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September 17, 2014

Mr. Mike Rogers
Supervisor
Watersmeet Township Office
P.O. Box 306
Watersmeet, MI 49969

VIA EMAIL and MAIL

Re: Conflict of Interest
(Planning Commission)
Our File No. WAT 230

Dear Mike:

This letter follows up on our recent conversation concerning allegations of conflict of interest involving certain Planning Commission members for their vote in favor of a zoning amendment. I reiterate the opinions expressed in my 9/25/13 letter. Under Michigan law, a conflict of interest exists when there is an existing contractual arrangement that provides financial benefit. Motivation should not be confused with a conflict of interest.

The legality of the Planning Commission's acts cannot be tested by analyzing the motives of the individual members. *Pythagorean, Inc. v Grand Rapids Township*, 253 Mich App 525 (2002). Keep in mind, the Planning Commission only conducts zoning amendment hearings for the purpose of a recommendation to the Township Board and the Township Board has the ultimate final decision. Planning Commission members are selected based upon their personal backgrounds and qualifications. That selection criteria should not be used to claim a conflict of interest. Again, the motivation of individual Planning Commission members, who approve or reject a zoning proposal, is irrelevant to a determination of the validity of those actions. *Pythagorean, supra*.

Based on the above and my 9/25/13 letter on conflict of interest, it is my opinion the following do not constitute a conflict of interest for a Planning Commission member. First, the ownership of land that may be affected by a zoning amendment. Example, supporting a reduced square footage provision allowing development of a 40 acre parcel with a smaller structure. Second, owning or operating a business that may get future work because a decision may lead to an increase need for that work. Example, a contractor favoring a reduced square footage provision for a dwelling.

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If you have any questions, please do not hesitate to contact me.

Very truly yours,

DEAN & POPE, P.C.

By:
MICHAEL K. POPE

MKP:jab

cc: Sandra Mansfield, Clerk

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October 6, 2014

Mr. Mike Rogers
Supervisor
Watersmeet Township Office
P.O. Box 306
Watersmeet, MI 49969

Re: Bed & Breakfast (Zoning)
Our File No. WAT 230

Dear Mike:

This letter follows up on our recent discussion concerning the bed & breakfast zoning issue. This confirms my opinion that same can be permitted as a special use in a Lake Area. Under section 5.02B(8), use by special approval includes short-term rental of a single family dwelling. A bed & breakfast is short-term rental of a home.

As you know, the MZEA requires specificity for special land uses. In *Whitman v Galien Township*, 288 Mich App 672 (2010), the Michigan court of appeals examined the MZEA's specificity requirement. Defendant township had a special use provision for its agricultural zoning district that read "establishments for the conducting of commercial or industrial activities". The court found that language overbroad because it made all actions or functions pertaining to commerce, business, trade, manufacturing, or industry eligible for special use status.

In my opinion, the *Whitman* analysis does not apply to the bed & breakfast issue. Sec. 5.02B(8) provides for the specific land use of short-term rental of a single family dwelling. It is not a general category. Rather, it specifically identifies what is eligible for approval. The use allowed is the short-term rental of a home, which includes a bed & breakfast. If you have any questions, please do not hesitate to contact me.

Very truly yours,

DEAN & POPE, P.C.

By: 

MICHAEL K. POPE

MKP:jab

cc: Sandra Mansfield, Clerk (via email only)