

To: Ag. Tourism Task Force, Eureka Town Board

From: Cory Behrendt, Fritz Frana

RE: Response to Ag Tourism Task Force Draft 5/29/14 (Minority Report)

In completion of the current draft of the "Ag Tourism" ordinance, there are several areas in the 5/29/14 draft that we have significant concerns with. During the working process there has been opportunity to continue to discuss and work with these concerns, but in its current form, the draft carries difference of opinion and deficiencies that we feel have not been sufficiently addressed.

- Definition:
 - The definition of agritourism continues to be broad and does not fully describe a clear primary to secondary relationship. The effective definition calls only for "related to agriculture and accessory to the agricultural use". While there is some connection from the accessory use definition, it is not clear in the actual definition. Accessory use is also applicable at the uses inception and may not apply in perpetuity. As a permitted use and no impending IUP process, it would be a significant challenge to the Township to resolve a legitimate violation of that relationship or resolve significant commercial impacts to surrounding properties.
 - As presented in the draft, there is still significant grey area on how non-agriculture related activities and/or events are handled. The even broader issue lies in a lack of clear definition on what determines if an activity is connected to the agriculture use or a "value-add" activity to the agriculture use. The value-add activities are often the type of activity which will become the most objectionable and difficult to identify under the broadly written agritourism definition and lack of clearly defined non-agriculture activities or events.
 - While direct-marketing is more specific and identifies a clear connection to products produced from the agriculture use on the property, the addition of "manufacturing" and "value-add" opportunities significantly broaden the definition. Again, as a permitted use and no impending IUP process, it would be a significant challenge to the Township to resolve a legitimate violation of that relationship or resolve significant commercial impacts to other properties.
- Use Issues:
 - Because of the broad definitions, it is not possible to account for the types or variations of use that could arise from agritourism. The draft ordinance relies on an assumption that the agritourism use is compatible with surrounding uses and Township infrastructure. The draft ordinance does not provide a means to resolve issues that are created if the uses are not compatible.
 - These commercial type uses that are open to the public create concerns such as traffic volume, traffic type, dust, road maintenance, exposure of private property, road safety, commercial buildings, signage and property values; among others.
- Zoning Issues:
 - When considering the agritourism/direct-marketing uses as proposed, there are some major flaws in the zoning implementation. The Township has one zoning district which is "Agriculture District". When considering the commercial nature (general public invited) of the agritourism uses, it is not consistent with the other permitted uses in the agriculture district. However, there are uses that

allow for the public and commercial impacts, but are all implemented using either a CUP or IUP; so that the existing approved uses in the district are not compromised from the new use. The intention is that they are creating a non-consistent use in the district and allows the Township to apply appropriate conditions to be consistent with performance standards of the zone and be consistent with the comprehensive plan. Therefore, the current agritourism draft, effectively allows a commercial use (zoning) within an agriculture district (zone), without accounting for compatibility issues between the zones.

- The intent of the agriculture district is as follow: The Agriculture District is established for the purpose of protecting viable agricultural lands from non-farm influence; retaining valuable areas for conservation purposes; preventing scattered non-farm growth; and securing economy in governmental expenditures for public services, roads, utilities and schools.
- Regardless of the administrative procedures used, it is important to remember that the Township may not impose additional conditions on a permitted use that fits the standards of the ordinance. Such actions are likely to be seen as arbitrary or denying the property owner equal protection and due process. Generally, a property owner is entitled to engage in the permitted use provided they have met all applicable requirements. This means that the Townships attempts to apply the IUP process after the fact would be a significant challenge unless the property owner willfully agreed to IUP regulation. This would likely not be the case and would require the Township to litigate in an attempt to mitigate the commercial impacts in the Township based on the proposed “threshold” model.
- In addition; if the use is permitted (as with the draft ordinance), and is effectively a different zone/district by nature. Property owners meeting the performance standards are effectively rezoning their property, resulting in self implemented spot zoning or islands of commercial use in the Township. There is concern that if this is the effective result of the draft ordinance; that it can be done as rezoning requires Township approval. It is important to note that spot zoning which results in a total destruction or substantial diminution of value of property may be considered a form of regulatory taking of private property without compensation.
- An IUP process would allow the Township to deal with issues on a case by case basis without creating a zoning issue created by the agritourism use. Without creating zoning districts that separate uses or a use permit process, the Township is unable to assure that adequate space is provided for each use and that a transition area or buffer exists between distinct and incompatible uses. Adequate separation of uses prevents congestion, minimizes fire and other health and safety hazards, and mitigates potential nuisances in the agriculture (residential) district.
- Enforcement Issues:
 - As stated earlier, the draft ordinance allows for: any property owner to start an agritourism business that they feel meets the definition and standards without any allowable recourse for the Township. The property owner is then free to self-regulate as to whether they need an IUP to operate outside the established standards regardless of impact on other property owners.
 - The Township (other property owners), based on complaint; may then attempt to resolve issues with the property owner, but would require litigation should a property owner disagree with the Township as its only allowable recourse.