

CHEBOYGAN COUNTY PLANNING COMMISSION

870 SOUTH MAIN ST., ROOM 103 ▪ PO Box 70 ▪ CHEBOYGAN, MI 49721
PHONE: (231)627-8489 ▪ TDD: (800)649-3777

CHEBOYGAN COUNTY PLANNING COMMISSION MEETING & PUBLIC HEARING WEDNESDAY, APRIL 17, 2019 AT 7:00 P.M. ROOM 135 - COMMISSIONER'S ROOM - CHEBOYGAN COUNTY BUILDING

PRESENT: Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Johnson
ABSENT: Churchill
STAFF: Jen Merk, Jeff Lawson
GUESTS: Eric Boyd, Carl Muscott, Bob Lyon, Cal Gouine, Jack Tucker, John Moore, Amy Hall, C. Maziasz, Ed Delana, Deanna Prevo, Roy Prevo, Terri Tringali, Robert MacGregor, Rick Steiger, Jill Merchant, Marcia Rocheleau

The meeting was called to order by Chairperson Croft at 7:00pm.

PLEDGE OF ALLEGIANCE

Chairperson Croft led the Pledge of Allegiance.

APPROVAL OF AGENDA

The meeting agenda was presented. **Motion** by Mr. Kavanaugh, seconded by Mr. Bartlett, to approve the agenda as presented. Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Johnson), 0 Nays, 1 Absent (Churchill)

APPROVAL OF MINUTES

The April 3, 2019 Planning Commission minutes were presented. **Motion** by Mr. Borowicz, seconded by Mr. Kavanaugh, to approve the meeting minutes as presented. Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Johnson), 0 Nays, 1 Absent (Churchill)

PUBLIC HEARING AND ACTION ON REQUESTS

Brent Marlatt - Requests a rezoning from Agriculture and Forestry Management (M-AF) and Commercial Development (D-CM) to Commercial Development (D-CM). The subject property is located at 4599 Van Etten Court, Tuscarora Township, section 25, parcel #161-025-300-013-02 and is described as follows: *COM W 1/4 COR OF SEC 25, T35N, R3W, TH S 1D 45M 30S W 430.0FT ALG SEC LI; TH S 87D 49M 25S E 28.24FT TO C/L OF OLD 27; TH CONT S 87D 49M 25S E 370.0FT TO POB; TH CONT S 87D 49M 25S E 289.70FT; TH N 1D 45M 30S E 99.6FT; TH N 87D 53M 49S W 289.82FT; TH S 1D 41M 20S W 99.23FT TO POB. BEING PART OF NW 1/4 OF SW 1/4 OF SEC 25, T35N, R3W.*

Mr. Lawson reviewed the background information contained in the staff report.

Ms. Croft asked for public comments.

Mr. Prevo stated that he owns property at 4643 Van Etten Court and stated his concerns regarding the trees being removed from the property. Mr. Prevo stated that he has an affidavit from every resident on Van Etten Court that does not want this application to be approved. Mr. Prevo stated that there are residences with children on Van Etten Court and this is a private community. Mr. Prevo stated that Mr. Marlatt would like to construct a storage unit and he does not want a storage unit next to his bedroom as his property is adjacent to where Mr. Marlatt plans to build. Mr. Prevo explained that the buffer zone has been removed and he can now see the neighbor's house. Mr. Prevo stated that he has a small motor shop and repair facility on his property where he resides. Mr. Prevo stated he received zoning approval for his small motor shop and repair facility. Mr. Prevo stated he knows every customer that comes into his facility and they have to sign a work order with their name, address and phone number. Mr. Prevo explained that the storage units create a lot of illegal activity and there are 6 houses in this area. Mr. Prevo stated that his storage unit is fully fenced off and there is an access from Straits Highway. Mr. Prevo stated that this storage unit existed prior to him purchasing his property. Mr. Prevo stated his concerns about property values depreciating by trying to turn this into an industrial park. Mr. Prevo stated his concerns regarding a private road being used as a commercial access for the storage unit. Mr. Prevo stated that Mr. Marlatt did not ask any of the neighbors what they thought about the proposed project. Mr. Prevo stated his concerns about his family not being safe. Mr. Prevo stated his concerns regarding

people coming in all hours of the night. Ms. Croft explained that the Planning Commission is not discussing a proposed use for this parcel. Ms. Croft explained that the Planning Commission is reviewing a request for a rezoning. Mr. Prevo stated that everyone on Van Etten Court is against turning this into a commercial site.

Mr. Marlatt stated in May 2013 he bought a commercial lot in Tuscarora Township with the intent of developing it. Mr. Marlatt stated that when he bought the property there was a tiny cottage on the property that was close to being condemned. Mr. Marlatt stated that there were feral cats living in the shed and skunks under the foundation and mice inside the building. Mr. Marlatt stated that the previous Building Official, Al Hoard, walked the property and inspected the building and said that he thought it could be saved. Mr. Marlatt stated that he created a business called Antiques Roadhouse. Mr. Marlatt stated the commercial lot is 660ft. deep and in the Agriculture and Forestry Management you can salvage trees. Mr. Marlatt stated he will salvage the logs and take them to the mill and put that money back into the property. Mr. Marlatt stated that the neighbor to the east contacted him and asked about purchasing property from him. Mr. Marlatt stated he split the property and presented a proposal for the sale of the property to the neighbor. Discussion was held. Mr. Marlatt explained that the neighbor did not purchase the property. Mr. Marlatt explained that he looked into storage units and thought that it complimented the antique business. Mr. Marlatt stated that he has never seen any of the illegal activities transpiring in his research. Mr. Marlatt stated that he thought it would be a great way to utilize the lot. Mr. Marlatt stated that when he submitted his application to the Zoning Department he was informed that his property was zoned Commercial and Agriculture and Forestry Management. Mr. Marlatt stated that he was informed that he would have to submit a rezoning application for the Planning Commission to review.

Public comment closed.

Discussion was held regarding setbacks and useable area. Mr. Lawson noted that the area to be rezoned is slightly less than one acre. Mr. Freese asked how the boundary of the Commercial Zoning District was determined. Mr. Lawson stated that it is based on the zoning map. Ms. Croft stated that 660ft. on Straits Highway is zoned Commercial Development. Mr. Freese asked for the distance from the highway to end of the parcel. Mr. Marlatt stated 660ft. from South Straits Hwy. to the end of the parcel. Mr. Freese stated that the map is not correct. Mr. Borowicz stated that the first parcel is 369.89ft. and the second parcel is 289.82ft. Mr. Freese stated that he believes the rear property line is the east boundary of the Commercial Zoning District and that a rezoning is not necessary. Mr. Freese stated that the map is not correct. Discussion was held. Mr. Freese stated the Commercial Zoning District should be 660ft. on either side of the centerline, unless there is an exception by rezoning a parcel and having it extend beyond 660ft.

Motion by Mr. Borowicz, seconded by Mr. Kavanaugh, to clarify that the GIS map is incorrect and that this parcel lies within the 660ft. Commercial Development Zoning District boundary from the centerline of Straits Highway. Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Johnson), 0 Nays, 1 Absent (Churchill)

Dana Nutt - Requests a special use permit for an addition to a campground on an existing lawful nonconforming lot of record (Section 10.3.2). The property is located at 9994 M-68/33 Hwy. and 9940 Peninsular Dr., Forest Township, section 3, parcel #s 231-T03-004-001-00 and 231-T03-004-004-00 and is zoned Lake and Stream Protection (P-LS).

Mr. Lawson stated that legal counsel has provided a background for this parcel and the Planning Commission can make a decision on whether or not there is enough evidence to show the parcel was used for camping prior to 1983 then the review of the special use permit can proceed.

Mr. Lawson reviewed the background information contained in the staff report.

Ms. Croft asked if the Planning Commission has any questions. Ms. Johnson asked why 1983 is being used as the date for the adoption of the Zoning Ordinance as there was a Zoning Ordinance #100 which was adopted on December 1, 1969. Mr. Lawson stated that it is explained in Zoning Ordinance #200. Ms. Johnson stated that the 1983 Zoning Ordinance replaces the previous Zoning Ordinance, which replaced a previous Zoning Ordinance. Ms. Johnson asked if this would be the date to consider for the operation of this facility. Mr. Lawson explained that Zoning Ordinance #200 is the current ordinance. Ms. Johnson stated that the 10 acre requirement was in the previous ordinance also. Ms. Johnson stated that if we are looking at this as a lot of record prior to an ordinance being in place in Cheboygan County, wouldn't we go back to the original ordinance date. Mr. Freese stated that you have to determine when the parcel became a legal non-conforming parcel. Ms. Johnson stated that if this use was not in use until 1970 and there was a Zoning Ordinance in place in 1969 this is not a non-conforming use. Ms. Johnson stated that the Zoning Ordinance that she has from September 1982 does have a 10 acre requirement. Mr. Freese stated that the Planning Commission will have to determine whether or not this was a campground prior to the adoption of the Zoning Ordinance. Ms. Johnson stated that the burden of proof falls upon the applicant to prove that the campground existed

prior to the adoption of the Zoning Ordinance. Mr. Kavanaugh stated that the Planning Commission can also request more information be provided. Discussion was held.

Ms. Croft asked for public comments.

Mr. Steiger stated that he is serving as legal counsel for Ms. Tringali and Mr. MacGregor, who are neighbors that are adjacent to the Tower Motel. Mr. Steiger stated that Ms. Tringali has lived there since 2004 and Mr. MacGregor is a lifelong resident of this area. Mr. Steiger stated that he has lived in Northern Michigan for eighteen years and has passed the Tower Motel many times and visits his friend Ms. Tringali over the years and has never seen advertising for camping or a tent. Mr. Steiger stated that he has seen a recreational vehicle. Mr. Steiger stated that Mr. MacGregor has lived in the area 64 years and he has passed the motel more than 1000 times and has not seen a campground even once. Mr. Steiger stated that the applicant claims he has taken out only dead trees, but that is not true. Mr. Steiger stated that he believes that the Planning Commission has already made up their minds as the notice states "Dana Nutt - Requests a special use permit for an addition to a campground on an existing lawful nonconforming lot of record." Mr. Steiger stated that this has not been established by the applicant. Mr. Steiger stated that it does establish a campground because someone camped back in the 1950's - 1960's. Mr. Steiger does not believe this is a lawful use. Mr. Steiger stated that his clients are aggrieved parties, if the Planning Commission decides to allow the extension of a campground that never existed. Mr. Steiger stated his concerns regarding the property values declining and they will have a difficult time selling the property. Mr. Steiger believes that the applicant should apply for a variance for the campground use as it is a new use. Mr. Steiger stated that there was once a little motel and now there are signs for camping, snowmobile rental and kayak rental. Mr. Steiger asked if the proper procedures have been followed for these uses. Mr. Steiger stated that the applicant should apply for a variance. Mr. Steiger stated that the Planning Commission should deny the request before them tonight. Mr. Steiger noted that the definition of abandonment in Zoning Ordinance #200 states that it occurs after 6 months. Mr. Steiger stated that there hasn't been camping on this site since he and Ms. Tringali lived in this area. Mr. Steiger asked that the agenda be changed to reflect that this is not an existing non-conforming use and to deny the application.

Ms. Tringali stated that she is an attorney and that she and Mr. Steiger have researched this matter. Ms. Tringali stated that when Mr. Nutt purchased the property a year ago, he started demolishing the trees. Ms. Tringali stated that Mr. Nutt is proposing 16 campsites, 1 existing cabin, 2 additional cabins and 7 RV sites. Ms. Tringali stated that there is no place for parking. Ms. Tringali stated her concerns regarding noise, drugs and sanitation. Ms. Tringali stated that Mr. Nutt bought parcel 1 and parcel 2 and she bought half of parcel 2. Ms. Tringali stated that she had the first option to buy the cabin. Ms. Tringali stated that there is a letter from legal counsel in the packet dated 04/15/19 stating that this could be factually argued that the lawful non-conforming use existed only on the motel parcel. Ms. Tringali stated that there were never campsites as it is a wooded parcel. Ms. Tringali stated that the applicant demolished the woods to create the campsites. Ms. Tringali referred to the 1981 aerial photo and stated that there are no RV's and campsites. Ms. Tringali stated that if the Planning Commission reviews a current aerial photo, it is totally different from the aerial photos in the packet. Ms. Tringali stated that she does not believe that Mr. Nutt has the authority to make these changes without approval from the Planning Commission. Ms. Tringali stated that she asked for the meeting to be adjourned. Ms. Tringali asked that the Planning Commission do the legally right thing. Ms. Tringali stated that Mr. Nutt has 3 RVs on the land and there is no special use permit. Ms. Tringali stated that she wants the RV's removed. Ms. Tringali questioned how Mr. Nutt will ever receive approval from the State of Michigan. Ms. Tringali stated that the reason that 10 acres is required for a campground is due to sanitation, sewage and parking. Ms. Tringali asked that the Planning Commission deny the special use permit application and have Mr. Nutt remove the RVs.

Mr. MacGregor stated he lives on the north side of the Tower Motel and he has lived here all of his life and has not seen any camping on the subject parcel. Mr. MacGregor stated that he looked at pictures on the campground's website and questioned if this will or will not be a family oriented business.

Mr. Tucker stated that he is third generation and he owns property across the road from the motel. Mr. Tucker stated that there have been campsites (tents, not campers) along the river. Mr. Tucker stated that they may be rough campsites, but they have been there. Mr. Tucker stated that they received permission in 2006 to put the 3 to 4 out by the road.

Public comment closed.

Mr. Nutt stated that he is an outdoors man and he grew up in the timber business and construction business. Mr. Nutt stated that he has not taken out one live red pine or one live white pine. Mr. Nutt stated that he has only taken out trees that are spruce and balsam. Mr. Nutt stated that poplar trees are at the mature age and are danger trees. Mr. Nutt stated that one just fell down. Mr. Nutt stated he is trying to make the property look better. Mr. Nutt stated that he has fed the wildlife all winter

long. Mr. Nutt stated he is trying to make this a nice property and has received good comments. Mr. Nutt stated that he caters to the families and has donated rooms to the community. Mr. Nutt stated that he understands he has to apply to the State of Michigan for licensing and the Health Department for sanitation. Mr. Nutt stated that he plans to put in 3 bath houses. Mr. Nutt stated that he grew up in Afton and he knows a man who camped in a pop-up camper at this campground when M-68 was rebuilt. Mr. Nutt stated that he plans on abiding by all the laws and rules.

Mr. Steiger stated that if the Planning Commission finds this to be a conforming use it cannot be extended.

Charlotte Maynard stated that she is the manager of the Tower Shore Motel and it states RV camping on the building. Ms. Maynard stated that she has lived here for 18 years and there were campers on the site when she moved here.

Public comment closed.

Board held discussion. Mr. Kavanaugh stated that more information is needed. Mr. Kavanaugh stated that people have stated that there was camping and other people have stated that there wasn't camping. Mr. Kavanaugh stated that the Planning Commission has a responsibility to find out if there was camping. Mr. Kavanaugh referred to Ms. Johnson's comments and questioned if there is any impact from previous ordinances. Mr. Kavanaugh stated that there is more work to be done before the Planning Commission is able to make a decision. Mr. Kavanaugh stated that he has personally known that there was camping at the motel unit for some years in the past. Ms. Croft stated that she has seen it too. Mr. Freese stated that he has also seen the camping along the motel property. Mr. Freese stated he had a question if there was camping on the second parcel which is to the north. Mr. Freese stated that there was testimony that there was camping on the second parcel and there was testimony that there wasn't camping on the second parcel and the Planning Commission will have to evaluate these statements and make a decision. Mr. Freese stated that there was camping on the motel property and believes it is a legal non-conforming use and can be expanded anywhere on that parcel. Mr. Freese stated that the trees that he saw that were cut down were poplar trees and not red pine or white pine. Mr. Freese stated he checked the stumpage. Mr. Freese stated that the real question is if there was camping on the second parcel. Mr. Freese stated that Mr. Nutt will also have to comply with the State's regulations and provisions in Zoning Ordinance #200 such as screening.

Ms. Johnson stated that she agrees with Mr. Freese and that she does see some other issues. Ms. Johnson stated that the effective date of the Zoning Ordinance is a crucial date because of merger requirements and if there were any merger requirements because these lots (1-18) were owned by a single person and could have been merged to meet the 10 acre requirement at one time within this timeframe. Ms. Johnson stated that these are questions that legal counsel needs to answer. Ms. Johnson stated that the site plan is lacking information such as parking, setbacks and garbage dumpsters. Mr. Freese agreed that the site plan is inadequate. Ms. Johnson asked if Mr. Nutt will have to submit a revised plan to the Planning Commission if the State of Michigan requires changes to the site plan. Mr. Freese stated the State of Michigan requirements will apply if they are more restrictive than Cheboygan County's restriction. Discussion was held. Mr. Freese stated the Planning Commission could place a condition on the approval of the special use permit that the applicant provide a copy of the licensing from the State of Michigan. Mr. Freese stated that Mr. Nutt will have to comply with the State of Michigan and until he does, he is not fulfilling the conditions of the special use permit if the special use permit is conditioned on furnishing proof of State licensing. Ms. Johnson stated she understands and disagrees with it because of past things that have happened and continually happen with putting conditions on approvals. Mr. Freese stated that this has been a complaint for years and there is now a Zoning Enforcement Officer and hopefully he is following up on conditions that the Planning Commission puts on special use permits. Ms. Johnson stated her concerns regarding additional signage on the building that are not in the pictures. Ms. Johnson stated that if there is a campfire wood sign should it be considered an accessory use. Mr. Freese stated that the campground is the question before the Planning Commission and stated snowmobile rental and kayak rental may be another issue. Mr. Kavanaugh stated that applying for zoning is a good first step. Mr. Kavanaugh stated that the Planning Commission can ask for letters and proof. Mr. Kavanaugh stated that the Planning Commission can request parking, second dumpster location and dump site on the site plan. Mr. Kavanaugh stated the Planning Commission needs to allow the applicant and the opposition time to prepare. Mr. Freese noted that the regulation requires a stamped site plan, but it has never been enforced and we can't start with this request. Mr. Freese stated that the State of Michigan will require a stamped site plan and that can be a condition if this special use permit is approved.

Board held discussion regarding the following items being added to the site plan: parking, dumpster location, sewage location, topography at 5ft. intervals, elevations of the watercourse, setbacks, easements and internal roads. Discussion was held regarding the applicant submitting a statement that lighting is downward lighting and that District Health Department #4 approval will be required. Discussion was held regarding legal counsel reviewing whether or not Zoning Ordinance #100 will affect this use because of how long it has existed and also reviewing the ownership and merger requirements as lots were under single ownership until 1993. Discussion was held regarding information on the previous use being submitted.

Ms. Johnson stated that she does not know if Cheboygan County's Zoning Ordinance ever required combining lots to make a non-conforming use conforming if the adjacent lot is sold. Ms. Johnson stated it should have been researched at the time when the lots were sold. Ms. Johnson stated that just because it wasn't done doesn't necessarily mean that this is a non-conforming lot now and should go through a variance. Mr. Freese agreed with Ms. Johnson and stated that there may be a voluntary relinquishment of the use at the point in time when the parcels were sold separately on the north lot. Mr. Freese stated that the regulation states that a 6 month period of non-use of a non-conforming use terminates the non-conforming use, however, this provision is not legally enforceable. Mr. Freese stated that there has to be evidence of a voluntary abandonment. Mr. Freese stated the length of time is not sufficient evidence, but the fact that the lots were divided and sold separately may be a question for legal counsel to consider regarding a voluntary abandonment of the use.

Discussion was held regarding the cabins doors not being handicap accessible. Mr. Freese stated the State of Michigan does not allow water, but the Zoning Ordinance does not allow cooking. Mr. Kavanaugh stated the cabins have to be on a skid or something similar as they can't be permanent. Ms. Johnson stated that there is a State requirement of 1 ½ parking spaces per campsite.

Motion by Mr. Borowicz, seconded by Ms. Johnson, to table this request until information is received from Mr. Nutt and legal counsel. Board held discussion. Mr. Freese stated that we will have to establish the sequence of sale of the original parcel and when it was split. Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Johnson), 0 Nays, 1 Absent (Churchill)

Mr. Kavanaugh asked if the letter from legal counsel is available for the public. Mr. Lawson stated that a letter was provided in the packet regarding this request. Mr. Lawson stated that there was a question about a previous opinion regarding another parcel and staff does not have authorization to release documents that are stated Attorney Client Privilege without Cheboygan County Board of Commissioners approval. Mr. Lawson stated that legal counsel wrote the opinion in the packet specifically for this parcel without Attorney Client Privilege so it could be provided to the public.

Discussion was held regarding when the packet will be available for review on the website.

UNFINISHED BUSINESS

No comments.

NEW BUSINESS

No comments.

STAFF REPORT

No comments.

PLANNING COMMISSION COMMENTS

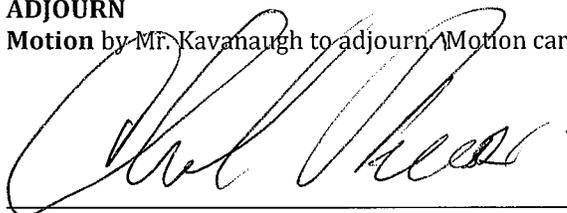
No comments.

PUBLIC COMMENTS

Mr. Muscott distributed copies of an Emmet County Zoning Evaluation Form for a PUD. Mr. Muscott reviewed the form with the Planning Commission. Discussion was held.

ADJOURN

Motion by Mr. Kavanaugh to adjourn. Motion carried. Meeting was adjourned at 8:36pm.



Charles Freese
Planning Commission Secretary