

**Au Train Township, Zoning Board of Appeals
Special Meeting**

Thursday, September 19, 2024 – 6:30pm

Au Train Township Hall - N7569 Spruce St – Au Train, MI 49806

MINUTES

- **CALL TO ORDER** - The meeting was called to order by Chairperson Reynolds at 6:30pm, followed by the Pledge of Allegiance.
- **ROLL CALL** – Members present: Chair Katherine Reynolds, Secretary Donna Shields, Member Matt Lang

Others present: Au Train Township Supervisor Michelle Doucette, Au Train Township Clerk Mary Johnson standing in for Zoning Administrator. Also present per sign in sheet: John Carr, Greg & Kris Lindquist, Amy Hernandez, Mary Mousseau, Bob & Tina DesArmo, Phyllis LaCombe, Scott & Peggy Smith, Kris Francis, Duane Newton, Tabatha Rudebeck, Marc Rudebeck, and Cory Tufnell.

- **APPROVAL OF AGENDA** – Motion by Shields, second by Lang to approve agenda as presented. Motion Carried
- **APPROVAL OF MINUTES** – Motion by Shields, second by Lang to accept minutes as presented. Motion Carried
- **RESIGNATION – JOHN CARR** – At the August 12, 2024 meeting of the Au Train Township Board the resignation of John Carr from the Zoning Board of Appeals was accepted. Appointed as his replacement was Matt Lang. The Board also appointed Amy Hernandez as alternate to the ZBA.
- **ELECTION OF VICE CHAIR** – Nomination made by Shields for Matt Lang as Vice Chair. No other nominations were made. Roll Call: Shields: Yes, Reynolds: Yes, Lang: Yes. Matt Lang was elected as Vice Chair of the Zoning Board of Appeals.
- **ZONING ADMINISTRATOR COMMENTS** – Au Train Township Clerk Mary Johnson announced that our Zoning Administrator Kathleen Lindquist has resigned effective immediately. Johnson was sitting in for the Administrator at this meeting, but the appointment of an interim Zoning Administrator would not be made until the October 14, 2024 meeting of the Township Board. Johnson said she would do her best to answer any questions that might arise but she was just given all the documentation.
- **PUBLIC COMMENT** – Public comments were heard from Duane Newton.
- **PUBLIC HEARINGS** –
 - a) **Van Wieren Appeal – Zoning Compliance for Seaberg hotel/motel, Parcel ID# 001-325-020-00, N7840 Ridge Road, Munising**

Chair Reynolds opened the hearing at 6:39pm

Presenting for Kristen VanWieren was Lynda Cross who read aloud the letter written by Kristen VanWieren dated 9/12/24 that had previously been delivered to the Au Train Township Zoning Board of Appeals. The letter presents the argument that Mr. Seaberg's zoning compliance application does not meet the definition of hotel/motel as defined in the Au Train Township Zoning Ordinance nor the State of Michigan Public Act 188 of 1913 (427.1 (b)). Mrs. VanWieren states that "...it is clear that it's (the application) for multiple buildings. He states that the cabins make a hotel/motel because they are connected by utilities such as water, sewer, gas, power and internet. By this rationale of connected utilities making a single building, all of Au Train could be considered one motel/hotel!" Mrs. VanWieren also questions the Type III well system that was installed.

Chair Reynolds opened the public comment period at 6:46pm

Public comments were heard from the following:

- Duane Newton believes we are all learning here, himself included. He also believes there should be a staff report presented by the Zoning Administrator. He spoke of how he tried to FOIA the Zoning Compliance application and that he had some questions. Mr. Newton said that he attempted to approach the ZA at the meeting the previous night and said that he had approached the FOIA coordinator for the information but he never got it and now he's being told that what he was asking for were questions. He didn't understand that. He would also like to see a checklist for the 802 standards. He also questions the screening requirements, parking lot dimensions, setbacks? It should follow 1004 site plan requirements being a commercial project. Many things are missing from this site plan.
- Clerk Johnson, who is also the Township's FOIA Coordinator stated that Mr. Newton has sent several FOIAs regarding this appeal and the Smith appeals. She has provided him this application. She stated that most of Mr. Newton's requests were questions, which she did not need to answer as part of a FOIA.
- Michelle Doucette asked the following statement be recorded in the Minutes:

"On 8/1/2024 I received both the Memorandum of Decision and the Order RE: Motion for Summary Disposition and also Opinion and Order both from Judge Rahilly. Immediately I called Joe Cilc, Building Inspector for Alger County and forwarded him both of these documents. He told me he was going out to speak with Wyatt Seaberg immediately that day and ask him to cease building on his resort."

"With that being said, as Supervisor of Au Train Township, I am asking the Zoning Board of Appeals tonight to follow through with Judge Rahilly's Opinion and Order written on 7/24/2024. The last page reads:"

"Access to the proposed resort is only on a private road easement. There is no evidence that the Seaberg's can provide adequate access to the resort. The

private road easement is for use only by owners of benefited parcels. The owners are required to maintain that easement. Because there is no public road and no private road entirely maintained by the Seaberg's this standard (Section 802A #6) cannot be met. This private road issue also likely makes it difficult to comply with the other standards in 802.

Conclusion – The court vacates the decision of the Au Train Township Planning Commission for the reasons stated above.””

Supervisor Doucette went on to also say that she stated this at the previous night's hearing but she will say it again: “Neither I, nor any of the Township Board members have ever been paid under the table by Wyatt Seaberg and family. I want that to be made very clear, my Township Board, none of us, have been paid by the Seaberg's. Thank you”

Secretary Shields also recognized receipt of letters from the following which were distributed to each member prior to the meeting:

- Kristen VanWieren - opposed
- Dan & Phyllis LaCombe - opposed
- Robert DesArmo - opposed
- Gregory & Kristine Lindquist - opposed
- Duane Newton – not opposed
- Marietta Iordachescu – opposed

- One last public comment was heard from Mary Mousseau who stated she and her husband Kerry are opposed.

Chair Reynolds closed the public comment period at 6:58pm

The Board members discussed the merits of the application noting the lack of details and failure to show access to a public road, but agreed to focus on the appeal which questions the Zoning Administrator's interpretation of the definition of hotel/motel. All were in agreement that a hotel/motel should be interpreted as a single structure and what Mr. Seaberg is asking for best fits the description of a resort as defined in the Au Train Township Zoning Ordinance. Mr. Seaberg had already submitted an application for the project to be considered as a resort, though his application was rejected until the site plan could be amended to show access to a public road.

Motion by Shields, second by Lang to revoke the Seaberg Zoning Compliance for hotel/motel as we believe it is a resort, not a motel and therefore would need to be applied for under a Conditional Use Permit.

Discussion:

Comments were made by Shields stating that the scope of this whole project really falls under the CUP application that is outstanding after being rejected at the previous night's meeting of the Planning Commission. Mr. Seaberg knows he has to go back to the drawing board and find a way to get access to a public road according to the site plan review standards. Shields made note that the standards do not say it has to be direct access, that if Mr. Seaberg could find a way to come to an agreement with his neighbors, that would

suffice, but if not then he would have to find some other way to get to a public road, Ridge Road or M-28 on his own.

Mr. Seaberg then made comments that the likelihood of him working things out with the neighbors would be about zero. He stated that EGLE would allow a bridge, but he can't fill in wetlands and put in culverts to get to the resort. He made comment that he has \$600,000 into this and his only option is to take legal action for promissory estoppel. He has 6 cabins and his only options are to build a \$200,000 bridge, or work with the neighbors which he claims is an impossibility, so financially his only option is a lawsuit.

Motion on the floor with a second.

Roll call: Shields: yes, Lang: yes, Reynolds: yes, Motion passed 3-0

Motion passes, Zoning Compliance for Hotel/Motel for Wyatt Seaberg has been revoked.

Chair Reynolds closed the public hearing at 7:11pm and calls a short recess.

➤ **Smith Appeal – Campground enforcement for Tufnell, Parcel ID# 002-255-012-00, N7136 Perry Road, Au Train**

Chair Reynolds resumed the session and opened the hearing at 7:19pm

Scott Smith presented the Board with photos taken of multiple campers and tents on the Tufnell property spanning a timeline of July 4 through July 27, 2024. He explained how this started last summer (2023) when there were anywhere from four to seven campers on the parcel at a time, which according to the definitions in our ordinance this is considered a campground and is not a permitted use. Mr. Smith has filed multiple zoning ordinance complaints but fails to find adequate enforcement of the ordinance from our Zoning Administrator, either being told she is working with them to come into compliance yet violations keep reoccurring or being told there was no violation. There are complaints of setbacks not being met by an electrical panel which was moved but still does not meet setbacks. There is a portable toilet set out for the entire summer each year that does not meet setbacks as well. Mr. Smith requests that the Zoning Administrator be directed to take enforcement action for repeated violations of the Au Train Township Zoning Ordinance.

Clerk Johnson commented that she believed that the Zoning Administrator did the best she could trying to accommodate both parties.

One of the land owners, Cory Tufnell was asked if he would like to speak on this. He stated that he was only trying to do the right thing. They have been working with Administrator Lindquist for three years. They didn't know about all the rules and regulations and they have been trying to work with her to get it down to two campers or less. Mr. Tufnell says he was told that they could have a tent there for a weekend if they had family come up if they take it down when they leave. They aren't trying to do anything wrong on purpose, they are just trying to comply.

The other land owner, Tabatha Rudebeck chose not to speak.

Chair Reynolds Opened the public comment period at 7:31pm

Public comments were heard from the following:

- Duane Newton made public comment regarding policy. He asked what is the application for this, what is the approved use for this parcel? He stated again that he had FOIA'd the document for this complaint and again he received nothing. He would consider even public comment letters and everything that pertains to this. He did get some of them but they were confusing. He has seen the application for the appeal but where is the document they are appealing? He asked if someone could explain what this is all about.
- Mary Tiernan made comments about her experiences with loud music being played and the traffic they bring into what was a quiet area. She stated that she thinks they didn't do their research on what could be done or not with that parcel. Now that they have taken down the trees, there is no buffer for the noise and now that the road is paved, traffic moves faster and signs have to be put up to slow down.
- Clerk Johnson commented that Mr. Newton was provided with the documents for this appeal, but he was also asking for things that don't exist. There is no Zoning Compliance application, there is no site plan.
- Township Supervisor Doucette provided comments of her experience in the Summer of 2023, when she drove down Perry Road, a public road, and stopped to take pictures when a rude man came to the edge of the property and shouted to her "move on, move on lady, there's nothing to see here." Supervisor Doucette stated there were many kids, campers too many to count, and rude people.

Chair Reynolds closed the public comment period at 7:42pm

Vice Chair Lang started the discussion by stating that he did not understand what decision of the Zoning Administrator they are appealing. Rather it seems like this appeal is just asking us to compel the ZA to take action and he didn't feel that this was something the ZBA could do. The ZA reports to the Township Supervisor or Clerk, not to the ZBA. We can reverse decisions, or agree with decisions but not compel her to do anything.

Shields thought that perhaps Mr. Smith was appealing the Zoning Administrator's decision not to enforce but agreed that it wasn't our duty to compel the Zoning Administrator to issue a citation. Shields went on to say that there are a number of things going on here, like there was never a zoning compliance application filed, which should have been done when the use was changed and the power panel was to be installed. And there's been some misinformation given, like having a tent in your backyard. Shields read the definition of "Campground" from the Zoning Ordinance aloud: *"A tract of land*

which is divided into sites offered for use by the public, organizations, family, or friends, for the establishment of temporary living quarters consisting of any combination of three or more recreational vehicles, tents or other temporary habitable structures, or sites. This tract of land can be offered for use either free of charge or for a fee."

Shields spoke of her visit to view the parcel and her findings of how setbacks are not being met on the parcel's front at the required 63 feet in regard to the electrical panel, the portable toilet, and the camper. She noted the setback on the portable toilet is only 27 feet and has questioned LMAS Sanitarian Halso as to whether its use is even allowed in this situation. Shields spoke of how Mr. Tufnell's latest electrical permit shows a new 200 amp service and two outlets and that Electrical inspector Mike Rozek confirmed, that at his final inspection there were only two outlets. Shields felt that Mr. Tufnell clearly has this parcel set up for 4 sites and that is a campground by our definition and that two of the electrical hookups should be removed. Shields stated she would file a zoning violation complaint for all the violations that she witnessed that are still outstanding.

Clerk Johnson and Secretary Shields spoke of working with the Zoning Administrator to establish a policy for the ZA regarding enforcement. This policy has been drafted and is expected to come before the Township Board for approval at their next meeting on October 14, 2024. This policy will give clear steps and timelines for handling zoning violations. The policy provides for unresolved violations to be brought before the Township Board for their direction on how to proceed, which could include referral to the Township Attorney for circuit court litigation, request for conjunctive relief, and/or pursuit of the matter as a Civil Infraction.

Clerk Johnson also stated that she felt the second appeal by Mr. Smith pertaining to this same property and owners could be rolled into one appeal as it's being talked about as a whole and that the Zoning Board of Appeals might consider making a recommendation to the Township Board that they consider a return of Mr. Smith's fee of \$250 for the second appeal as he really could have just amended the first appeal.

Motion by Chair Reynolds, second by Shields to recommend to the Au Train Township Board that they continue to move forward and approve the *Policy and Procedure for Zoning Administrator – Processing Violation Complaints* policy, and that the Township website be amended to show who the next point of contact in the Township would be should a person disagree with any action or lack thereof by the Zoning Administrator. The Zoning Board of Appeals further recommends that the Township Board consider returning the \$250 fee to Mr. Smith for the second appeal as the two appeals were viewed and discussed as a whole.

Roll call: Reynolds: yes, Shields: yes, Lang: yes Motion passes 3-0

Chair Reynolds closed the public hearing at 8:18 pm

b) Smith Appeal – Setbacks for Electrical panel for Tufnell, Parcel ID# 002-255-012-00, N7136 Perry Road, Au Train

Note: This appeal for setbacks was discussed within the first appeal. See above Motion for (a)

- **OLD BUSINESS** -- None
- **NEW BUSINESS** – None
- **PUBLIC COMMENT** – Public comments were heard from Peggy Smith, Mary Tiernan, and Duane Newton.
- **NEXT MEETING** – No meetings are presently scheduled. Other than their annual organizational meeting, the Zoning Board of Appeals meets on an as needed basis.
- **ADJOURN** – Motion by Shields, second by Lang to adjourn. Motion Carried. Meeting adjourned at 8:30 pm.

Minutes submitted by: Donna Shields, Recording Secretary, Au Train Township Zoning Board of Appeal

Approved: January 23, 2025

Signed: 
Donna Shields