

KASSON TOWNSHIP PLANNING COMMISSION

October 17, 2016

MINUTES

~~Unapproved~~ **Approved** [with change to Old Business Item C. Correct the section number in the first line.]

A regular meeting of the Kasson Township Planning Commission was held in the Kasson Township Hall on Monday, October 17, 2016, for the purpose of conducting the regular monthly business of the Commission.

1. Call Meeting to Order/Pledge of Allegiance

The meeting was called to order at 7:04 P.M. by Chairperson Tad Carter. The Pledge of Allegiance was recited.

2. Recognition of Visitors and Roll Call of Commissioners

Visitors Present:

Mike Lanham (Township Zoning Administrator);

Fred Lanham (Township Supervisor);

Alan Nesbit — (Davis Lake neighborhood)

Commissioners present (roll call): Jim Anderson, Dana Boomer, Tad Carter, Roger Noonan and Gerry Roush.

Commissioners absent: None

3. Approval of Minutes – September 19, 2016

Corrections: In Sections 8 and 11, change the spelling of “Alen” to “Alan” and “Nesbitt” to “Nesbit” in various places. On page 4, Section 9C, paragraph 4 Boomer asked to change the word “felt” to “suggested” because was not advocating we call for a tear-down, since she thinks we do not have the power to do so if the applicant continues to do nothing toward fulfilling the SUP.

Moved by: Boomer **Seconded by:** Anderson to approve the minutes, as corrected.

Ayes: Anderson, Boomer, Carter, Roush

Nays: None

Abstain: Noonan (not present at the meeting in question)

Motion carried.

4. Consideration of Agenda: Additions or Deletions

Additions or Deletions: None

Moved by: Noonan **Seconded by:** Anderson to approve the agenda, as submitted,

Ayes: All.

Motion carried.

5. Declaration of Conflicts of Interest

None.

6. Correspondence Received

Carter received a letter from the Township Attorney, in respect to the parcel at the Northeast corner of Bohemian and Burdickville Roads, which will be covered under Old Business, Item D.

7. Reports

- a) Recording Secretary Report — Schaeffer: reported that we will have 4 Gravel Pit SUP renewals to consider in November — the Kasson Sand and Gravel Pit and Redi-Mix SUPs (now owned by Rieth-Riley but operated as a DBA); the Rieth-Riley Coleman Road (669) pit; the Leelanau County Road Commission Newman Road pit.
- b) Township Board – Commissioner Noonan. Reported that terms of two PC commissioners are coming up for reappointment. Township Board wants us to move on the short-term rental situation.
- c) Zoning Board of Appeals – Commissioner Boomer No report.
- d) Zoning Administrator’s Report — During September Lanham issued 2 Land Use Permits (420 Beech Bark Trail garage addition, and 2827 W. Armstrong Rd. accessory structure) for a total value of \$30,000. Lanham further reported that he took approximately 28 phone calls and 12 emails and 8 texts. He also granted one land split (Larkin), and one amended land use permit (Meteer).

8. Comments From the Public.

Alan Nesbit — Short-term rentals. He recently met someone from the Torch Lake (Twp) who had to close down his rental operation since the Township has a restriction on that. In 2003 the TLT ZBA determined that short-term rentals were not allowed in residential zoning. In 2004 the decision was appealed to the Antrim County Circuit Court who determined that short-term rentals were against the zoning regulations. In-2005 the Township did a survey of residents and 70% said they desired to see no change in the current regulations [which did not allow for short-term rentals]. The Township went on to define that anything under 30 days was short term rental. He feels any ordinance requiring neighbors to police is unfair.

Therefore he feels the ordinance should be updated or clarified that anything under thirty days is a short-term rental, is a business, and therefore not allowed in residential zoning.

Chuck Schaeffer - Thoughts on recent actions and behaviors of the Commission regarding consideration of SLUP requests. He provided written text of his remarks (Attachment “A”). After making his statement, Boomer pointed out that the appeals for SLUPS are now (recently changed) to the Circuit Court, not the ZBA. Schaeffer said he stood corrected, and agrees totally with Boomer’s point.

9. Old Business

A. Dwelling Size Final Version Language — Grier/Huegen

Chairman Carter introduced a letter and suggested wording changes to the Zoning Ordinance. It simplified the entire definition of Dwelling Single Family, by replacing paragraphs 1-7 and deleting paragraphs 8-10. See Attachments “B” and “C”

Before adoption, a Public Hearing needs to be conducted. Schaeffer will investigate publishing for a November hearing.

Moved by Boomer **Seconded by** Anderson to amend Section 2.2 of the Zoning Ordinance as recommended by Township Attorney Grier, and to schedule a Public Hearing at the next possible regular .Commission Meeting.

Ayes: All

Nays: None

Abstain: None

Motion: Carried.

B. House Rentals in Non-Commercial District - Discussion Continuation

Chairperson Carter called Steve Patmore, the Suttons Bay Township Zoning Administrator. SB Township has not taken action yet. The current version language is posted on

www.leelanau.cc/downloads/draft_str_ord_for_public_hearing.pdf

Patmore was not in favor of regulating and proposed “to let sleeping dogs lie.” Also he believes that the Zoning Administrator should NOT be the enforcement officer. Apparently the SB Township Board is in favor of such an ordinance.

Carter noted that Grier’s suggested ordinance language seems to be less specific and more lenient than the SB Township proposed. However Carter likes the updated SB Township better.

Commissioner Anderson asked Commissioner/Trustee Noonan why the Township Board want something like this. Noonan said that they wanted to know what the Commission thought.

Anderson: “So it’s not that they wanted an ordinance, but they wanted the opinion of the : Commission...” Noonan: “So that we [Township Board] can make a decision.”

Commissioner Roush wondered how this was going to be enforced. He can see so many pitfalls. His opinion was to walk away from the issue.

Carter suggested that if the Township Board wants something, is to send them the two ordinance models we have. Commissioner Anderson added that we should also express our opinion as to which ordinance or neither that we support. He agrees with Roush, Yes, we have had one valid complaint at this time. But thinks the solution that is being discussed is “over the top.”

Commissioner Boomer thought that the Grier ordinance should not be sent because it was not a strict as the SB Township wording. She thought if we were to send any language, it should be the SB Township. She agrees that this creates a tremendous enforcement issue. She said the only change to the process was instead of calling the rental agent, they would be calling our Zoning Administrator. According to the rental agents, they have someone designated to come out and stop the situation that caused the complaint. She thinks that its up to the neighbors to initiate the process using the currently available means.

Anderson thinks we should encourage neighbors to contact the rental agent, and the agent should be vetting the prospects, such as recommendations from previous renters. Carter agreed since he uses a rental service that also asks him for an evaluation of the rental.

Moved by Anderson **Seconded by** Roush to send latest SB Township document and the Tom Grier document as samples of what was reviewed (for the Board’s information) with a consensus recommendation that neither should be adopted, nor should the Township adopt any such ordinance.

Ayes: All

Nays: None

Abstain: None
Motion: Carried.

C. Wording Change Amendment 4.11.6.G - LCPC Suggested Language

Carter reviewed the history of this item. Previously a Public Hearing was held on the amendment, then the amendment was sent to County Planning for its input. County Planning recommended changes to strengthen and clarify the wording. However, our Planning Commission had not yet acted because we did not know if there had to be another public hearing on the new wording. The opinion of the Township Attorney was no, in this case because the intent of the change was the same, and the changes were minor.

Moved by Boomer **Seconded by** Roush to revise our earlier proposed language by incorporating the suggestions from the County Planning Commission and further to send the amendment to the Township Board with the Planning Commission's recommendation for its adoption.

Ayes: All
Nays: None
Abstain: None
Motion: Carried.

D. SUP for Kayak Rental Business at CR 616 and CR 669. — Correspondence from Township Attorney

Chairman Carter presented the Commission with an opinion letter from Township Attorney. The letter stated that the property could not be granted a Special Use Permit because the property was below the minimum lot size of 5 acres, required in this zoning district. However, the applicant can seek a variance before applying for the Special Use Permit.

Since the potential buyer of the property did not make a formal application for an SUP, the Commission does not have anything to act upon.

However the Commission will forward the Attorney's Opinion Letter to the potential buyer.

No further action taken.

10. New Business

A. Filing Cabinet for all Planning Commission

Commissioner Boomer has requested the Township to purchase a fireproof filing cabinet to store all of the past records she has been amassing. Commissioner Noonan commented that the Township has already authorized the purchase of two cabinets, one for the Planning Commission. Boomer and the Commission was not aware of that purchase authorization. Boomer will ask Clerk Cruz about the status.

Therefore no action necessary at this time.

B. Procedure to review inactive Special Use Permits

Boomer had previously enquired about Special Use Permits that are no longer being exercised, or SUPs that were never carried out. She would like to know about reviewing and possibly revoking those SUPs that are not being actively used. ZA Lanham referred to a provision in the ordinance that only partially addresses the topic — Section 7.1.2.5 paragraph two (page 83). It says if a

provision of the SUP is violated, than the SUP may be revoked, or prohibited activities ceased. This does not totally encompass what Boomer is asking, though.

Anderson asked how a new neighboring property owner would know an SUP existed on neighboring property. This would be up to the Zoning Administrator. There is no standard way that this is handled in the County. With Boomer's collecting and filing of old documents, some of this will be resolved. There was general agreement that this whole topic should continue to be pursued.

9. Comments from the Public.

Alan Nesbit says he is disappointed at the action taken in not adopting an ordinance. Short term rentals should be defined a business and not permitted. He feels that the Township is not reacting in any way to his and his neighbor's complaints. He went on to reiterate points that he had previously made at previous meetings.

10. Next Meeting:

November 21, 2016, 7:00 PM, Township Hall.al

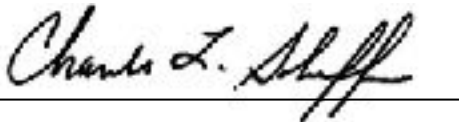
11. Adjournment

Moved by: Noonan **Seconded by:** Anderson to adjourn the meeting.

Ayes: All

Motion carried.

The meeting was adjourned at 8:15.



Chuck Schaeffer
Recording Secretary
Kasson Township Planning Commission

Attachment “A”

“Comments from the Public” to the Kasson Township Planning Commission Chuck Schaeffer, October 17, 2016 regular meeting of the Commission

I have been reflecting upon the recent deliberations of the Commission, specifically about the SLUP request for 669/616 but also on other requests for SLUPs that have come before it in recent months.

Often it seems to me that Commissioners have been looking at the ordinance and trying to figure how a proposed use can be shoehorned into an existing, enumerated permitted or special land use. This takes the micro view of zoning,

Instead of doing that, Commissioners should utilize the macro view of the ordinance drafters “original intent”. They listed what’s allowed. Everything else is not.

To do this, the Commissioners should consider the broad categories that the permitted and special land uses address.

Housing/Dwelling

- Single family dwellings.
- Duplex dwellings.
- Residential Planned Developments .
- Home Occupations.
- Adult Foster Care Family Home.
- Family Child Care Home.
- Foster Family Home.
- Housekeeping cabin parks.
- Boarding or Lodging Houses.
- Bed and Breakfast establishments.
- Elderly Day Care Centers.
- Adult Foster Care Group Home.
- Group Child Care Home

Agricultural

- Agricultural Uses (refer to Section 4.5.1).
- Fruit packing and grading plants.
- Wineries.
- Cooling and packing plants.
- Agricultural research and development facilities; public and private.
- Other similar agricultural businesses or uses.
- Riding stables.
- Kennels.

Public Uses

- Churches.
- Public or private outdoor recreation or park facilities.
- Schools
- Cemeteries

Thinking about these uses in groups, you see Housing/Dwelling uses describe what the intent of Forested is all about — our housing stock and “rural neighborhoods” . The list of uses is the longest of all categories. From this it should be obvious that this is the major intent of the uses permitted this district.

Next, note the Agricultural uses as the second most numerous. In fact, the Agricultural district is recognized in the Ordinance as our highest and best use of the land, since all of the uses in Agriculture are included in Forested and most other districts. Since agriculture was the original use of our land, and is the major dominant occupation and land use throughout our rural township, this is a logically allowed use.

Lastly you see the Public Uses which are things that should be available conveniently in our “neighborhoods” — things that enrich our lives - worship, recreation, education, and the last resting places for our ancestor neighbors and family.

Note also, that although some of the uses are of a “business” nature, it should not automatically be presumed that any business is allowed in Forested zoning. It is the purpose and nature for which the use is allowed — thus defining the character of the zoning district.

Taking a different approach, I would like the Commissioners to refer back to the comments that were received from County Planning, related to the use of the word “discretion” by Planning Commissions. The person making the comment is correct — the Planning Commission has the least “discretion” (also called making judgement calls) of all the mechanisms involved in the zoning process.

So the answer to the question, “Is this use permitted?” it should be simple. If the Commission cannot find that the proposed use fits not only to one of the enumerated uses, but also the overall character of the district as I have summarized above, they should say, “No, this proposed use is not a permitted use.”

In the case of an informal request, I suggest each Commissioner should be polled, and the result of the poll be given to the applicant using the following language:

“Since this is an informal request, and based only on the facts presented here, the Commission seems to be inclined to deny (or approve) the request when a formal application is made, and a public hearing conducted. However, in light of additional discussion by the Commission, plus information from the applicant and public, made at the public hearing, it could reverse it’s current opinion.”

The proper recourse for the applicant, if he/she disagrees with the sense of the Commission (at either an informal or public hearing), is to then appeal to the Zoning Board of Appeals. Remember, it is the job of the ZBA to consider and interpret the Ordinance. Quoting, in part, from Section 11.5 of the Ordinance, “...the Zoning Board of Appeals shall be authorized to interpret any uncertainty that may occur in the administration of this Ordinance.”

Thank you for your attention, and consideration of what I have presented to you.

Chuck Schaeffer, Kasson Township resident.

Attachment “B”

Letter from Township Attorney Tom Grier, Dated September 16, 2016, re: “Amended definition of ‘Dwelling Single Family’ for the Zoning Ordinance”. Letter found on the following page.

September 16, 2016

William M. Davison
Richard W. Ford
Kent E. Gerberling
Michael I. Conbe
Alan J. Couture
Catherine D. Jastrak
Thomas A. Grier

Kasson Township Planning Commission
P.O. Box 62
Maple City, MI 49664

Of Counsel:
Robert R. Guyer, III
Keith L. Leak

Re: Amended definition of "Dwelling Single Family" for the Zoning Ordinance

Harry T. Ronning
(517)-499-2222

Dear Planning Commission Members,

William L. Wise
(517)-201-4141

Attached is a revised draft of the definition of the term "Dwelling Single Family" in the Zoning Ordinance. This revision reflects my review of the definition in the context of applicable Michigan statutes as well as extensive discussion with Leelanau County Building Inspector Steve Huegen. I asked Mr. Huegen to review the proposed definition as well.

Miller C. Gerberling, PLC
(517)-201-1515

Based upon my review of pertinent Michigan statutes and discussion with Mr. Huegen, there are essentially *three* types of single family dwellings in Michigan. These are "*stick built*" homes ("SBH"), *pre-manufactured homes*, and *mobile homes*.

PLEASE REPLY TO:
 TRAVERSE CITY
325 E. State Street
P.O. Box 686
Traverse City, MI
49685-0686
Ph: 231.946.1700
Fax: 231.946.3857

SBH and pre-manufactured homes are regulated under the State Construction Code Act of 1972, MCL 125.1501 et. seq. ("PA 230"). PA 230 was amended in 1999 to provide for uniform adoption of the international electrical, construction, mechanical and plumbing codes statewide and provided for adoption of those codes by local government, including Leelanau County.

CHARLEVOIX / PETOSKEY*
201 State Street
Suite 200
Charlevoix, MI 49720
Ph: 231.347.8990

For that reason, paragraph 2 of the revised definition makes reference to PA 230. PA 230 also defines "mobile homes", but then makes reference to a federal construction standard. That is the basis for paragraph 3 of the revised definition.

FRANKFORT*
P.O. Box 272
Frankfort, MI 49631

Mobile homes in mobile home parks, and under other circumstances are also regulated by the Mobile Home Commission Act 96 of 1987 ("PA 96") and that is why there is a further reference to PA 96.

Other regulations are also included.

Sincerely,



Thomas A. Grier

GAYLORD*
440 W. Main Street
Suite B
Gaylord, MI 49735
Ph: 989.619.5000

TAG/cgf
Encl.

* By Appointment Only

Attachment “C”

Dwelling Single Family is a building designed for the exclusive use and occupancy as a dwelling unit by one (1) family, complying with the following standards:

1. A single family dwelling shall have a minimum of 480 square feet of living space.
2. Dwellings constructed on site with building materials brought to the site, and pre-manufactured units as defined under the Michigan State Construction Code, 1972 P.A. 230 (“PA 230”), as amended, shall comply in all respects with the Michigan State Construction Code as promulgated by the Michigan State Construction Commission under the provisions of PA 230, as amended. Where a dwelling is required by law to comply with any federal or state standards or regulations for construction and where such standards and regulations for construction are different from those imposed by PA 230, then, and in that event, such federal or state standard or regulation shall apply, in addition to those in PA 230.
3. A Mobile Home, as defined in PA 230 shall mean a vehicular, portable structure and shall meet all of the following requirements:
 - (i) Is built on a chassis pursuant to the national manufactured housing construction and safety standards act of 1974, 42 USC 5401 to 5426.
 - (ii) Is designed to be used without a permanent foundation as a dwelling when connected to required utilities.
 - (iii) Is or is intended to be, attached to the ground, to another structure, or to a utility system on the same premises for more than 30 consecutive days.
4. A Mobile Home shall otherwise comply with all of the requirements of the Mobile Home Commission Act, Act 96 of 1987 (“PA 96”), as applicable, shall be installed pursuant to the manufacturer's set -up instructions, and shall be secured to the premises by an anchoring system or device complying with the rules and regulations of the Michigan Mobile Home Commission and shall have a perimeter wall.
5. Each Mobile Home shall be installed with the wheels removed. Additionally, no Mobile Home shall have any exposed towing mechanism, undercarriage or chassis.
6. All dwellings shall be connected to a public sewer and water supply or to such private facilities approved by the local Health Department.
7. The foregoing standards shall apply to a Mobile Home located in a licensed mobile home park except to the extent otherwise required by state or federal law or as specifically required in this Ordinance.

Attachment “D”

Suttons Bay Township Short Term Rental Regulation Ordinance (from Leelanau County Website as of November 19, 2016)

DRAFT

Suttons Bay Township Short Term Rental Ordinance

Section 1: Purpose

The Suttons Bay Township Board finds and declares as follows:

- A. The Township wishes to preserve and retain the residential community character of the Township.
- B. Short Term Rentals provide a community benefit by expanding the number and type of lodging facilities available and assist owners of Short Term Rentals by providing revenue which may be used for maintenance upgrades and deferred costs.
- C. Township staff has received complaints involving excessive noise, disorderly conduct, overcrowding, traffic, congestion and parking at Short Term Rental properties.
- D. The transitory nature of occupants of Short Term Rentals makes continued enforcement against the occupants difficult.
- E. The provisions of this ordinance are necessary to prevent the continued burden placed upon county and township services and impacts on residential neighborhoods posed by Short Term Rental homes.
- F. It is the intent of the Suttons Bay Township Short Term Rental Ordinance to make the Short Term Rental activity permitted by this ordinance resemble the existing and traditional residential uses made by resident owners and lessees.

Section 2: Applicability

All requirements, regulations and standards imposed by this Ordinance are intended to apply in addition to any other applicable requirements, regulations and standards imposed elsewhere in other ordinances of the Township, including the Suttons Bay Township Zoning Ordinance. Further, this Ordinance does not affect additional requirements placed on use of property (or a portion thereof) imposed by deeds, associations or rental agreements.

Section 3: Definitions

Unless otherwise specified herein, the terms used in this ordinance shall be defined as follows:

Dwelling Unit. A group of rooms located within a building and forming a single habitable unit having facilities which are used or intended to be used for sleeping, cooking, eating, and bathing purposes.

Local contact person. A local property manager, owner, or agent of the owner, who is available to respond to tenant and neighborhood questions or concern, or any agent of the owner authorized by the owner to take remedial action and respond to any violation of this ordinance.

Managing agency or agent. A person, firm, or agency representing the owner of the property (or portion thereof) used for a Short Term Rental, or a person, firm or agency owning the property (or portion thereof) used for a Short Term Rental.

Operator. The person who is proprietor of a property (or portion thereof) used for a Short Term Rental whether in the capacity of owner, lessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character, other than an employee, or where the operator performs his functions through a rental agent, the managing agent or the rental agent has the same duties as his principal. Compliance with the provisions of this ordinance by either the principal or the managing agent or the rental agent is considered to be compliance by both.

Owner. The person or entity that holds legal or equitable title to the property (or portion thereof) used as a Short Term Rental.

Parking space. An onsite designated parking area legally available to the dwelling unit for overnight parking of a motorized vehicle or trailer.

Person. An individual, a group of individuals, or an association, firm, partnership, corporation, or other private entity, public or private.

Preschool-aged children. Children age five (5) and under.

Short Term Rental. The commercial use of renting a dwelling unit for a period of time less than thirty (30) consecutive calendar days. Short Term Rental does not include a bed and breakfast permitted and operated in accordance with the Suttons Bay Township Zoning Ordinance.

Section 4: Short Term Rental Standards

All Short Term Rentals must meet the following standards whether or not a permit is required:

A. Only one (1) dwelling unit per parcel shall be leased, subleased, rented or sub-rented at any given time. All lodging is to be exclusively within the dwelling unit and not in a recreational vehicle, camper, or tent.

B. Only one permit for one short term rental operation may be granted per applicant.

C. Local Contact Person:

1. Each owner of a Short Term Rental must designate a local contact person who has access and authority to assume management of the unit and take remedial measures.

2. The local contact person must be available twenty-four (24) hours a day during the rental period and be within forty-five (45) minutes travel time of the property (or portion thereof) used for a Short Term Rental.

3. The Township will provide the phone number of the local contact to all neighbors within a three hundred (300) foot radius of the subject property boundaries.

4. An owner meeting the requirements of subsections (1) through (3) above may designate themselves as the local contact person.

D. The occupancy of the Short Term Rental property does not exceed the lesser of:

1. For homes on a septic system, the maximum occupancy for Short Term Rentals shall be equal to the design load of the septic system, although under no circumstances shall the maximum number of people be greater than ten (10) persons (but not including pre-school aged children).

2. Two (2) persons per bedroom (not including pre-school aged children).

3. Ten (10) persons (but not including pre-school aged children).

E. All parking associated with a Short Term Rental shall be out of the roadway and entirely on-site, in the garage, driveway or other improved area.

F. Cultural events, special events, outdoor events, lawn parties, weddings or similar activities are not allowed on the site for more than the number of permitted occupants.

G. The Animal Control Enforcement Ordinance of Leelanau County shall have authority over pets. Pets shall be secured on the property or on a leash at all times. Dogs shall not be allowed to whine, yelp, bark, or howl for a period of ten minutes or longer, as per the Animal Control Enforcement Ordinance of Leelanau County.

H. Fireworks of any kind are not allowed on rental property except on the day before, day of and day after a national holiday:

- New Year's Day
- Martin Luther King, Jr. Day
- Washington's Birthday
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veterans Day
- Thanksgiving Day
- Christmas Day

I. No person shall start or maintain a fire except within provided devices or locations. Fires shall not be left unattended and must be fully extinguished. Only clean, dry wood may be burned.

J. Provisions for trash disposal must be provided. Trash must be contained in properly sealed receptacles. There must be no overflow that will be attractive to vermin.

K. The owner shall maintain a properly functioning septic system or sewer connection per the Benzie/Leelanau District Health Department standards.

L. Noise during quiet hours must be limited to that which does not disturb the quiet, comfort or repose of a reasonable person of normal sensitivities. Quiet hours shall be from 10:00 PM to 8:00 AM. The Suttons Bay Township Noise Ordinance (Ordinance No. 2 of 2010) shall also apply.

M. All advertising handouts, flyers, or any other information provided for Short Term Rentals shall conform to the approved occupancy limits and other standards. Availability of the rental unit to the public shall not be advertised on site.

N. The owner shall post these standards in a prominent place within the Short Term Rental and include them as part of all rental agreements.

O. Maintain a log, to be made available for inspection by the Zoning Administrator at any time from 8:00 AM to 5:00 PM weekdays. Such log shall include names of all Short Term Rental guests, their addresses and dates of stay.

Section 5: Owner Responsibilities

A. The owner must insure the required standards are met.

B. The owner must use best efforts to assure that the occupants or guests of the Short Term Rental do not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of this ordinance or any other local or state law pertaining to noise or disorderly conduct by notifying the occupants of the rules regarding Short Term Rentals and taking appropriate action to abate the violative conduct when notified that occupants are violating laws regarding their occupancy. It is not intended that the owner, local agent, or contact person act as a peace officer or place himself or herself in harm's way.

C. The owner or local contact person must, upon notification that occupants or guests of his or her Short Term Rental have created unreasonable noise or disturbances, engaged in disorderly conduct or violated provisions of this ordinance, or state law pertaining to noise or disorderly conduct, promptly use best efforts to prevent a recurrence of such conduct by those occupants or guests.

Section 6: Short Term Rental Permit

A. Any dwelling rented for a total of two (2) or fewer weeks during a calendar year does not require a permit be issued pursuant to this Ordinance.

B. A separate permit is required for each Short Term Rental property.

C. The following application elements are required prior to receipt of a Short Term Rental Permit or permit renewal.

1. A fully completed and signed Short Term Rental Permit Application form provided by the Township including all the required supplemental documents.

2. A local contact available by phone twenty-four (24) hours a day, seven (7) days a week whenever the unit is utilized as a Short Term Rental.

3. Short Term Rental rules, if any, in addition to those required by this ordinance.

4. A floor plan of the rental unit including use description of each room and a site plan of the property.

5. Maximum number of occupants to be accommodated while in use as a Short Term Rental, which shall in no circumstances, be greater than ten (10) persons (not including pre-school aged children).

6. A copy of the recorded deed or land contract and a copy of any deed restrictions on the property.

7. Proof of a current home owner's insurance policy on the property.

D. A Short Term Rental Permit shall be issued by calendar year and shall be pro-rated for the months remaining in the current year. All Permits shall expire at the end of the calendar year and must be renewed each year.

Section 7: Violation and Administrative Penalties

A. Any of the following conduct is a violation of the Short Term Rental ordinance:

1. Any advertising or leasing of a short term rental without first having obtained a short term rental permit.

2. The permit holder has failed to comply with the standard conditions specified in the Short Term Rental Standards section of this ordinance.

3. The permit holder has failed to comply with the owner's responsibilities specified in the Owner Responsibilities section of this ordinance

4. The permit holder has violated the provisions of this ordinance.

5. Any false or misleading information supplied in the application process.

B. The penalties for violations specified in subsection (A) above are as follows:

1. For a first violation within any calendar year, the penalty is a warning notice of violation which may be verbal and/or written.

2. A second violation within the same calendar year shall be subject to a municipal civil infraction punishable by a fine of not less than two hundred fifty (250) dollars nor more than five hundred (500) dollars. All owners, regardless of their interest in the property, may be responsible for the civil infraction. The Township Zoning Administrator and other officials designated by the Township Board are hereby designated as the authorized officials to issue municipal civil infraction citations directing alleged violators of this ordinance to appear in court. Each day the violation remains may be a separate offense.

3. A third violation within the same calendar year shall be subject to a municipal civil infraction punishable by a fine of not less than twice the amount of any previous fine but not more than five hundred (500) dollars, and the permit shall be revoked. An owner may reapply for a permit no sooner than twelve (12) months after revocation of a permit.

4. If there are one or more violations each year during any three (3) consecutive year period, the permit may be revoked. An owner may appeal a decision to revoke a permit to the Suttons Bay Township Board.

C. A violation of this ordinance shall be a nuisance per se. The Township shall have the right to commence a civil action to enforce compliance with this ordinance.

D. The Suttons Bay Township Zoning Administrator is authorized to issue all permits under this Ordinance and is also authorized to issue civil infraction violation notices and/or civil infraction citations for violations of this Ordinance.

Section 8: Private Actions to Enforce

A. Any person who has suffered, or alleges to have suffered, damage to person or property for a violation of this ordinance may seek relief in a court of competent jurisdiction against the owner.

B. Nothing in this ordinance creates any right of action against the township or any of its officers, employees, or agents. The sole purpose and intent of this section is to create a right of action between private parties, entities, and interests, which are or may be impacted or affected by various aspects of Short Term Rentals within the township.

Attachment “E”

Sample Short Term Rental Ordinance — drafted by Township Attorney Grier.

SHORT-TERM RENTAL ORDINANCE Ordinance No. ___ of 2016

AN ORDINANCE PURSUANT TO PUBLIC ACT 246 OF 1945, MCL 41.181 AS AMENDED, TO PERMIT AND REGULATE SHORT-TERM RESIDENTIAL RENTALS WITHIN THE TOWNSHIP, TO INSURE THE PUBLIC HEALTH, SAFETY AND WELFARE, AND TO PROVIDE PENALTIES FOR VIOLATIONS THEREOF, THE ORDAINS:

Kasson Township Ordains:

Section 1. Definitions.

As used in this Ordinance,

"Bedroom" means a separate room or space used or intended to be used for sleeping purposes.

"Dwelling unit" means a single family residence, residential condominium unit, duplex, or single apartment in a commercial building, providing complete, independent living facilities for one or more persons, including permanent provisions for living, eating, cooking, sanitation, and a separate bedroom(s) for sleeping.

"Occupancy" means the purpose for which a dwelling unit or portion thereof is utilized or occupied.

"Occupant" means any individual living or sleeping in a dwelling unit, or having possession of a space within a dwelling unit.

"Operator" means any person who owns or has charge, care or control of a dwelling unit which is offered for rent on a short term basis.

"Person" means an individual, firm, corporation, association, partnership, limited liability company, or other legal entity.

"Short-Term Rental" means to permit, provide for, or offer possession or occupancy of a dwelling unit - in which the owner does not then reside for a period of less than thirty (30) days to a person who is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license.

“Sleeping Room” means space, other than a bedroom, used for overnight sleeping purposes.

“Township” means the Kasson Township.

Section 2. Short-Term Rental Permit Required.

No person shall rent or cause to be rented a dwelling unit within the Township for a period less than thirty (30) days without first obtaining a Permit from the Township pursuant to the requirements of this Ordinance. This requirement applies to all short-term rental properties in the Township including those properties granted zoning permits prior to the adoption of this ordinance.

Section 3. Application and Fee Requirements.

An operator seeking a license under this Ordinance shall submit a complete application to the Administrative Coordinator, or its designee and pay the required fee, not less than \$50 annually, which shall be determined from time to time by resolution of the Township Board. The application shall include proof of

ownership of, or the legal right to rent, a dwelling unit, and all information reasonably necessary for the Administrative Coordinator, or its designee, to determine whether the applicable standards for approval have been met. The Administrative Coordinator or its designee may approve the form of, and content of, the application.

Section 4. Standards for Approval.

The Administrative Coordinator or its designee shall approve, or approve with conditions, an application for a short-term rental Permit only upon a finding that the application complies with all of the following applicable standards:

1. **Bedrooms and Sleeping Rooms. Maximum Overnight Occupancy.** Maximum overnight occupancy for short-term rentals shall be up to a maximum of two (2) persons per sleeping room or bedroom, plus two (2) additional persons per property, up to a maximum of twelve (12) persons, excluding children under three (3) years of age.
2. **Maximum Bedrooms or Sleeping Rooms.** There shall be a maximum of five (5) bedrooms or sleeping rooms.
3. **Per Parcel Limit on Number of Residences or Structures.** Only one short-term rental is allowed for one single family residence, one residential condominium, one duplex, or one apartment per tax parcel. Accessory structures on the same parcel shall not be leased, subleased, rented or sub-rented separately from the main dwelling.
4. **Parking.** There shall be at least one (1) off-street parking space for a rental with up to two (2) bedrooms or sleeping rooms; at least two (2) off-street parking spaces for a three (3) or four (4) bedroom short-term rental property. Larger short-term rental properties must demonstrate adequate parking with a minimum of three (3) spaces.
5. **No Room Rentals.** In no event shall an individual room in a short-term rental unit be rented to a person, family or other group of persons. Nor shall a short-term renter sublet a unit.
6. **Boat Storage and recreational storage.** There shall be designated locations for boats, trailers, bikes and personal watercraft.
7. **Fire Safety and Emergency Access.**
 - A. **Smoke Alarms.** Smoke detectors/alarms shall be installed in each rental unit. All smoke detectors/alarms shall be UL (Underwriters Laboratories, Inc.) approved, and shall be installed in accordance with the provisions of the Michigan Residential Code and the household fire warning equipment provisions of the National Fire Protection Association (NFPA) standards Section 72.A. Smoke detectors/alarms shall be installed in the following locations:
 - (1) In each bedroom or sleeping room.
 - (2) Outside of each separate sleeping area in the immediate vicinity of the bedrooms.
 - (3) On each additional story of the rental unit, including basements and cellars but not including crawl spaces and uninhabitable attics. In rental units with split levels and without an intervening door between the adjacent levels, a smoke detector/alarm installed on the upper level shall suffice for the adjacent level provided that the lower level is less than one full story below the upper level.
 - B. **Bedroom and Sleeping Room Emergency Window Access**
 - (1) Every bedroom and sleeping room shall contain a window meeting current fire code and/or building code standards for ingress and egress in an emergency. Alternatively, this requirement can be met by a door in the bedroom or sleeping room that leads directly outside.

- (2) No bedroom or sleeping room shall be located in a basement unless the room contains a window meeting ingress and egress emergency standards, or by a door in the room that leads directly outside.
- C. **Fire Extinguishers.** A fire extinguisher (minimum size @A10BC) shall be mounted at an exit door located on every floor level including the basement.
8. **Designated Representative.** The operator shall identify a designated representative as a contact person. The operator shall provide an address and a current 24-hour working phone number of the designated representative, who shall be located within 25 miles of the short-term rental property. The designated representative shall be reachable within one hour of the time that a telephone call is made. The operator shall further update the Township whenever there has been a change in the designated representative.
9. **Rental Agreement and Insurance.** As part of the application, at minimum, along with other information, the following shall be provided:
- A. Copy of Liability Insurance including coverage for short-term rentals.
 - B. Copy of proposed Rental Agreement.
 - C. Copy of proposed Rules for renters reflective of the requirements of this Ordinance.
 - D. Copy of other documents the Administrative Coordinator may determine are necessary from time to time as part of the application.
10. **Certification by Applicant.** As part of the application, the applicant operator shall certify that the foregoing standards have been met, and include a photograph and site plan of the dwelling unit where the short-term rental shall occur.

Section 5. Operational Standards.

1. **Maximum Number of Guests and Visitors.** The maximum number of total guests and visitors allowed at any one time in a single short-term rental shall not exceed the maximum overnight occupancy plus six (6) additional persons per property, or eighteen (18) persons, whichever is less, excluding children under three (3) years of age.
2. **Quiet Hours and Noise.**
 - A. Quiet hours are imposed between 11 p.m. and 8 a.m. There shall be no noise levels from loud conversation or other outdoor activity disruptive to neighbors between the hours of 11 p.m. and 8 a.m.
 - B. Music played outdoors or indoors between 8 a.m. and 11 p.m. must not disrupt the essential residential character of the general vicinity. Any music or other sounds from electronic devices, yard machinery, other mechanical devices and vehicles and shall be harmonious with the normal activities of the neighborhood.
 - C. No person shall unreasonably make or cause to be made any noise disturbance, or otherwise cause noise contrary to a Township noise or nuisance ordinance.
3. **Fireworks.** Fireworks are prohibited at all times.\
4. **Outdoor burning.** Outdoor burning is prohibited at all times, except for grilling and contained fire pits. However, fires in fire pits must be terminated by 10 p.m.
5. **Tents, Yurts and RVs Prohibited.** Tents, Yurts and RVs are prohibited as part of a short-term rental.
6. **Boat, Bike Storage.** Boats, trailers, bikes and other recreational devices must be stored in designated locations on the property.
7. **Posting Restrictions.** All Restrictions shall be posted in a prominent place within the interior of the dwelling boldly. All advertising handouts, flyers, other information and the short –term rental agreement must contain the foregoing standards and rules and include a signed acknowledgment by

the renter to abide by the rules.

8. **Trash Pick-Up.** The operator must provide for trash pick-up at the property consistent with the neighborhood practice.

Section 6. Duration of Permit; Re-application.

A Permit issued under this Ordinance shall remain in effect for three years until the happening of one or more of the following events:

1. The dwelling unit is physically altered in such a way that the occupancy potential is increased or decreased.
2. There is a change in the operator.
3. This Ordinance is amended to alter the standards for approval contained in Section 4.
4. If a Permit is no longer valid, because of any of the foregoing conditions, the operator applicant shall re-apply based upon the application standards in this Ordinance.

Section 7. Additional Conditions.

The Administrative Coordinator or its designee may impose additional reasonable conditions on a Permit issued under this Ordinance which are reasonably necessary to ensure compliance with the standards for approval and operational standards. Any applicant dissatisfied with any additional standards may appeal to the Township Board within 10 days of the Administrative Coordinator's decision.

Section 8. Appeal of Denial

In the event an application is denied in whole or in part, the applicant operator may appeal the Administrative Coordinator or its designee's decision to the Township Board within 10 days of the decision.

Section 8. Nuisance

A violation of this Ordinance is hereby declared to be a public nuisance, a nuisance per se and is hereby further declared to be offensive to the public health, safety and welfare.

Section 9. Violations.

Any person who violates any provision of this Ordinance shall be responsible for a municipal civil infraction as defined in Public Act 12 of 1994, amending Public Act 236 of 1961, being Sections 600.101-600.9939 of Michigan Compiled Laws, and shall be subject to a fine of Five Hundred and 00/100 (\$500.00) Dollars. Each day this Ordinance is violated shall be considered a separate violation. In addition, a person in violation of this ordinance may be subject to appropriate injunctive orders issued by District Court Judges and Magistrates under the foregoing authority.

Section 10. Enforcement Officials.

The _____, and the Leelanau County Sheriff's Department are hereby designated as the authorized officials to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court.

Section 11. Civil Action

In addition to enforcing this Ordinance through the use of a municipal civil infraction proceeding, the Township may initiate proceedings in the Circuit Court to abate or eliminate the nuisance per se or any other violation of this Ordinance.

Section 12. Validity.

If any section, provision or clause of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any remaining portions or application of this Ordinance which can be given effect without the invalid portion or application.

Section 13. Revocation

In the event the operator has been shown to be responsible for two or more municipal civil infraction violations, the Permit shall be revoked for one year and re-application cannot occur until after the one year revocation period has expired.

Section 14. Effective Date.

This Ordinance shall become effective twenty (20) days after being published in a newspaper of general circulation within the Township.

Date of Council Approval: _____

Date of Publication: _____

Effective Date: _____

Attachment “F”

Letter from Township Attorney Tom Grier, Dated October 3, 2016, re: “Proposed Special Land Use Permit County Road 669 and 616 Property”. Letter found on the following page.

October 3, 2016

William M. Davison
Richard W. Ford
Kent E. Guberling
Michael J. Condon
Alan J. Couzore
Catherine D. Janski
Thomas A. Gibe

Tad Carter
Chairperson
Planning Commission
Mike Lanham
Zoning Administrator
Kasson Township
P.O. Box 62
Maple City, MI 49664

Of Counsel
Robert B. Curut, III
Keith L. Leck

Harry T. Running
(913.1993)

William L. Wise
(921-2014)

Miles C. Guberling, PLC
(530-2015)

Re: Proposed Special Land Use Permit
County Road 669 and 616 Property

Dear Tad and Mike,

This letter addresses the question involving the proposed special land use for a kayak delivery business for property located at the corner of County Road 669 and County Road 616.

PLEASE REPLY TO:

TRAVEMER CITY

124 E. State Street
P.O. Box 486
Traverse City, MI
49681-3686
Ph. 231.946.1780
Fax 231.946.8817

Background

There is a 2.7-acre property located at the northeast corner of County Road 669 and County Road 616. It is my understanding that the property was created in 1992 before the 1997 Zoning Ordinance ("ZO") was adopted. The property lies within the Forested ("FR") zoning district which has a five-acre minimum lot size. See ZO Section 4.7.3.

CHARLEVOIX / PETOSKEY*

201 State Street
Suite 200
Charlevoix, MI 49723
Ph. 231.547.8990

Under the prior 1977 Zoning Ordinance, the corner of 669 and 616 was zoned agricultural, and had a two-acre minimum lot size. Because the lot consisted of 2.7 acres, and was created before the 1997 ZO took effect, it was considered a legal non-conforming lot under the 1997 ZO.

FRANKFORT*

P.O. Box 272
Frankfort, MI 49635

The property owner has appeared before the Planning Commission and has asked whether he can operate a kayak delivery business from the lot. Namely, kayaks would be stored at the lot, and in addition, persons could either park a vehicle at the property and rent kayaks from there, or kayaks could be delivered to another location.

GAYLORD*

440 W. Main Street
Suite B
Gaylord, MI 49735
Ph. 989.617.1000

ZO Section 4.7.1 describes the permitted uses in the FR District, and ZO Section 4.7.2 describes the special land uses ("SLU"). A kayak business is not a permitted use, but could qualify as a SLU as either a "private outdoor recreational facility" or a similar SLU under the "catch all" category as described in ZO Section 7.15.

* By Appointment Only

Issue

Can the lot qualify for a kayak business SLU despite the fact that the lot does not meet the minimum lot size for the FR zoning district?

Answer

In my opinion, the lot cannot qualify for the SLU under the application of the current Zoning Ordinance. With respect to nonconforming uses, ZO Section 3.2 allows residential nonconforming lots to be used for *residential* purposes. *There is no similar provision allowing the use of nonconforming lots for nonresidential purposes.*

As an option, however, I believe that the property owner could seek a *variance* from the lot area requirement before the Zoning Board of Appeals ("ZBA") and then seek a SLU permit. The ZBA would consider the variance request under the standards in ZO Section 11.3. These standards include a determination of whether the variance is in the public interest and whether or not it would have an adverse impact on the value of properties in the immediate vicinity. These standards are similar to the SLU standards in Chapter 7.

The variance process could consider, as a major factor, the character of the surrounding properties. For example, if the 669-616 intersection area has taken on a residential character with homes relatively close to each other, then it may not be appropriate to grant the variance. Where there are other businesses in the area, or large vacant lots, etc., then the variance may be appropriate, even deserved, as the property may not be proper for residential use.

Discussion

A number of appellate cases have been reviewed on this question nationwide, as there is no clear Michigan precedent that I could identify. The cases reviewed also draw different conclusions based upon the specific language of each zoning ordinance being applied.

With this approach in mind, the following sections of the Kasson Township ZO deserve review: ZO Section 2.2 defines a "lot":

Lot is a parcel of land separated from other parcels of land by description on a recorded plat or by metes and bounds description, including a condominium unit site in a site condominium subdivision, having frontage upon a public or private street and having sufficient size to comply with the requirements of the Ordinance. [Emphasis added]

Z.O. Section 3.2 describes how nonconforming lots are handled:

Any residential lot or parcel created and recorded prior to the effective date of this Ordinance may be used for residential purposes even though the lot does not comply with the dimensional requirements of this Ordinance provided . . . [Emphasis added]

My interpretation of ZO Section 3.2 is that if there is nonconforming lot in a residential district (FR is residential because single family dwellings are allowed as a permitted use), then that lot will be able to accommodate one single family home even though it is undersized.

ZO Section 3.2 is *silent, however, with respect to whether non-residential uses*, such as a kayak business, would be permitted on an undersized lot.

In my view, because ZO Section 3.2 allows a single family residence, but is silent with respect to all other uses, this implies that *non-residential permitted or special land uses are not permitted on an undersized lot*. This appears consistent with a policy designed to avoid nuisances by not allowing certain uses on undersized lots - i.e. while a pig farm may be OK on a five-acre lot in the agricultural district, it is not OK on a smaller non-conforming two-acre lot.

This interpretation is also consistent with at least one case - from the state of Washington. In *Watson v. Snohomish County*, Docket No.53531-0-1, April 12, 2010, a Washington state court of appeals addressed facts similar to the facts in Kasson. Key passages are repeated below:

Under Snohomish County general development standards, all lots must conform to the dimensional requirements for the zone in which they are located unless there is an exception elsewhere in the code. The code does make an exception allowing single family residences to be built on substandard lots in the R-5 zone under certain conditions, but there is no exception for duplexes. The fact that duplexes are a permitted use on legal nonconforming lots in the R-5 zone does not modify the *dimensional* requirements to which lots must conform in order to be eligible for development. We affirm the trial court's ruling on declaratory judgment that duplexes are not allowed in the R-5 zone on lots smaller than 200,000 square feet. . . . [underlined emphasis added]

Specifically, the fact that duplexes are a permitted use in the R-5 zone does not modify the requirement that a lot must be at least 200,000 square feet in order to have a duplex built upon it. . . .

In short, the requirements of the Bulk Matrix are nowhere modified to permit development of duplexes on substandard lots. The code is not ambiguous. The only reasonable interpretation of the code is that it prohibits development of duplexes on substandard lots.

In summary, under Kasson ZO Section 3.2, the kayak business could not operate as a SLU on a parcel less than five acres in the FR district.

The applicant retains, however, the option to seek a variance from the lot size requirement before applying for a SLU permit.

Please contact me with any questions or concerns.

Sincerely,



Thomas A. Grier

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