

Minutes:
Watersmeet Township Planning Commission
Meeting of September 11th, 2013

Meeting called to order by Chairman Dennis Snyder at 8:25 PM.

Members Present: Members Present: Chairman- Dennis Snyder, Vice Chairman-Roy D' Antonio, John Neumann, Township Board Liaison-Rich Henriksen, Jeff Wasson, Larry Potter, Jeff Zelinski, and Pete Peterson, were in attendance. Fred Reimer was excused. A quorum being present, business could be officially conducted.

The Pledge of Allegiance was given.

Members of the community present: Several members of the community were present including Mike Rogers-Township Supervisor, Dave Neumann-Township Zoning Administrator, Craig and Lisa Hesse, Kathy Pirk, Julie Mathiesen, John Cutts, Jack and Jean Erhart, Karen and Phil Lenhart and about thirty other folks.

Public Hearing items:

1. Spencer Ward's request for Michigan Medical Marijuana (MMM) facilities at 4602 Third Street: Jeff Zelinski asked to table to give time for additional investigation. Request denied by Chairman Snyder. The Chairman stated that the Planning Commission has "worked diligently on this request for three and one half weeks". Being new to the P-C, John Neumann asked that he be allowed to see any paper work from this investigation. The chairman stated that there are no compiled written results to share. Pete Peterson questioned the oversight for the distribution of Medical Marijuana. Who monitors the amount of "medicine" delivered? Is it strictly honor system? Mr. Henriksen asked who on the Planning Commission was actually involved in the study of this issue. Chairman Snyder said that the P-C members involved was himself and Vice-Chairman D'Antonio. Chairman Snyder summarized his findings this way: The members of the community have expressed their considerable skepticism and the lack of oversight is a problem. Michigan's Drug-Free Zone act extends 1,000 feet from a school, park or recreation area. The proposed location is 1,182 feet from the school and no problem. Since it also includes public parks and recreation areas, and there is only 867 feet from the proposed location to the park, this requirement is not fully met. The "clubhouse" is actually being proposed for use as a walk-up dispensary which is in the courts and currently not legal. In addition, some patients live on tribal land. Federal law prohibits these "patients" from carrying their "medicine" back on to tribal land. On the basis of these facts, as presented by Chairman Snyder, he entertained a motion to deny the request. Pete Peterson made the motion to deny the "Use by Special Approval" request. Jeff Wasson offered support. A roll-call vote followed. All members present voted to deny the request, with the exception of John Neumann who abstained.
2. Dan Wait's request to rent the property at 19385 Clearwater Lake Road: Roy D'Antonio stated that the previous owner, Don Harter, rented the same property (illegally) for three years prior to Dan Wait's recent purchase of the property. Roy stated that no one objected during that interval. Roy continued with advocating for the applicant by stating that he was present at the property auction. He vouched for the honesty and character of the applicant. He reiterated that no one objected to

the short-term rental (illegal) of the previous owner. Chairman Snyder agreed that rental of the guest-house on the property would be illegal under the current terms and conditions of the Zoning Ordinance if it was rented independently of the main house. Roy D'Antonio explained that there was an original cabin and the new log home was built as an addition to it, with a breeze-way connection. Mr. Henriksen reminded the P-C that the court ruled that to be illegal when a similar concept was pursued by former Supervisor Kathy Stupak-Thrall. Also, the Public Hearing brought repeated questions about the efficacy of the septic system to withstand the rigors of commercial use by 14 to 18 people. The zoning ordinance and the special use request form contain language that the water and sewer are suitable, but no guidance as to the actual requirements or who certifies compliance. Mr. Henriksen stated that it would be prudent to require State inspection when a request for change of use; residential to commercial in this case, is anticipated. This enhanced language should be incorporated into the process. Roy D'Antonio explained his understanding of septic system rules and Pete Peterson offered enhancements to that discussion. The Chairman then read a letter from Arnie Domanus asking to reject this request for the short-term rental of this property based on the fact that this home was purchased by investors with the intent to use it as a rental. The Chairman stated that he doesn't see any significant difference to the permit issued on the same lake to Jason Elders. Because of that precedent, and that we have the new owner's word that he will protect the lake and the neighbors, he believes it should be approved. Jeff Zelinski observed that the principal use of this property by the new owner is the commercial rental of the dwelling(s) and is therefore a commercial use of a residential property. Roy D'Antonio disagreed stating that he is aware of case law exempting owner rentals from commercial use labeling. Mr. Henriksen pointed out that long-term rental is protected by state law and the P-C doesn't get involved. Short-term rental, however, is akin to a resort operation and therefore subject to P-C involvement and is a commercial operation. The Chairman disagreed. Jeff Wasson stated that this is "the land of the free" and people should be allowed to do whatever they want with their property. Mr. Henriksen then argued that using the logic expressed here, he should be allowed to build a McDonalds on a portion of his residential lot, and his neighbors should have nothing to say about it. Mr. Henriksen reminded the P-C that some Clearwater Lake residents were opposed to the Jason Elder short-term rental operation, and were ignored. Now they seem poised to be ignored again. He asked a rhetorical question: Why do we go through the expense of notification and solicitation of neighbor's comments if it is a meaningless gesture? Mr. Henriksen asked how we were going to treat the rental of the guest house. No comment. Jeff Zelinski asked if the tax base changed on this property. Chairman Snyder said it probably would, but that area is in Supervisor Rogers' neighborhood. Roy D'Antonio made a motion to approve this special approval request contingent upon the Western Upper Peninsula Health Department approving the septic installation for the anticipated number of people in residence which the system can support. The findings will determine the maximum number of occupants. Chairman Snyder directed comments to Dan Wait, the applicant, as he dismissed the negatives expressed by the neighboring residents. He chastised the public for being silent during the illegal rental operation run by Don Harter, the previous owner. Jeff Wasson supported. A roll-call vote followed. Dennis Snyder-yea, John Neumann-abstain, Pete Peterson-yea, Jeff Wasson-yea, Larry Potter-yea, Roy D'Antonio-yea, Rich Henriksen-nay, and Jeff Zelinski-nay. Total 5 yea, 2 nay, 1 abstention. Motion carried.

3. Tom Lavellee's guest-house/yoga studio at E24103 Misery Bay Road: Dan Wait represented the owner at this hearing. Pete Peterson made a motion to approve, with support from Roy D'Antonio. A roll call vote followed with no discussion. Dennis Snyder-yea, John Neumann-yea, Pete Peterson-yea, Jeff Wasson-yea, Larry Potter-yea, Roy D'Antonio-yea, Jeff Zelinski-yea, Rich Henriksen-yea. Total 8 yea, 0 nay.

August Regular meeting Minutes: The minutes of the August regular meeting were approved contingent upon correcting the language stating that the “grandkids could be ticketed for wading” to: “Grandpa (the “fee-simple owner”) could be cited for allowing the grandkids to go wading”. A motion was made by Larry Potter with support from Pete Peterson. Voice vote: All in favor.

Zoning Administrator’s Report: David Neumann reported having received requests for permits which were granted for one dwelling, and ten garages. Mr. Neumann stated he had additional comments that he would make later in the meeting.

Zoning Board of Appeals (ZBA): No Report

Chairman’s Report: Chairman Snyder reported on the serious health concerns of member Fred Reimer. With the resignation of Greg Garlock as P-C secretary, last month, Chairman Snyder welcomed new member John Neumann and implored him to assume the duties of secretary. John eventually accepted the position and will become the P-C secretary for the future beginning with the October meeting(s).

Agenda Changes: Chairman Snyder asked to change the order of discussion under old business to discuss changes to the key-hole language first and guest house language second.

Old Business:

Proposed Language for Key-holing/Funneling/Pyramiding

Chairman Snyder distributed the latest copies of the proposed language to revise section 5.03 of the Zoning Ordinance which regulates Key-holing/Funneling/Pyramiding. A letter from Township attorney Michael Pope was distributed which attests to his involvement in the drafting of and approval of the following language:

Section 5.03 Key-holing/Funneling/Pyramiding

The following restrictions are intended to limit the number of users of Lake Frontage in order to preserve the quality of the waters, to promote safety, and to preserve the quality of recreational use of all lakes within the Township. It is intended that keyhole development or funnel development or pyramid development not be a permitted use on privately owned lands abutting all lakes.

The effect of Key-holing/Funneling/Pyramiding is to funnel back lot development from off shore lots or residences via a parcel of Riparian Land to provide access to the water. Said practice in any form, directly or indirectly, is prohibited. Developing back lot contiguous properties that run from lake lots to back lots for access to the lake or lake lot is prohibited.

Note: Contiguous properties that run from lake to back lots, such as L-1 and L-2 properties joining Recreational and Forest (R&F) properties must also abide by Section 6.01B of this ordinance (Buffer Zone).

Roy D’Antonio commented that it would appear that attorney Pope wrote the current language (above). Chairman Snyder affirmed that he and Mr. Pope wrote the previous iteration jointly and this version is the result of changes added by Mr. Pope.

Proposed Language for Caretaker or Guest House Rental:

As above, Chairman Snyder distributed copies of the latest proposed language to allow caretaker and guest house rentals, as authored by attorney Pope. The latest language follows:

5.01E Short-term rental of caretaker or guest house

This section shall constitute an exception to the rental prohibition contained in sections 5.01C and 5.02B(7). Upon special approval per Section 7.09, short-term rental of a caretaker or guest house is permitted, provided all of the following are met:

- 1. The caretaker or guest house has existed for at least 10 years.*
- 2. Property owner must reside in the principal dwelling residence where the caretaker or guest house is located during the period of caretaker or guest house short- term rental.*
- 3. All federal, state and local requirements are met for occupancy.*

Roy D’Antonio commented that since attorney Pope has written and approved these changes we should accept them as written. Mr. Henriksen commented that with this exemption to the single dwelling rule stated in 5.02A and 7.02B, we are allowing the commercialization of a portion of a single lot. This is, in effect, an *ad-hoc* land division creating a blatant violation of the Key-holing ordinance, even as amended. Mr. Henriksen reminded the P-C that the prohibition against the short or long term rentals of guest houses and caretaker houses has stood for nearly 45 years, and predates the anti-Key-holing language in any form. All existing caretaker and guest houses were constructed as an exception to 5.02A and 7.02B with the express understanding that these structures could never be subsequently rented or leased as independent dwellings. Chairman Snyder disagreed and stated that a few people, wishing to remain anonymous, have requested these changes through his office and the P-C was obligated to provide them with relief. Mr. Henriksen stated that as we trash the ordinance, we are creating conflicts throughout the ordinance. Pete Peterson stated agreement that the ordinance should not be allowed to get out of synch. No answer as to how to accomplish this. Roy D’Antonio opined that he believes that Michael Pope is a “very good attorney” and we “should rely on the attorney’s opinion” to re-write and change the P-C’s Zoning Ordinance. Chairman Snyder agreed that we should allow the Township attorney to author changes to the ordinance. Jeff Wasson also stated that we should go with the attorney’s opinion. The chairman asked Jeff Wasson if he was making a motion but Jeff declined. Pete Peterson made a motion that these changes be brought to a public hearing in October. This was supported by Jeff Zelinski. A voice-vote followed with all in favor except Mr. Henriksen who was opposed.

New Business: Pete Peterson asked if the P-C could get some advance copies of the material that is being routinely passed out at the meeting immediately before requesting a decision. E-mail was mentioned as a solution but quickly abandoned by the chair in favor of “mail-folders” at the Township offices.

Public Comments: Chairman Snyder asked for public comments. William Charaf asked why Jeff Wasson would value freedom for one person to get his way “in the land of the free” while ignoring public protest from multiple neighbors. He asked if it is the P-C’s desire to manage chaos over fair play and order. Pete defended his comment that if a lake is infested with invasive species, and the DNR’s public boat launch is allowed to remain open, there is no basis to disallow a house rental based on EWM findings. Much discussion ensued regarding boat landings. Roy D’Antonio continued to advocate for rentals by stating that in his experience, 99.9% of renters are “fantastic people”. Dave Sherrill commented that a statement was made that there is a lack of rental property available in the Township. He stated that the legitimate resort

operators disagree as they battle for customers. Lisa and Craig Hesse of Vacationland Resort argued with Roy D'Antonio's perception that there are insufficient rentals available. Dave Neumann, the zoning administrator, complained that he was not asked for his opinion, as required, on the Clearwater Lake rental. Chairman Snyder apologized and then reiterated that there was no objection to the prior rental practices of Mr. Harter. Mr. Neumann stated that in his capacity as Zoning Administrator, he did object to the short-term rental of that property, and shut it down. Mr. Harter could continue to rent the property for 28 days as a long term rental which is protected by State law. Chairman Snyder then admitted that viewed in that light Mr. Harter "beat the system". Roy D'Antonio told Mr. Henriksen he should "try to sell his house right now and find out what it's worth". Mr. Henriksen replied that he knows he could not replace his house for what the entire property is worth". Mr. Henriksen asked Mr. D'Antonio how he "could turn his property into a cash cow to pay his exorbitant taxes". Mr. D'Antonio said it couldn't be done. Mr. Henriksen replied sure he could. "Just build a guesthouse, and I'll take the 10 year thing to court because the number is capricious". Roy D'Antonio said "the people need to find a happy medium and the community is too polarized". Dale Sharpee agreed that Dave Neumann, the Zoning Administrator was bypassed as his opinions were not solicited. Dale asked how the 10 year pre-existence qualification to rentable guest houses was arrived at. The Chairman stated that was to prevent the rush to build guest houses for immediate rental. Mr. Henriksen stated that the 10 year number is capricious and could be challenged in court. Dale asked that we get an accounting of how many guest houses exist. Julie Mathiesen said that; regarding invasives, there is language being considered in Lansing that would grant Townships the right to close lakes with invasive species infestations. Also, the Townships may be allowed to collect launch fees provided the proceeds are used to combat invasive species infestations. Ms. Mathiesen is compiling a list of lake rentals currently being advertised. The Jason Elder property on Clearwater Lake is currently being advertized as sleeping 20 persons. It was noted that in the application process, Mr. Elder stated a capacity of 10 to 15. Inflation? Dave Sherrill noticed that the public is being quoted as wanting all of these zoning changes as expressed to the chairman. When the public appears at a public hearing expressing a different opinion, they are routinely ignored. He then asked about the progress of updating the Township Master Plan. Nothing has been done. The Chairman stated that there is insufficient time left to discuss the Master Plan; with all the public hearings to rent lake houses and to drive changes to the L-1 ordinance. Former secretary Greg Garlock stated that when he was on the planning commission he brought up the Master Plan update requirement in January, then again in February. Zoning Administrator Dave Neumann commented that when a few people come privately to the chairman or vice chairman requesting revisions to the zoning ordinance it gets the full attention of the Planning Commission but when many residents come to a public hearing their opposition is ignored. Mr. Henriksen stated that it appears that when a few people get the chairman's ear privately, requesting changes to the L-1 and L-2 portions of the zoning ordinance, the chairman adds it to the agenda and passionately fights for them. Craig Hesse asked if all of the legitimate resort owners appeared at a public hearing in opposition to these short-term rentals of lake homes, guest houses and caretaker houses, would they be heard and would their opinions be considered. Chairman Snyder said "he didn't know". Mr. Henriksen responded to Chairman Snyder's and Roy D'Antonio's repeated assertions that when a property has been previously rented (even illegally) the P-C should approve the rental by special approval since no one seems to have objected in the past. Mr. Henriksen stated that he personally wrote the letters to neighbors and addressed the envelopes wherein the Planning Commission specifically asked the opinions of these neighbors. When given, it seems insulting to reject those requested opinions because they weren't offered during the illegal operation by contacting the Zoning Administrator or P-C Chairman privately, way back when. Julie Mathiesen asked if we have a file of special approvals to cross check against the advertized rentals. (Don't know). Pete Peterson asked how the P-C monitors compliance in this situation. Pete Peterson opined that the problem in Watersmeet has always been enforcement and/or lack thereof.

Motion to adjourn at 10:15 PM by Rich Henriksen and supported by Jeff Zelinski. Voice vote: All in favor.
Respectfully submitted by,

Richard T. Henriksen – Planning Commission Secretary - pro tem Approved: 10/09/2013