

**Greenvale Township Planning Commission
Meeting Minutes
Thursday, November 10, 2022**

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

Others Present: Mary Collins, Perry Collins, Donita Anderson, Maynard Bolton, Victoria Langer, Jim Larson, Dan Kelley, Gregory Langer, Alison Bartlett, Tom Wirtzfeld, Lisa Legvold, Andy Anderson, Dave & Deb Mittelstaedt, Dan Hron, Kurt Hembd, Terry Mulligan, Cindy & Dave Roehl, Steve Rasmussen, Skip Ruppe, Patti Christianson, Eric Christianson, Dean Odette, Jennifer Welbaum, Bruce Paulson, Joy Royle, Dan Stanton, Jerry Bolton, Jack Stanton, Mike McNamara, Jim Cihak, Buck Nelsen, Tom & Lori Robey, Linda Wasner, James & Carol Null, Mary & Linus Langer, Judi Malecha, Karl Bouvin, Carolyn Joyce, Nick Darling, Cindy Larson, Vickie Tyler, Alison Lea, Ron Welbaum, John Wedel, Carolyn Fott and Tony Rowan. (Many audience members left after the Public Hearing).

Chairman Malecha asked the audience to join in the Pledge of Allegiance at 7:30pm.

Opening of the Meeting: Malecha stated the Planning Commission (“PC”) is an advisory body that makes recommendations on planning and zoning issues to the Town Board. 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. Items received after that time 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: Chairman Malecha called the meeting to order at 7:30pm. Planner Steve Grittman was introduced and joined the PC at the meeting table. Malecha asked if there were any changes to the agenda, requesting an addition under 5c - a report from the Board Liaison. Volkert had a discussion with Ed Holt about a possible land split – this will be added to 7c – zoning and land use. Legvold moved to approve the agenda with these updates, Moore seconded. Motion carried 5 - 0.

Minutes: The October 13 Public Hearing minutes were reviewed. Legvold made a motion to approve the minutes, seconded by Norkunas. Motion carried 5 – 0. The October 13, 2022 PC minutes were also reviewed. There was an open item of who seconded a motion on page 3 of the draft. Norkunas said he seconded. Moore made a motion to approve the minutes with the addition, seconded by Volkert. Motion carried 5 – 0. Malecha thanked Dilley for the very good minutes.

Board Liaison Report: Charles Anderson praised the PC for getting a lot of work done on some tough issues. He shared that lifelong resident Herman Ohmann, Jr. had recently passed away. Vickie Tyler shared the funeral arrangements which will be held at Highview Christiana Lutheran Church.

Building Permits: none.

Zoning and Other Land Use: The Winter family presented a land split for 19.4 acres which Adam Winter will be purchasing from his father. A draft subdivision agreement was presented along with before and after surveys. A final version will be presented to the Board November 17, 2022. Malecha moved to approve the split, Volkert seconded. Motion carried 5 – 0.

Malecha said he had been approached by four families inquiring about their building rights. Two families have provided copies of documents prepared by the township, or by an attorney and approved by the township – all of which have been recorded by the County. Malecha checked the Greenvale Township Buildable Site Information and Activity Records (aka the “Green Book”) and neither set of building rights were written into the records. Malecha entered notations for both families: John and Dana Kuyper and Terry Mulligan.

Volkert was in contact with Ed Holt, who was inquiring about a possible land split. He owns 19.5 acres along Highway 19 and would like to split off a 2-acre parcel that has a shed on it. The 2-acre piece would have an easement out to Hwy 19. Malecha said Holt would have to do a subdivision agreement, get a survey and present it to the PC. The current parcel has no building rights, nor will either surviving parcel.

New Business: Malecha asked if any of the PC members had comments about the Public Hearing. Volkert asked Planner Steve Grittman to elaborate on the term “nonconforming” as there were multiple questions about what this means. Grittman said the word nonconforming is a term used in zoning, meaning that it does not conform to current ordinances. Businesses would be nonconforming because the current ordinances do not contain a provision for business use. It is impossible for a business to

be compliant under current zoning, and those are categorized as “illegal nonconforming.” However, there are some businesses which already have the status of “legal nonconforming” which is a statutory right because they were in existence before zoning was put in place that does not authorize commercial operations. The legal nonconforming entities cannot expand but can be sold and allowed to run a similar operation with a similar scope. If a use is discontinued for a period of time, usually a year, then the status of legal nonconforming is extinguished.

The purpose of this ordinance is to deal with the many business operations where it would be too burdensome to determine if they were compliant at the time of establishment or had received County or State permits allowing them to operate or were led to believe they were legal by previous town boards. Rather than engage in these battles, we looked at a process where the businesses could come in and register with the township, and approved, obtain legal nonconforming status.

Malecha then asked to confirm if we undergo this process, then the township does have the authority to not allow further uses not already described in the existing code/ordinance. Gritman said if a newly formed business sought permission to operate the township could turn down that request. The safe harbor date distinguishes between newly established vs. existing businesses where a pattern of behavior existed to imply compliance. This ordinance does not give anyone the right to start up a new business. The safe harbor date is intended to allow time to process applications for existing businesses.

Norkunas said a large number of residents have heard or been told they are already compliant and this process only affects a small number of businesses. He once again brought up the example of a contractor who uses a trailer in their business, they come home at night and leave that trailer parked in their yard. Gritman confirmed the township’s ordinances do not allow this, and that business is therefore not in compliance. Legvold added that businesses do not know if they are compliant. No one has made an official declaration about specific businesses in writing about whether they are compliant or not. Is there a process whereby a business can get a ruling on whether they are compliant or not?

Malecha asked Gritman to go through the “red line” changes that were made to the ordinance since the last meeting. There was a question about the effective date of the ordinance. If the PC recommends to the Board to enact this ordinance, and the Board does so, the ordinance becomes effective upon publication in the township’s approved newspaper. Print editions of the Northfield News are published on Wednesdays, with a submission deadline of the previous Friday.

Grittmann talked about the information a business owner would need to provide in the application. One version limited the description to the Property Identification Number (PID). A later version expanded that to include a requirement to include the dimensions of buildings used in the business, number and type of vehicles used, square footage of the operation. Legvold asked for clarification of the type of "or other documentation" a business owner can provide to show where their business boundaries are. Grittmann described suitable options to be a survey, a GIS snapshot or if the owner had their own aerial photography. Legvold was not comfortable with the Board members being able to determine what kind of documentation needs to be provided when two of them will be submitting their own applications.

Businesses will have 120 days from the effective date of the ordinance to submit applications to the PC. Applications could be reviewed beyond that date due to volume of applications or requests from the PC for additional information from an applicant.

The term "health, safety and welfare" of residents is included in the ordinance. The term "welfare" gives pause to some municipalities, wondering what it is they are regulating. The term was included because it is a term of art in land use law.

The State statutory regulations referencing legal nonconforming status are incorporated into this draft ordinance. The total regulation is much longer as it contains information about shoreline and floodplain locations. Use of aerial maps in the application process will allow the PC to see if the proposed land use is close to streams, creeks or wetland areas.

The cost of the ordinance was discussed. There is concern the township will pay for an ordinance that does not provide a benefit to all residents of the township. Malecha mentioned one example where the township paid for the Lot of Record ordinance which does not provide a benefit to all residents. Malecha believes we can come up with a reasonable application fee that will cover the costs associated with this ordinance. Legvold is not concerned as much about how the fee is determined, but that it be laid out so it is known before applications are submitted. The ultimate fee will be determined by the Board, but the PC should make a recommendation to the Board.

Legvold went over his notes from the Public Hearing. A lot of people mentioned performance standards. The way it is written the PC either approves or denies an application and any conditions would be established by the Board. Legvold asks we give guidance to the Board. Legvold does not think it's a good idea to have the Board make this decision since at least of two Board members will likely submit applications.

Legvold is concerned that “safe harbor” status might imply businesses could ignore preexisting environmental guidelines.

Grittman describes this ordinance as a kind of middle ground. One option would be to amend the ordinances to allow commercial, which opens the door to many which may not be desirable.

Norkunas called attention to language in the application that should be deleted as it refers to additional fees may be assessed if the “escrow” balance is depleted. The township does not plan to operate an escrow with this ordinance. Volkert asked if refunds would be issued if too much money was collected or if applications are denied. Not intended. A small examination fee and then a subsequent permit fee approach was suggested. Too cumbersome.

Legvold observed there is no subsequent compliance review. Grittman said there is already language for enforcement in the existing ordinance, and the legal nonconforming land uses become subject to that provision. Legvold agrees there needs to be middle ground. Norkunas is against compliance reviews – it feels very invasive. If there is a complaint it should go through the Board to be handled. There are plenty of regulations already in place that have to be followed.

Malecha made a motion the PC approve the ordinance with the following changes and then forward it to the Board:

- Section 1g - ...within 120 days of the effective date (which is the publication date)
- Section 3 - ... within 120 days of the effective date
- Section 3e – add the Town Board may place conditions on the land use

One change was suggested for the application – to strike the provision that payment be made after approval. Instead, an application fee is required for the application to be considered. Remove any language relating to the depletion of an escrow fund. Volkert seconded the motion. Motion carried 5 – 0.

Old Business: Legvold reviewed the language change for the Planning Commission Policies and Procedures Manual relating to updating the Building Rights study when building rights are granted by the Town Board. The language has been given to the Clerk.

Future Meetings: The schedule submitted by the Clerk for all Planning Commission meetings was reviewed – all meetings will be on the second Thursday of the month.

Volkert made a motion to follow this schedule. Malecha seconded. Motion carried 5 – 0.

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

APPROVED – December 8, 2022

Prepared by:



Ken Malecha, Chair



Jane Dilley, Town Clerk