

## **Greenvale Township Planning Commission Meeting Minutes Thursday, April 13, 2023**

**Present:** Ken Malecha (Chair); Commissioners Mark Legvold, Scott Norkunas, Joyce Moore, Victor Volkert; Supervisor Charles Anderson, Board Liaison and Jane Dilley, Town Clerk

**Others Present:** Bruce Paulson, Steve Rasmussen, Andy Anderson, Terry Mulligan, Jessica Bodnar, Ed Bodnar, Brian & Rita Krukow, Gregory Langer, Tom Wirtzfeld, Rusty Kluver, Linus Langer, Mary Collins, Perry Collins, Ed Treinen, Randy Kubes, Patrick Rose, Carolyn Fott, Dean Odette, Dave & Cindy Roehl

Chairman Malecha asked the audience to join in the Pledge of Allegiance at 7:00pm.

**Guests:** Township Attorney, Mike Couri was present.

**Opening of the Meeting:** Malecha stated the Planning Commission (“PC”) is an appointed body that makes recommendations on planning and zoning issues to the Town Board. These recommendations are advisory only. The elected Town Board members make the final decisions on matters brought before the PC. The PC will act tonight on matters received by the Zoning Administrator by noon ten (10) business days before the meeting tonight. Questions on submissions after the deadline can be addressed under New Business; they will be placed on the following month’s agenda. The audience was reminded this is a public meeting, not a Public Hearing. Audience comments are limited to topics being discussed. Malecha reminded the audience to sign the attendance sheet and silence their electronic devices.

**Agenda:** Malecha asked if there were any changes to the agenda. Legvold made a motion to approve the agenda, Malecha seconded. Motion carried 5 – 0.

**Minutes:** The March 9, 2023 PC minutes were reviewed. Malecha requested an addition to the minutes to reflect that when the last application for Nonconforming Land Uses was reviewed, a full recap of the monies would be completed. Legvold made a motion to approve the minutes, seconded by Moore. Motion carried 4 – 0 (Norkunas did not vote, as he was not at the March 9 meeting).

**Citizen Comments:** Jessica Bodnar and other residents on 300<sup>th</sup> St W (Ed Bodnar, Edward Hayford, Nate & Rita Nordrum and Brian & Rita Krukow) expressed concern about the proposed subdivision and clustering of three homes to the north of them on

property owned by Rusty Kluver. Rusty approached the neighbors about a year ago and was very straight forward about his plans for that property, and they appreciate that very much. However, they have a number of concerns. One concern is the impact on ground water and chemical leeching with so many homes in one area – additional septic systems and wells and another concern is density. There are already 7 homes in the NW corner of 300<sup>th</sup> St W and Foliage Ave. The group requested the PC not approve the subdivision and clustering of three additional homes requested by Kluver.

**Board Liaison Report:** Charles Anderson reported that we continue to focus on processing applications under the Nonconforming Land Use (“safe harbor”) ordinance. Several businesses have not submitted applications. Those businesses that have not been approved as legal nonconforming status will face enforcement remedies in the event a complaint is received.

**Building Permits:** New home construction for Doug and Carole Wilson, Ryan Wilson was present on their behalf. The Wilsons have submitted a building permit and sketch for the placement of a house on a parcel on which there is a building entitlement. A house number has been assigned. Malecha recommended approval to forward to the Board, seconded by Norkunas. Motion carried 5 – 0.

New home construction for Terry Mulligan. A parcel which has a building entitlement is being split off of an existing parcel. Mulligan has a survey and is awaiting a split agreement. Wants to know it will be approved before he incurs costs. Approval is recommended subject to verification the survey and legal description match. An easement to the new parcel is also required. Moore made a motion to approve, seconded by Volkert. Motion carried 5 – 0.

### **Zoning and Other Land Use:**

Applications received for consideration under the Nonconforming Land Use Ordinance were next on the agenda.

1. The first application was from 9-M Corp for PID 16-02300-28-030. Ken Malecha is representing 9-M Corp and turned the meeting over to Vice Chairman Legvold for the review of this application. The land usage is indoor and outdoor storage of boats, campers and vehicles. Norkunas asked if there were questions from the public. Linus Langer got up to speak. This is the former LaFontaine property which he considers to be a blighted property which was vacant when 9-M Corp bought it. Langer is concerned about sheds on the property being repurposed as illegally occupied rental property and adding voters in the township. Langer then commented on how requests for data were handled in the past and the data request procedure the Board recently put in place that involves a fee for



obtaining requested documents. Clerk Dilley pointed out the Public Packet was available in the meeting room. Norkunas asked if Langer had a question that related to the application being reviewed. Legvold rephrased Langer's concerns – first, adding illegal renters to the property and second, the data request procedures. Malecha said when 9-M Corp bought the property, the main house was empty. Two apartments were rented at the time of the purchase. One renter has been there for 2.5 years, the other for 8 years. Jeff Bohlen lived there in past years. Malecha said he believes the rentals to be legal, as they've been in existence for many years, and he is before the Planning Commission to seek legal nonconforming land use status on for indoor and outdoor storage as noted on his application. Legvold and Couri had a brief discussion of precedence vs legality on the rentals – this is a topic for the Board to address. There were no further comments from the audience. Norkunas asked how many units were stored outside – 3 vehicles, 2 campers, 1 motor home and 2 trailers. This represents the maximum number of items stored outdoors. Number of employees – 3. Legvold asked when Malecha started the storage business. It started when Malecha bought the property – July/August 2022. Moore made a motion to recommend approval of the application from 9-M Corp PID 16-02300-28-030 as a legal nonconforming land use and to forward it to the Board of Supervisors. The motion was seconded by Volkert. The motion carried – 4 – 0. Malecha did not participate in the vote.

2. The application from Ed Treinen was reviewed. The PID is 16-00300-01-012 and the land is machining of refractory materials and woodworking. There were no questions from the audience. Norkunas asked about any items stored outside – one trailer. Legvold asked if the materials used were considered hazardous. The materials contain some elements that are hazardous – but it is confined to the shop area, no danger to the public. Malecha made a motion to recommend approval of the application from Treinen as a legal nonconforming land use and to forward it to the Board of Supervisors. seconded. Motion carried 5 – 0.
3. The application from Steve Rasmussen was reviewed. The land use is service and restoration of vintage motor homes and outside storage on PID 16-02000-75-014. audience if there were any questions. There were none. There are roughly 25 vehicles stored outside. Steve is the only employee. There are no set hours. Legvold made a motion to recommend approval of the application from Rasmussen for PID 16-02000-75-014 as a legal nonconforming land use and to forward it to the Board of Supervisors. Moore seconded. Motion carried 5 – 0.

Next was Pat Rose's request for confirmation of a building entitlement on PID 16-00400-51-021. Pat was accompanied by his realtor, Randy Kubes. Pat provided a copy of the title work that was done when he purchased the property. There is no notation that a building right had been transferred off the property. To the north of Pat's parcel is the original 40 acres belonging to Schilling, house built in 1999. This 40 acre parcel was split, with the north 20 acres going to Carlson. House was built in 2000 and there is no indication where the Carlson building entitlement originated. Malecha reviewed minutes and old permit books. The Building Rights Entitlement binder (aka "the green book") shows a manual notation of "T" indicating a transfer on the parcel Pat Rose owns. Legvold asked about the February 19, 2015 meeting minutes. Clerk Dilley read from the minutes posted on the township website: *"Clerk asked if Board wanted minutes /recap from building site study open house. Board indicated a short summary would suffice."* Greg Langer offered a historical perspective. During the buildable rights project, the township hosted Special Meetings where each of the 30 township sections were reviewed. Meetings were open to the public. If we could locate the meeting where this section was discussed, it may provide some insight. These meetings were held in 2015 and 2016. Clerk Dilley located the September 24, 2015 minutes on the township website and read the following excerpt: *"Section 4: Langer has a concern. There were many requests on the Vang property. In 1996 that was part of the Juveland 80. In 2000 Carlsons built a home and in 1999 Shillings built a home. 7 sites on map then can/should be reduced to 6 sites. Recent sale was priced as bare farmland. Lots of people inquired and didn't buy because of lack of building right. Eric offered flags/questions are reasonable notes for our maps. Take building right off and replace with a "?". Roehl and Fredrickson were happy with that. Roehl asked again about Vang property. Roehl asked on section 3 on Kuyper's. NW Q of NW Q change to "?"* Malecha again stated that no one can demonstrate or show documentation that a building right was transferred off of the parcel owned by Pat Rose. Couri asked if the "green book" was ever approved by the Town Board – are these records now the township's determination? Malecha replied the green book has not been maintained. When Mulligan asked for a review of his properties, there were no notations in the green book. Mulligan had done a sale of property, a transfer of 5 building rights and 2 subdivisions – none of which were noted in the green book. Couri asked what the notation is for Pat Roses's parcel in the green book. The parcel is marked with a "T." How did the parcel go from a "?" in the minutes to a "T" in the green book? There is no documentation. Malecha said the green book is a good reference – to a point. Malecha offered how a recent transaction was handled as an example. When St. Olaf College sold a 5-acre parcel to the City of Northfield with a subdivision agreement, Malecha recorded the information in the green book and established a file for the file room. A lot of these properties don't have a file. Legvold asked if it was possible there was a file in the file room related to this property that would explain what became of the building



right. Malecha said no such file has been found. Couri spoke of an attorney's mindset being in front of a judge – who will look at this – is there a record in the green book that has no support. When the court encounters an ambiguity, they generally favor the landowner. Therefore, it is on the township to prove there is no building right. If we can't demonstrate where the building right went, and when, that's a problem. Malecha made a motion the PC approve Pat Rose's request and have the Board authorize the Clerk to issue a letter to Pat confirming the existence of a building right. The "T" in the green book is not being recognized as there is no supporting documentation to reflect when and where the building right was transferred away from Pat Rose's parcel. Norkunas seconded for purposes of discussion. Norkunas asked Clerk Dilley to re-read the September 24, 2015 minutes relating to Section 4. Couri asked when the last time all three parcels were under common ownership. Conclusion was 1998. In 1999, the minutes that address the Schilling building permit questioned the status of a subdivision agreement. This topic was not addressed in any future minutes, and no subdivision agreement has been found. Malecha asked if PC members had any questions. Norkunas asked if they needed an answer tonight. Kubes said they do want an answer tonight. Malecha called for a vote. Volkert – yes, Norkunas – yes, Moore – yes, Legvold – no, Malecha – yes. Motion carried 4 – 1. Legvold asked to elaborate on his vote; it was based on the existing notation in the green book that the building right was transferred off the property. Couri suggested the PC members who voted yes indicate the reason(s) behind their vote. Malecha said he has found many inconsistencies in the green book; Pat and Randy supplied a lot of documentation including documents recorded at the County, none of which show a building right being transferred away. He added the doubt raised by the minutes referring to the building right as "?" and the green book showing a "T." Moore believes Pat and Randy did their due diligence, the green book is unreliable, and we need something more solid as a reference guide. Norkunas echoed Malecha's and Moore's comments. Volkert said the common assumption is the building right for the Carlson house came from Pat Rose's parcel, but he sees nothing that says that.

Next was Rusty Kluver's request. He thanked his neighbors for speaking up and reminded them the woods is for sale if anyone wants to buy that property. Tonight, he is requesting approval to have the split done and transfer 3 building rights in total to the new parcels – one building entitlement per parcel. Moore commented that she would abstain from voting and participating in the discussion. Her property borders Kluver's property. Couri suggested a review of the subdivision and cluster agreement – in this case Section 3 ("the township agrees to issue a building permit") will be stricken from the agreement as this is not part of what Kluver is requesting tonight. Volkert added that Nancy Kluver should also sign the subdivision agreement as her name is on the



parcel giving up the building rights. An additional section should be added to confirm that no building permits are being issued. Malecha made a motion that recommends the Board approve the subdivision agreement (items 1, 2, 4, 5 and the addition of a to be drafted item 6) and the transfer of 3 building rights from PID 16-010000-75-020 in section 10 onto the new lots described as B, C and D, also in section 10 per the survey done by Bohlen Surveying. Norkunas seconded the motion for discussion purposes. Norkunas brought up the provisions of the Comprehensive Plan – should this be addressed now? Couri said the township’s ordinances should mirror the Comp Plan. Malecha and Norkunas said they do not as of now. Couri noted in the metro area, the Comp Plan trumps local zoning ordinances and likely trumps a subdivision ordinance. Outside the metro area, local zoning trumps the Comp Plan. Norkunas stated the Comp Plan contains language limiting 4 homes per quarter section, but also allows clustering in order to maximize agricultural land availability. There is an extensive process to follow if we need to make changes to the Comp Plan. The PC is an advisory group to the Board, but before the Board makes its decision about this, Couri recommends involving a planner to make certain this is allowed by the Comp Plan, the zoning ordinances and subdivision ordinance as they exist now. Malecha amended the motion in its entirety to approve the subdivision request on PID 16-010000-75-020 for Robert and Nancy Kliver to complete a subdivision agreement based upon the survey they presented from Bohlen Surveying to create three (3) parcels of record of which the subdivision agreement needs to match the legal descriptions; furthermore, this is subject to the subdivision and cluster application that items 1, 2, 4 and 5 will govern, and item 6 township attorney will draft the new parcels are not building permissible at this time under current zoning; and further, an opinion will be requested of the township planner on the qualification this application based on township zoning ordinances and the Comprehensive Plan. Norkunas seconded. Volkert said he would abstain from voting as he participated in transferring building rights when the Ohmanns owned the land. Malecha called for a vote. Motion carried 3 – 0.

**New Business:** OTC report. A report of the Over the Counter permits processed in the last calendar quarter was reviewed. No action to be taken.

The City of Northfield has submitted to Greenvale Township two proposed annexation agreements. One parcel in the proposed annexation is a 37 acre portion of Hauberg Woods, the other is a five acre parcel near the hospital where a water tower is being proposed. The Board sent this to the PC to review. The Board also requested Township Attorney Couri review the annexation agreements and give us an opinion. His opinion was shared with the PC. Both parcels are already owned by the City of Northfield and are adjacent to properties already in the City. The City could simply annex these

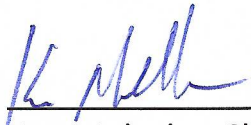
properties via ordinance. This annexation is being done via a joint agreement. Couri recommends participating in the annexation. No motion by the PC is necessary.

**Old Business:**


Malecha asked for a motion to adjourn. Moore so moved, seconded by Volkert .  
Motion carried 5 – 0.

APPROVED – May 11, 2023

Prepared by:



Ken Malecha, Chair



Jane Dilley, Town Clerk