

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

Thursday, March 5, 2026– 6:00pm

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

MINUTES

- 1) **CALL TO ORDER** - The meeting was called to order by Chair Seaberg at 6:00pm, followed by the Pledge of Allegiance.
- 2) **ROLL CALL** – Members present: Chair Wyatt Seaberg, Vice Chair Matt Lang, Alternate member Wayne Cullens. Excused: Emily Molnar
Others present: Zoning Administrator Donna Shields, Appellant’s representative and land owner Cory Cole, John Carr, Thomas Balmes
- 3) **APPROVAL OF AGENDA** – Motion by Lang, second by Cullens to approve agenda as presented.
Motion Carried
- 4) **APPROVAL OF MINUTES** – Motion by Lang, second by Cullens to accept minutes of the February 12, 2026 organizational meeting as presented. Motion Carried
- 5) **PUBLIC COMMENT** – None
- 6) **BOARD COMMENT** – None
- 7) **PUBLIC HEARING** –
 - a) **Duane Newton – Appeal of Administrative Decision**
Expiration of ZCP 2024 001-368-001-10 – Lots 3-16 Block 19 of the Plat of Au Train, Parcel ID# 001-368-001-10

Chair Seaberg opened the public hearing at 6:02 pm

Core Issue: Expiration of a permit for an accessory structure (pole barn) and recreational structure (RV) that served as the principal permitted use.

Chair Seaberg opened the floor to the appellant, represented by the land owner Cory Cole.

Mr. Cole presented the stance that the principal permitted use (RV) was established almost immediately after permit was approved. He satisfied the principal use by placing an RV on the parcel. In fact, there had been three different RVs over the course of time. One would be removed and another put in its place to always have one present to satisfy the need for the principal use.

Mr. Cole cited case law: "Work of substantial character done by way of preparation" and "apparent and manifested by a tangible change in the land." He voiced the argument that one year is insufficient, given +/- 6 month building season due to load restrictions (mid-May to early Nov) and potential delays from agencies like EGLE. He stated the permit should not have expired without discussion because work had "commenced."

Mr. Cole stated that he had put in a driveway on October, 2022. He has done extensive excavating to get ready for the construction, obtained EGLE evaluations and permits, all which add up to substantial money spent already. Major earthwork and land development for the pole barn (costing thousands of dollars, hours of labor/equipment) within one year should be considered "commenced." He also hadn't gotten any building permits because a building permit is not required to park the RV on site and he was awaiting the EGLE evaluation and permit to continue with the remainder of the development.

Chair Seaberg opened the floor to the Zoning Administrator (ZA).

Zoning Ordinance Section 408, #2 states "an accessory structure shall not be permitted prior to the establishment of a principal structure." Section 306, District R1/2, Permitted Principal Use #8 listed "Recreational structure" and at the time the application was made, the definition of Recreational Structure included a Recreational Vehicle. The Zoning Ordinance was amended effective October 30, 2025 to remove "Recreational vehicle" from the definition of a Recreational Structure, thus making this development, if it existed prior to the amendment, a nonconformity.

ZA Shields emphasized the basis for her decision to expire the permit was that she considered the development as nonexistent. In her opinion, backed by case law, the lack of obtaining a building permit and lack of substantial progress in the construction of the development left the appellant no vested rights. The nonconformity must first exist to establish vested rights for its continuance. Per case law *"The actual use which is non-conforming must be apparent and manifested by a tangible change in the land, as opposed to intended or contemplated by the property owner."* The ultimate test in each case hinges on *"whether there has been any tangible changes in the land itself by excavation and construction."*

Lansing v Dawley (1929) and Gackler Land Co v Yankee Springs Twp (1986)

It was ZA Shields' opinion that the mere parking of the RV on the parcel was not substantial enough progress to warrant vested rights.

ZA Shields had provided her complete Staff Report to the Board prior to the meeting for review. **See Attachment A for the full report.**

Chair Seaberg opened the floor to public comment. There were no comments either in person or written to be heard.

Chair Seaberg closed the public hearing at 6:52pm

Board discussion:

Discussion amongst the Board revolved around whether or not the use had commenced. With having case law setting precedence on what constituted vested rights, vs the simplicity of our own Zoning Ordinance Section 703: *“If development authorized by a zoning compliance permit has not commenced within one year from the date of issuance, said permit shall expire automatically.”* The Board felt that the term “commenced” was not adequately defined as to the scope of its intent. The Recreational Structure (RV) was the principal permitted use. They discussed whether having the RV in place had “commenced” the use. Our Zoning ordinance states nothing about having to have building permits and substantial construction in order for a use to be considered as having commenced.

The appellant offered the fact that while he believed that the placement of the RV warranted his commencement of the use, he would understand if he had not met the expiration for the construction of the pole building and would be willing to reapply for compliance on that.

ZA Shields offered that if the Board of Appeals felt that the placement of the RV was sufficient to be considered the commencement of the use, then that in itself would constitute an existing nonconformity and she would not require the appellant to reapply for compliance on the pole building. However, she urged consideration under the understanding that nonconformities are only allowed to continue in the same size and same essential nature as they existed when the nonconformity was created.

After much discussion, it was decided by the Board that the placement of the RV satisfied the “commencement” of the use.

Motion by Seaberg, second by Cullens to grant Mr. Newton’s appeal and reverse the Zoning Administrator’s decision to expire the permit. The Board believes that per Section 703 of the Zoning Ordinance, the use has commenced by placing the RV on the parcel.

Roll call: Seaberg: Yes, Cullens: Yes, Lang: Yes Motion passes 3-0

Chair Seaberg called for a brief recess at 7:46pm

Chair Seaberg recalled the meeting to order at 8:12pm

- 8) **OLD BUSINESS** – None
- 9) **NEW BUSINESS** – None
- 10) **PUBLIC COMMENT** – None

11) **BOARD COMMENT** – None

12) **NEXT MEETING DATE** – April 16, 2026 6:00pm

13) **ADJOURN** – Motion by Lang, second by Seaberg to adjourn at 8:14pm. Motion Carried

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

Approved: April 16, 2026

Signed: _____ on file _____
Donna Shields – Recording Secretary

Signed: _____ on file _____
Emily Molnar -- Secretary



Staff Report to the Zoning Board of Appeals Appeal of Administrative Decision

Prepared by: D Shields, Zoning Administrator

March 5, 2026

File #: 2026-001-368-001-10 Newton APL **Date of Hearing:** March 5, 2026 6:00pm

Appellant: Duane Newton **Owner:** Cory Cole

Address: Lots 3-16 of Block 19, plat of Au Train Village

District: R1/2 **District of surrounding parcels:** R1/2

Existing land use: vacant

Adjacent Land Uses: Mix of vacant and single family residential

BASIC FINDINGS OF FACT:

- **2024 09/30 Zoning Compliance permit approval was granted** permitting the construction of a 40x60 pole barn style accessory building. The permit also allows for the a 40x60 RV gravel pad with a 24x36 RV Cover structure (carport) erected over the pad, the purpose of which is to park a Recreational vehicle on/under. The permit states it is good for one year.
- **2025 10/22 EGLE permit WRP046898 grants approval** to fill an 8x40 foot long by 1 foot deep area in wetland to extend an upland camper pad. The site plan attached to the EGLE permit shows the RV pad on Lot #3, the same lot as the RV pad in the site plan for the zoning compliance permit approved 9-30-24. This EGLE permit is granted more than one year after the approval of the zoning compliance permit. The EGLE permit was also for fill on Lot #6 to allow for an installation of an additional driveway off Liberty St.
- **2025 10/22 After reviewing the zoning compliance permit issued 9-30-24, ZA places call to Alger County Building Inspector and learns that no building permits have been issued** for construction of a pole barn or RV cover (carport) on block 19. ZA informs building inspector of the expiration of the compliance permit.
- **2025 11/08 Visual inspection via drive-by reveals no visual changes to the land or construction. ZA sends notification letter via email to Duane Newton and landowner Cory Cole informing of expiration.** Letter explains the need to reapply, but the scope of the plan would need to change due to amendment of the zoning ordinance that no longer includes a “recreational vehicle” in the definition of a recreational structure.

BASIS FOR DETERMINATION: No vested rights for continuation of a non-conformity

The Doctrine of Vested Rights is a legal principle that protects the rights of individuals or entities that have acquired a legal right or interest in a property or contract. This means that once a right has been acquired, it cannot be taken away by a subsequent law or regulation. For example, if a property owner has obtained a building permit from the local government and has started construction, the doctrine of vested rights would protect their right to complete the construction even if the local government changes the zoning laws or building codes.

The vested right to a nonconforming use is something that a local government cannot take away from property owners. Specifically, the Michigan Supreme Court in **Dusdal v Warren**, explained that “[a] prior nonconforming use is a vested right to continue the lawful use of real estate in the manner it was used prior to the adoption of a zoning ordinance. Though the ordinance be reasonable, it cannot operate to oust the property owner of his vested right.” **387 Mich 354, 359 (1972) (1)**

A nonconformity is defined as the use of a dwelling, building, structure, or of the land that lawfully exists at the time of adoption of a zoning ordinance or amendment to a zoning ordinance. Through vested rights, a nonconforming use may continue in the same manner and extent even though it no longer conforms to the zoning ordinance or amendment.

However, the nonconformity must first exist to establish vested rights for its continuance.

Case law sets precedence on this issue of determining at what point a nonconformity exists:

"there must be work of a `substantial character' done by way of preparation for an actual use of the premises." **Bloomfield Twp v Beardslee, 349 Mich 296, 307; 84 NW2d 537 (1957)**. The actual use which is nonconforming must be apparent and manifested by a tangible change in the land, as opposed to intended or contemplated by the property owner. In this regard, preliminary operations such as ordering plans, surveying the land, and the removal of old buildings are insufficient to establish a nonconforming use. The test in each case is not whether a little or a lot has been spent in reliance upon the past zoning classifications, but, rather, "whether there has been any tangible change in the land itself by excavation and construction." [Id. at 574-575.] [\(2\)](#)

We see the same verbiage used again and again in similar cases:

“The actual use which is nonconforming must be apparent and manifested by a tangible change in the land, as opposed to intended or contemplated by the property owner.”

The ultimate test in each case hinges on *“whether there has been any tangible change in the land itself by excavation and construction.”*

- **Lansing v Dawley, 247 Mich 394, 397; 225 NW 500 (1929)**

- **Gackler Land Co v Yankee Springs Twp, 427 Mich 562, 574-75 (1986)**

A Vested Right is... a private property right that exists with the continuation of a nonconformity or is created upon the issuance of a building permit AND substantial construction work has resulted based on that permit. (3)

THE ARGUMENT

The proposed development as approved on 9-30-24 does not exist. If it existed or was substantially under construction with a valid building permit, it would be considered a nonconformity due to the change in the ordinance. But the facts are, no nonconformity exists. No building permit has even been issued to allow construction. And this reason in its simplest form is the basis for my decision.

Mr. Newton can provide various arguments such as having a driveway permit and driveway installed with gravel put down, or having parked his RV on the parcel in early 2025 to “satisfy” his permitted principal use so he can have his accessory building but we must remember, there is no room for interpretation of case law. It is a Supreme Court ruling that sets precedence. There is no building permit, there is no construction as a result of that building permit, there is no vested right to continue a nonconformity that doesn’t exist.

As Zoning Administrator, it is my belief that a recreational vehicle is exactly that, a vehicle. It is built to standards for RVs, not to building code for a residential dwelling. The Michigan Secretary of State considers them vehicles as well requiring licensing as a trailer. Its primary use is for providing temporary lodging for recreational use. If we were to believe that the intention of the Township truly were to consider an RV as a recreational structure for use as a dwelling, then every single RV parked on a parcel in Au Train Township would have been in violation of the zoning ordinance for having placed a structure on a parcel without permitting. We would also have had to make all comply with Section 407 Minimum Building Standards, i.e. firmly attached to a permanent foundation; constructed of such material and type as required in the applicable building code for residential dwellings; connected to water and septic or have other approved facilities; etc.

As members of the Zoning Board of Appeals, you are granted the power to interpret the intent of the Zoning Ordinance as well when forming a decision on this appeal. I ask that you take that and all I have presented into consideration when making your decision.

(1) <https://www.lsd.law/define/doctrine-of-vested-rights>

(2) <https://law.justia.com/cases/michigan/supreme-court/1993/92479-5.html#:~:text=The%20actual%20use%20which%20is%20nonconforming%20must,to%20intended%20or%20contemplated%20by%20the%20property>

(3) MSUE: ZAC - Other Legal Principals; 2025 ZAC Resources