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MINUTES - Pierce County Land Management Committee Meeting, August 17, 2022, in-person meeting for everyone along with the option of remote attendance.

Present: Joe Fetzer, Jon Aubart, Neil Gulbranson, Dan Puhmann, and Eric Sanden

Others: Andy Pichotta, Adam Adank and Anna Anderson

Chairperson Joe Fetzer called the Pierce County Land Management Committee meeting to order at 6:00pm in the County Boardroom.

Next meeting dates: September 7th & 21st, October 5th & 19th all in 2022.

Approve Minutes from the August 3, 2022 Land Management Committee meeting: **Aubart moved to approve the Land Management Committee minutes from August 3, 2022/Puhmann seconded. All in favor.**

Passed.

Discuss take action on a request for a conditional use permit for an Orchard in the General Rural District pursuant to Pierce County Code Chapter 240-35C(5), for Tomasz & Shawn Wisniowski, owners on property located in the SW ¼ of the SE ¼ of Section 6, T26N, R16W, Town of El Paso, Pierce County, WI.

Staff Report – Adam Adank: This property has been operating as an apple orchard/Christmas tree plantation since 1995. The business is called Happy Earth Orchard. The primary product is pick-your-own apples and pre-picked apples. In addition to selling apples, there are also baked goods, local products, and merchandise for sale. The orchard also provides activities like a corn maze, playground, and wagon rides. The business was originally permitted with multiple Land Use Permits in 1995 and 1999. In 2000 the owners received a Conditional Use Permit for a farm and home-based business due to the floor area of the business exceeding 1500 sq. ft. and the expansion of the hours of operation, additional employees, and additional retail which included producing/selling pastries, pies, and drinks from the commercial kitchen. In 2016 a LUP was issued for Direct Market Agriculture that also allowed for people to pick their own apples. In the fall of 2020 the property was sold to Tomasz & Shawn Wisniowski. In the Spring of 2021 the applicants started talking with staff about expanding food services to include wood fired pizzas and picnic baskets. The applicants are also proposing to sell more products. Produce options would include pumpkins, blueberries, grapes, cucumbers, carrots, cabbage, etc. The applicants also proposed selling local wines, ciders, and beer but the alcohol proposal has since been eliminated due to the lack of liquor licenses in the township. In 2012 amendments were made to Chapter 240 that classified Orchards as a specific use under agricultural business operations. Prior to 2012 an orchard would have been regulated/permitted as a farm and home-based business as indicated by the permit from 2000. Instead of applying for an expansion of the current CUP, staff recommended that the Wisniowski's apply for a new CUP to be classified as an Orchard based on the 2012 code amendments. The property is located in the SW ¼ of the SE ¼ of Sec. 6, T26N, R16W, Town of El Paso. This 31-acre parcel is zoned general Rural. Pierce County Code 240-15 Purpose and intent of Zoning Districts states: General Rural (GR). This district is established to maintain and enhance agricultural operations in the county. The district also provides for low-density residential development which is consistent with a generally rural environment and allows for nonresidential uses which require relatively large land areas and/or are compatible with surrounding rural land. Adjacent land surrounding this parcel is zoned General Rural and Primary Agriculture. Adjacent land uses include agriculture, forest and low density residential. PCC Ch. 240 Table of Uses allows orchards in the General Rural zoning district with the issuance of a CUP and is listed under § 240-35C(5). Pierce County Code (PCC) § 240-88 defines Farm and Home-Based Business as "A business, profession, occupation or trade for gain or support which is conducted on the same lot as a residence or farmstead." Pierce County Code (PCC) §

240-88 defines Orchard as “An establishment, located on a lot devoted to the cultivation of fruit trees, that includes the sale of goods containing produce primarily grown on site and items to attract customers and promote the sale of agricultural products such as baked goods, ice cream, crafts and other retail items identified in the conditional use permit.” An orchard is listed in the Pierce County Code as an Agricultural Business Operation along with other uses such as Winery and Nursery. “Agricultural Business Operation” is defined as: A site-specific business reliant on the property’s active agriculture which may include multiple related uses managed as one operation. The use categories of “Agricultural Business Operation”, “Nature Based Operation”, and “Resorts” were created in response to a need that was identified in Pierce County’s Comprehensive Plan. The new classifications were intended to allow for the establishment of a variety of agriculture compatible and site-specific commercial uses that would be conditionally permitted and would thus be subject to guidance and use parameters established in a town’s adopted comprehensive plan. The Orchard is open to the public from late August through late October. Current hours of operation are: Friday 12pm-5pm, Saturday: 10am-6pm, and Sunday: 10am-6pm. One to three seasonal employees help with picking apples, washing apples, and general maintenance and cleanup. Some contractors are hired for pruning and other tree care. All other work is performed by the applicants. The personal residence has its own kitchen separate from the commercial kitchen. The property has current permits and regular inspections with the Pierce County Public Health Department. All proposed food will be served using disposable paper services. All seating for food services will be outside on picnic tables or blankets. Picnic baskets would include snack items such as an assortment of cheeses, apple slices, honey, peanut butter, crackers, etc. The applicants estimate that they currently have around 30-40 customers on a busy day. Pierce County Code (PCC) § 240-54 requires one off street parking space per four patrons for commercial recreational uses. One space per employee during the peak shift is also required and 2% of the total number of spaces shall be provided for use by physically disabled persons. The applicants estimate that they have around 27 parking spaces available onsite, four of which are designated as handicap parking. One porta potty is located on-site for customers. The primary residence is served by a holding tank system. The El Paso Town Board recommended approval of this request on 7/11/2022. The Town did not list any concerns or suggested conditions. Based on advice from Corporation Counsel, staff is generally not recommending any conditions which require the permitting of, or compliance with, other agencies, organizations, or departments regulations or rules. The applicant is strongly encouraged to comply with relevant local and state ordinances and regulations and secure all necessary permits and licenses (e.g. Department of Safety & Professional Services (DSPS), Department of Health and Family Services, etc.). The existing conditions of the Farm and Home-Based Business CUP are:

1. The applicant shall submit a traffic circulation and parking lot plan to be developed consistent with the guidelines outlined earlier in the staff report that provides convenient access for customers.
2. The hours of operation shall allow for weekday and weekend use between the hours of 8:00A.M. and 8:00P.M.
3. Outside lighting shall not be directed toward the road right-of-way or the neighboring properties.
4. There shall be no outside display area shall not exceed the footprint of the overhang eave of the store.
5. Sale of products not produced on the premise shall not exceed 25% of the interior sales area of the building.
6. Provide a compliance inspection report from the Department of Agriculture.

Staff Recommendation: Staff recommends the Land Management Committee determine whether the proposed use at the proposed location would be contrary to the public interest and whether it would be detrimental or injurious to public health, public safety, or the character of the surrounding area. If found to be not contrary to the above, the staff recommends the Land Management Committee approve this conditional use permit for an Orchard with the following conditions:

1. Activities shall be conducted as presented in the application unless modified by a condition of this CUP.
2. The hours of operation shall allow for weekday and weekend use between the hours of 8:00A.M. and 8:00P.M.
3. Outside lighting shall not be directed toward the road right-of-way or the neighboring properties.
4. There shall be no outside display of merchandise for sale except for products grown or produced on the premises.
5. Applicants shall work with staff to determine if additional wastewater will be generated onsite and if modifications to the Private On-Site Wastewater Treatment System (septic system) are required.

6. At least 13 off-street parking spaces and a minimum of one ADA compliant parking space shall be provided onsite (assuming 40 people at peak hours).
7. Sale of retail items shall be limited to items identified in the Conditional use permit Application. Pizza sales shall be limited to Orchard operation August through October.
8. Applicant understands that expansion or intensification of this use will require issuance of a new conditional use permit. If applicant has questions as to what constitutes expansion or intensification, Land Management staff should be contacted.
9. This conditional use permit shall be renewed every two years. Permit may be renewed administratively if no compliance issues arise.

Chairperson Fetzer opened the hearing to public comment. No public comment. **Chairperson Fetzer declared the public hearing closed.** Chairperson Fetzer asked if the committee had any questions. Sanden asked given that the town hasn't cited any comprehensive planning concerns, functionally what would change as far as this orchard designation for a CUP versus the previous Farm and Home business CUP. Or would there be no difference? Pichotta stated that the difference would be the inclusion of pizza, the sale of pizza and what the orchard designation does is it allows for multiple pieces of business under one CUP, so it went from there being multiple permits issued over time to basically one all-inclusive approval. Chairperson Fetzer asked if Wisniewski had anything to add. Mr. Wisniewski asked what this means for us as we grow. He suggested that after this year or the following year they may have things that come up. Chairperson Fetzer suggested that he work with staff as questions come up.

Sanden moved to approve the conditional use permit for an orchard, finding that the proposed use at the proposed location would not be contrary to the public interest nor would it be detrimental or injurious to public health, public safety, or the character of the surrounding area, with conditions #1 - #9/Gulbranson seconded. All in favor. Passed.

Discuss take action on a request for a conditional use permit for Filling and Grading in the Kinnickinnic River Bluff pursuant to Pierce County Code Chapter 240-45(E), for John Armstrong & Jo Ann Lincoln, owners, by Ross Wegge, agent, on property located in the NE ¼ of the SE ¼, Lot 24 of Hidden Hills of the Kinni Phase 2, in Section 9, T27N, R19W, Town of Clifton, Pierce County, WI.

Staff Report – Andy Pichotta: The applicants are proposing Filling and Grading in the Kinnickinnic River Blufflands bluffline setback to construct a residence with a walkout basement. On 9/29/1998, Pierce County Zoning Code amendments were adopted by Ordinance#98-07 relating to the Kinnickinnic River Blufflands. The code amendments established a bluffline setback for structures. This parcel is 7.16 acres and is located in the NE ¼ of the SE ¼ of Sec. 9, T27N, R19W, Town of Clifton. This property and the surrounding properties are zoned General Rural Flexible-8. PCC § 240-45C states, “All structures shall be set a minimum of 15’ behind the bluffline, which is defined as a line connecting points at which a slope along the river and the first 1, 320 ft of adjacent ravines in excess of 20% decreases to a slope of less than 12%.” PCC § 240-45D states, “Site plan approval. All applications for structures along Kinnickinnic River Blufflands shall require site plan approval to assure compliance with the provisions of this chapter and to address erosion control during construction and afterward.” PCC § 240-45E states, “Any filling and grading of slopes downslope from the bluffline setback shall require a conditional use permit.” The applicants are proposing to grade approximately 55 feet into the bluffline setback to achieve the necessary slope for a walkout basement. The slopes in this area range from 12% - 20%. No slopes greater than 20% will be disturbed. A Land Use Permit was issued for the residence on July 21, 2022 with the following conditions:

1. Erosion Control Measures shall be established consistent with the recommendations from Rod Webb, Pierce County Land Conservation Department Director.
2. The smallest amount of bare ground shall be exposed for as short a time as feasible.
3. Diversion berms or bales, silting basins, terraces, filter fabric, fencing and other methods shall be used to prevent erosion.
4. Any unforeseen erosion issues shall be corrected to the satisfaction of Pierce County.

The builder plans to start construction of the structure in the walkout area, to allow for final grading and seeding to be established as soon as possible. All other disturbance will be outside of the setback area. Site plan review was completed administratively, with assistance from the Land Conservation Department, to address erosion

concerns. The Town of Clifton recommended approval of this request on 7/18/2022 without reference to the Town Comprehensive Plan or any listed concerns or recommended conditions.

Staff Recommendation: Staff recommends the Land Management Committee consider the above and determine whether the proposed conditionally permitted activity (filling and grading) would be contrary to the public interest, or detrimental or injurious to public health, safety or character of the area. If found to be not contrary to the above, staff recommends that the LMC approve this conditional use permit with the following conditions.

1. Activities shall be conducted as submitted in the application and as presented to the LMC. If plans are modified, the applicant shall go back to the Town for review and back to the LMC for reconsideration.
2. Applicants shall address any erosion control issues during and after the construction of the residence.

Pichotta stated that Mr. Wegge is here and noted that there are a number of handouts and maps in the packet. Pichotta asked Mr. Wegge to walk us through their plans. Mr. Wegge stated on page 2 of the packet is a map with a square box that shows the approximate location of where the home would be, and the blue shaded area to the left of the home is the area where the dotted yellow line comes up from the Kinni and jogs up towards the house and then goes over diagonally to the property line.

Chairperson Fetzer opened the hearing to the public. Greg Erickson, Clifton Township, stated that he submitted an email two weeks ago to this committee and again yesterday. Both addressed Wegge's development and project. Mr. Erickson stated he has been following this project since he first heard it. He investigated what was going on and has looked at the Hidden Hills development. He noted that there are lots and roads in various states of finishing. A lot of homes are already built, others are under construction and there are vacant lots. On lot 24, there is cutting that has happened on the bluffline, not the subject of tonight's application for a CUP, but it is a violation of Pierce County and Clifton's blufflands ordinance. That issue of the remedy that is going to take place for that violation is still an open question. He has no problem with Ross building a home on lot 24. He has no problem with this grading and filling CUP. The whole project that's planned for lot 24 has a huge unanswered question and until everything gets completely resolved, this committee should put it on pause. There has never been another violation of the blufflands ordinance, there are no penalty provisions specified in the ordinance, and it was his understanding from conversation with the people that participated in the creation of that ordinance in Clifton Township, is that it was intentionally left somewhat vague. The reason being that when an applicant would come in, forgetting that there has been a violation here, and that the applicant is applying after the fact, the applicant would come in and say I want to do some cutting here, and I'm going to be in the blufflands, etc., that there could be an open discussion on what would happen, how it would be handled, and then ultimately when all the parties agreed to how that was going to be handled, then you would issue the CUP. It would be monitored and everybody, hopefully would be in compliance, and it would be reviewed and so forth. In this case, on the bluffland portion of it, the trees are gone. So, what kind of remedy is this committee going to impose? He is afraid it's just going to be well, they're gone. He recommended that this committee take into account and that this is the first time that there has been a clearing on the bluffline. It is exactly what the bluffline ordinance was intended to prevent. What kind of remedy you would impose in the future, I don't know that, certainly that is up to you and your discretion. Chairperson Fetzer asked for any further input or comment on this. No further comment. **Chairperson Fetzer closed the public hearing.** Chairperson Fetzer asked if the committee had any questions. Gulbranson stated that on a couple of these pages, there is one with a home, one with a pool, and then one with a garage. So, is the garage attached to the house? Mr. Wegge stated he would focus in on the last page that shows the home with the garage. Approximately 15-20 feet out from the house there will be a rectangular pool. The pool will be the subject of another CUP request and is something that we will be addressing this winter. The surveyor's prints are accurate. Sanden had a question for staff. The email correspondences between Andy and Joe Rohl, correct me if I'm wrong, but the way I read it was that, and the last one was today, am I correct in saying that they are implying that the remedy situation should be addressed by Clifton Township, I know at first, they were reluctant to. It seems that through this email exchange, they may have had a change of heart. Pichotta stated that he is not certain on whether there has been a change of heart or not, he thinks that Mr. Rohl perhaps now recognizes the need for the town to generate a recommendation in order to move forward. Pichotta suggested it may be of benefit to the folks that are here for him to summarize where we are with the issue of tree cutting, basically the town of Clifton suggested that they were going to hold off on issuing a Town Recommendation for the CUP for

tree removal until such time as Land Management had imposed sufficient penalties on the landowner. However, 240-86 of the code states that if a structure or premise is used to establish a use, which according to the zoning code, requires issuance of a conditional use permit, without a conditional use first being obtained, the responsible party may attempt to correct the violation by applying for a conditional use permit for the unauthorized use. The procedure is that upon notification of the violation, the responsible party may apply for a CUP. Upon submittal of the complete application, the application shall be processed as provided in 240-76. So, basically that is where we are, we have the unauthorized removal of trees from the bluffline setback. This is what I had informed the town, that an application for a CUP in Pierce County is required to include a completed Town Recommendation Form, this form is to be used by the town in which the proposed conditional use is to occur to inform the Land Management Committee of any recommended conditions or concerns that the town may have. This mechanism also allows the town to cite relevant guidance from their comprehensive plan. Pichotta stated that he had suggested that the most appropriate way for the Town of Clifton and its planning commission to convey their concerns and present their preferred remedies and/or penalties regarding activities that have taken place on Lot 24 is to participate in the process outlined above. Pichotta noted that he did not believe we can tie these two CUP's together. Some zoning codes have provisions that state if you've got a violation that is open, that you can't issue permits until it is addressed. Our code does not have that provision. He thinks we are forced to do these as two separate things. As you also are aware, there have been some changes as to how CUP's are dealt with in WI in the last few years and so those things need to be taken into consideration also. What we have asked the town of Clifton to do is basically tell us how they would like to see this buttoned up and if they think that some sort of penalties ought to be imposed, to tell us what they think that ought to be and we will dutifully put them in a staff report, discuss the issue with legal counsel and figure out what we have the ability to do and don't have the ability to do and that we would deal with that in this way. These are two very separate things, they are on the same lot, but we have to deal with them separately according to our code. As far as getting the Town Recommendation from Clifton, that's what we have to do. That is the process our code calls for. He understands that the town of Clifton doesn't like after the fact CUP's, but that is what our code says we need to do. Sanden also asked about the last response from Joe Rohl that suggested sending official communication to Clifton's Town Board if Pierce County is awaiting on our guidance regarding enforcement. Further states they are unaware of this need with past violations, but the Clifton Town Board can provide whatever support is needed. Pichotta stated he believed that there is an additional email from Mr. Rohl following that one and in that one, he acknowledges that he had, up until recently, not read the email he sent him and the Town on August 9, 2022. He was not aware that we needed a Town Recommendation to move forward and that they should include those concerns in that recommendation if they see fit. Sanden stated so for the next stage we will get a recommendation from the town of Clifton with some suggestions as far as remedies and so on. Pichotta stated that is how he would anticipate and hope it moves forward. He can't guarantee they will do that but he is hoping they will. Chairperson Fetzer asked Mr. Wegge about the blue hashed area and if there was any clearing of that? Mr. Wegge indicated that there was no tree clearing there. Chairperson Fetzer asked if it was opened field there? Mr. Wegge stated that it was alfalfa. Gulbranson asked so don't we really want to get this erosion control done as soon as we can? Pichotta stated yes, we would want this done as soon as possible to ensure it is buttoned up before winter. Gulbranson asked when would you guess the other issue would come. Pichotta stated he would hope it would come in the next month or two. He noted that we were out on the site with folks from Land Conservation, they have implemented a plan to keep things in place, so there is not a pressing need to do something immediately. We are ok being in a holding pattern for the time being. Mr. Wegge wanted to state he cut down some trees without understanding he needed a permit to do so. He has a long-term plan in place with Prairie Restorations to convert the forest into a native land. Majority of the trees removed were buckthorn, box elder, etc. He left a lot of oak. On the west side of the property there was a clear cut done, that is the sensitive part. All slopes have been stabilized with erosion logs, fence, a cover crop, as well as natives have been planted. Alfalfa strip remains along the perimeter of the wood line and right now he has footings in the ground, piles of dirt and rock, mainly rock, with erosion logs around it per the recommendations in here. So, the forested hillside area is on hold. There is no more cutting done. There is no more mowing of buckthorn, most of it is complete, and he is looking to get back in when the ground freezes. Pichotta stated that the site is for the most part stable at this point. So, what we need to do now is figure out what, if any remediation, is necessary; get a CUP that identifies that, and then also the CUP if he wants to get in there in December to cut some additional trees, that activity would need to be authorized by the CUP. So the

CUP will have a couple components in it; addressing some things that happened in the past and how things will be done moving forward and penalties will also be considered. Pichotta stated hopefully we will get a thoughtful recommendation and he assumes we will from the Town of Clifton. He would hope they don't just recommend denial because that is not helpful, we need to know what conditions they think would be necessary to move forward with this. Chairperson Fetzer asked about the Kinni bluffland if each township has their own rules on this or does that go right with the river. Pichotta stated it goes right with the river, this particular bluffland overlay only exists in the Town of Clifton. Chairperson Fetzer asked if its mainly their rules. Pichotta stated these are our rules, and are in the zoning code, this was adopted a couple years before he got here, but he understands that it was largely generated by folks along the river who were concerned about maintaining what they had. Gulbranson stated he is going to just speak for himself but he thinks that when somebody is cooperating and working with the town and the county and our agents and steps have been taken to really control it, He thinks that means a lot, He's not saying that is going to reflect on what happened on the first issue, but for this moving forward, he thinks that means a lot. Mr. Wegge stated he appreciates that comment and that the first person he called when he got off the phone with Brad Roy was Terry McCade, his realtor. He thinks that the point has driven home, that whoever buys future lots that fall within the bluffland setback or within the bluffland zone. So, education would be critical going forward, He did what he did for a reason because he wanted a view. He left a lot of trees, but clearly there is some sensitivity to it.

No further discussion from committee.

Gulbranson moved to approve the conditional use permit for Filling and Grading, finding that the proposed use at the proposed location would not be contrary to the public interest nor would it be detrimental or injurious to public health, public safety, or the character of the surrounding area, with the two conditions/Aubart seconded. All in favor. Passed.

Discuss take action on Travel/Training Requests. Pichotta stated he has one travel/training request for Kevin Etherton to attend a GIS/LIS consortium in Bemidji, MN on October 12-14, 2022. It's 260 miles away and anything over 200 miles requires Finance and Personal Committee approval. **Gulbranson moved to approve the travel/training request for Kevin Etherton/Aubart seconded. All in favor. Passed.**

Future agenda items: Pichotta stated that we have one agenda item for the next meeting. A Public Hearing to discuss and take action on a request for a map amendment to rezone from Primary Agriculture to General Rural for Dale and Sheila Olson on 20 acres in Section 6 in the town of Martell.

Motion to adjourn at 7:01pm by Puhmann/Sanden seconded. Motion passed.

Respectfully submitted by A. Anderson