a phone call from Barb Gruesbeck the title deed holder of the property. He stated Ms. Gruesbeck said she was told the property was getting rezoned. He said he explained it was not getting rezoned, but an application for a CUP was being heard by the Planning Commission. Mr. Ross said Ms. Gruesbeck stated she was fine with everything as long as the zoning was not changing; she also stated to him that they knew about the additional Land Contract. Mr. Ross said someone this evening talked about

Hamlin Township not being represented well. Mr. Ross explained the Planning Commission is appointed by the Eaton County Board of Commissioners which is an elected body. He added Hamlin Township is represented very well on the Planning Commission.

Member Whittum asked if any additional information was brought forward this evening that the Planning Commission did not have. Mr. Tirrell noted the Board of Appeals has copies of all the Planning Commission documents. He said the conversation is similar, but more a little more complex this evening. Mr. Tirrell said they discussed the word industrial and it being in front of the word hemp in the Act. He stated the Planning Commission felt just because the word industrial was there, that did not make it so.

Member Chase asked if they felt overwhelmed by all of the information; did they have adequate time to review and understand it. Mr. Ross said they had their packets ahead of time so if they wanted to research on their own they could. He added the agencies they work with classified it as agricultural so it was not super difficult. Mr. Ross stated he felt the Planning Commission had plenty of opportunity to think through the information and make a decision.

Member Whittum asked if any of the members felt under duress to make a decision. Mr. Tirrell said no; he added everyone on the Planning Commission takes their work seriously and took a deep dive into all of this information.

Public hearing closed at 8:08 p.m.

Mr. Kushel requested time for rebuttal. **Member Chmielewski** said she would allow for brief comments.

Mr. Kushel said he thinks there is new information and noted the Farm Service Agency (FSA) reports showing there is only one farm; additionally they have shown CBD is not available for food or feed. He said we are not here about hemp or agricultural products; we are here about processing. He said in reference to available processors per the report provided there are sixty-seven processors, thirty-three of which are processing for other growers per page fourteen. Mr. Kushel said MMHP has asserted they have affidavits from farmers, but the Board does not have those and there was only one public comment, which is not an affidavit. He stated MMHP has asserted they will sell hemp waste for animal feed. He said hemp is not a feed additive and cannot be used as such. Mr. Kushel noted MMHP focused on township governance, but does not focus on the zoning ordinance and suggest relying on MDARD and the Federal Government. He stated it is this body, the Board of Appeals, which is responsible for interpreting the zoning ordinance, not the federal government or appellant court. Mr. Kushel read from page three, sub bulletin two, of the Planning Commission Staff Report and stated the Planning Commission made an error when they determined hemp was an agricultural product and therefore the processing of hemp was agricultural also. He said they went too fast and jumped to this conclusion with information from MDARD.

Board of Appeals Discussion/Comments:

Member Chase noted during the initial application several agencies were contacted, he asked if the Hamlin Township Fire Department responded. Staff consulted the CUP application file and confirmed there was no response from the Hamlin Township Fire Department. **Member Chase** questioned if anything was volatile. Mr. Barrow, from MMHP, stated no.

Member Stopczynski suggested starting with the first part under justification.

Member Cleary said the Board's job is to review the action of the Planning Commission and determine if there was an error in the facts or if their decision was inconsistent or contradictory with the Zoning Ordinance. Member Cleary stated she felt the Planning Commission appropriately relied on other agencies and does not believe there was an error. She said the Planning Commission relied on the agency at the state level that regulates and there is written documentation from the Deputy Director of MDARD identifying the processing of hemp as agricultural. Member Cleary stated given this information she cannot find any indication the Planning Commission erred in their decision. She added their decision was not inconsistent because the ordinance allows for agricultural processing which is what the Planning Commission granted.

Member Chmielewski stated the Board should first address whether Mr. Saunders and Mr. Howell are aggrieved parties.

Member Chase said he does not believe they are. He said they are living in a farm community and therefore have such issues. He added that is why there are conditions that can be placed on CUP's. He noted Hamlin Township does have status. **Member Stopczynski** said she agrees with the points made. Ms. Williams explained a decision of the Board on this matter should be by way of a motion and would need to state why Mr. Saunders and Mr. Howell are not aggrieved. She directed them to page two of the staff report and read what it means to be aggrieved.

Ms. Williams introduced Mr. Tim Perrone, Eaton County's legal counsel and asked Chair Chmielewski if he may have a few minutes to speak on the matter.

Mr. Perrone explained if it is the pleasure of the Board, they could make a specific finding the parties are not aggrieved on the basis they have not demonstrated they have suffered damages beyond others owners similarly situated.

Member Cleary moved the Board does not find the individual applicants of this appeal, Mr. Saunders and Mr. Howell, have demonstrated that they have been aggrieved nor have they submitted any evidence that they have suffered any damages, not suffered by other property owners similarly situated. **Member Chase** supported.

Discussion was held. **Member Whittum** asked about the three hundred foot radius for the mailing. Ms. Williams explained per state act, staff is required to notice neighbors within three hundred feet of the subject property of the public hearing taking place so they may have an opportunity to comment on what is before the Planning Commission or Board of Appeals. **Member Stopczynski** noted both of these property owners are further than three hundred feet away.

A roll call vote was taken with five (5) voting aye and none (0) voting nay. Motion carried.

Member Stopczynski stated in reviewing the Planning Commission records and testimony, they had a large amount of facts and discussed a lot of information when making their decision.

Member Chase stated he believes the Community Development Department should have notified all of the townships because it was a zoning issue and the townships they feel they did not have input. Member Cleary asked if staff should notify all of the Townships every time a CUP is applied for anywhere. Member Stopczynski asked Member Chase if he abstained from voting on the resolution supporting Hamlin Township at his Bellevue Township Board meeting. Member Chase said he did abstain from the vote as did their Township Secretary who serves on the Planning Commission.

Member Cleary asked Member Chase why he felt it was a zoning issue; the zoning did not change nor were any definitions or uses changed. She said per zoning ordinance definitions it is an allowable use with CUP so why would that be a zoning issue for townships to be notified. Member Chase said it is an issue for all Townships because it is spot zoning. Member Cleary stated the zoning is not changing so there is no spot zoning. Member Chase said some townships feel it is industrial and does not belong in a Limited Agricultural zoned area. He said the entire process appeared tainted from start to finish. Discussion was held in reference to Community Development staff attending a Township meeting. Ms. Williams stated she Ms. Miller and the Eaton County Director of Construction Code were all invited via e-mail by the Township Supervisor, Mr. Bombrys, to a Hamlin Township Special meeting in reference to MMHP's CUP application. She said they later received another e-mail stating their attendance was no longer needed. Ms. Williams confirmed she and Ms. Miller attended the meeting anyway, however, they did not speak at meeting and were not asked any questions.

Member Cleary noted she received a phone call from the Hamlin Township Supervisor, Mr. Bombrys, offering to answer any questions she may have. She stated she did not return the phone call and had no conversations with Mr. Bombrys and asked Member Chase if he had. Member Chase said he did and notified staff. Ms. Williams stated she called Member Chase and he assured her there was nothing improper or of consequence in reference to the conversation he had with Mr. Bombrys.

Member Chmielewski stated she was also contacted by Mr. Bombrys and that she notified staff. Member Stopczynski stated she was also contacted by Mr. Bombrys and she notified staff as well. She added this was not the proper form of communication and questioned how her person cell phone number was obtained. Ms. Williams stated she did not know how personal numbers were obtained that she nor Ms. Miller gave them out. Member Stopczynski said the message she received from Mr. Bombrys was specific in that he wanted to discuss the case with her before the Board of Appeals of meeting. Member Chmielewski stated her message from Mr. Bombrys stated he was calling per the advise from his township attorney. Member Cleary stated she feels the process was violated, but she is not sure it makes a difference.

Member Chase stated he feels the Planning Commission had ample time to review the information and do any of their own research; he feels comfortable with their decision and does not see anything wrong with their decision. He noted the Bellevue Township Clerk is a Planning Commission member. He stated when Mr. Bombrys attended their Bellevue Township meeting they gave him five minutes to speak. Member Cleary clarified with Member Chase if he is stating his initial concerns are not founded. Member Chase said that is correct, he thinks everyone did a good job.

Member Stopczynski asked Mr. Perrone how comfortable he was with the legitimacy of the Board of Appeals vote. Mr. Perrone stated this Board will be making a decision based on their

meeting packet and the information from this evening during the public hearing. He added the decision should be based solely on that information and not on any ex parte conversations outside of the public record.

Member Whittum stated he previously was the Hamlin Township Supervisor and is currently the Eaton County Board of Commissioners Chairperson. He said he received several e-mails and had conversations with people in reference to a change in zoning, but this is not a change in zoning, if it were all townships would have been notified. He added this is in reference to a CUP.

Member Cleary moved that the Board of Appeals sustain the decision of the Planning Commission and deny BA-2-22-1, a request to reverse the Planning Commission and rescind as void Conditional Use Permit CU-21-21-11, which allows for an Agricultural Business (hemp processing) per Section 14.1 of the Zoning Ordinance to operate at 6924 Peck Road (parcel 160-018-400-055-03), Section 18 of Hamlin Township for the following reasons.

- I. The Planning Commission did not make an error in its determination that hemp is an agricultural product/commodity. The Planning Commission's decision was based on information provided by regulating authorities consulted, being the United States Department of Agriculture (USDA) and the Michigan Department of Agriculture and Rural Development (MDARD).
- II. The Planning Commission did not make an error in its determination that processing hemp is an agricultural business that is directly dependent upon the agricultural community of the county and is necessary to support agricultural enterprise. The Planning Commission's decision was based on documentation provided by MDARD that MDARD considers hemp processing an agricultural activity and additional information provided by MDARD stating there are six (6) licensed hemp growers in Eaton County. Additionally, one hemp grower located in Eaton County spoke during the public hearing on March 1, 2022.
- III. The Planning Commission's decision was not inconsistent with the provisions of Section 9.3.6 E which addresses whether projects are harmonious and compatible with the existing land use and planned character of the adjacent property and general vicinity, and will not result in conditions that are detrimental to surrounding persons or property. The Planning Commission's decision was not inconsistent, as hemp was determined to be an agricultural commodity being processed in an agricultural facility. Additionally, the character of this area is large farm fields and large lots.
- IV. The Planning Commission's decision was not inconsistent with the provisions of the land use policies in the Eaton County Master Plan in reference to the location of the hemp processing facility. The Planning Commission was not inconsistent as the Master Plan has two land use designations, Agricultural Preservation Area and Primary Agriculture. Both are prioritized in the Master Plan and are compatible for agricultural commodities and agricultural processing.
- V. The Planning Commission's decision was not inconsistent with the intent and purpose of the Zoning Ordinance. No evidence was provided showing any inconsistency with the purpose and intent of the Zoning Ordinance. Hemp was determined to be an agricultural commodity and the ordinance allows for Agricultural Processing in a Limited

Agricultural zoned district with a Conditional Use Permit (CUP), which is what the Planning Commission followed.

VI. The Planning Commission did not make an error in its determination; the Applicant met obligations of the Zoning Ordinance. There is no evidence the Planning Commission made an error. The Applicant (MMHP, LCC.) submitted all of their complete site plans, all of the required permits have been approved, and they have done everything required by the Community Development and Construction Code Departments.

Member Stopczynski supported. A roll call vote was taken with five (5) voting aye and none (0) voting nay. Motion carried.

Upcoming Cases: Ms. Williams informed the Board of Appeals there are no applications to be heard in April.

Old Business: none

New Business: none

Public Comment: none

A motion was made by **Member Chase** to adjourn the March 1, 2022 Board of Appeals meeting. **Member Stopczynski** supported.

Meeting adjourned at 8:49 p.m.