

**Greenvale Township Planning Commission  
Special Meeting Minutes  
Thursday, September 22, 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:** Steve Grittman, planner, Mary Collins, Perry Collins, Terry Mulligan, Lois Berg, Tate Stanton, Dan Stanton, Gregory Langer, Maynard Bolton, Jack Stanton, Tony Rowan, Bruce Paulson, Carolyn Fott, Jerry Gehler, Dan Chesky, Jerry Bolton, Bobbi Bolton, John Mohn, Mike McNamara, Kurt Hembd, Mary Langer, Erv Ulrich, Duane Fredrickson, Linus Langer, Karen Workman, David Legvold, Dave & Deb Middlestadt, Dave Middlestadt, Sarah Middlestadt, Andy Collins, Ron Welbaum, Nick Darling, Cindy Larson, Tom Wirtzfeld, Bev Wirtzfeld, Quincy Moore, Vickie Tyler, Steve Rasmussen, John & Dana Kuyper, Andy Anderson, Wayne Peterson and one illegible.

**Opening of the Meeting:**

Chairman Malecha called the meeting to order at 7:00pm with the Pledge of Allegiance. Malecha stated the Planning Commission ("PC") is an appointed body that makes recommendations on planning and zoning issues to the Town Board. The PC's 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. Items received after that time will be placed on the following month's agenda.

The audience was reminded to sign in and silence their electronic devices.

**Agenda:** Malecha asked if members of the PC had additions or corrections to the agenda. Volkert moved to accept the agenda as is, Legvold seconded. Motion passed 5 – 0.

**Meeting Topic:** Establishing a Procedure for Registering Nonconforming Land Uses and Implementing a Safe Harbor Date. Malecha introduced our Planner, Steve Grittman, of Northwest Associated Consultants, Inc. Malecha asked the audience to please let the PC know if you cannot hear the discussion between Grittman and the PC. The original draft ordinance was paid for by a landowner a few years ago. Grittman stated he hoped to provide an equal opportunity for all to understand what would be required of the township as well as the commercial property owners, with a discussion of how it would operate. This could lead to amending the original draft ordinance. In the event a public hearing is held, the PC would hear public comments and make a recommendation to the Board for its discretion.

Grittmann talked about two situations where our current ordinances play a role. The first is where Minnesota State Statutes refer to Legal Nonconforming Land uses which include a land use that was allowable under a previous ordinance or was in place before any ordinance addressed the usage. This is a right that accrues to the property, not the owner. Therefore, a new owner could operate the property in the same way as the previous owner. Legvold asked if there were townships who do not permit these land uses when there is a sale of the property. Grittmann said that would not be in accordance with State Statute and would not be allowable as an ordinance provision. The second situation is a class of use for home occupations that are secondary to the property's residential use; for example, an accounting business run out of a home. Home occupations are generally called accessory uses. There are two classes of home occupations. The first is a business that does not have any employees other than the resident. The second one is what our current ordinances refer to as interim use - requiring an interim use permit. These types of businesses may operate out of an accessory building or have one or two employees. Accessory buildings are limited to 900 square feet. Buildings larger than 900 sq ft would not be compliant under the provisions of the home occupation ordinance.

Grittmann continued by discussing the concept of estoppel. If a township has a practice of treating a land use in a way that implies that they are not offensive or illegal, there is a presumption that you cannot all of a sudden start applying a prohibitional code of enforcement. Those against whom such action is taken would use estoppel as a defense. Litigation is always expensive and there is no way to know which way the courts would decide as it is a case-by-case basis, fact-based decision. Legvold asked if the primary consideration is if there's been no enforcement action taken. Grittmann commented that is often the case, but courts would look at if the municipality took active steps to validate uses over time such as town board proceedings, or decisions not to enforce when brought to the board's attention. The central theme is generally lack of enforcement.

Malecha asked about burden of proof. To take enforcement action, a misdemeanor charge would have to be filed against the business owner. A misdemeanor is a criminal charge, meaning the burden of proof is "beyond a reasonable doubt" and the burden rests with the municipality.

It is common for municipalities to address existing nonconforming land uses in the manner as the originally drafted ordinance instead of trying to eliminate businesses which is expensive, and the outcome is not certain. The ordinance as written includes all businesses as of a certain date and removes any facet of illegality and makes them legal nonconforming land uses. The businesses have a right to stay but cannot expand in any way.

Grittmann stated it is not his role to tell municipalities what is right vs. wrong, but report how other municipalities have solved this issue where the expense is high, and the chance of a successful outcome is low. Legvold posed the situation where a business comes in under the

safe harbor, but decides to expand further – does this not put the municipality right back in the position of having to regulate that and pursue misdemeanor charges? Grittman used an example of where a business goes through a registration process describing the activities and scope of the business. If the business doubles in size, it will still be expensive to enforce the ordinance, but the likelihood of success is much higher. The registration process provides a baseline, and it would be easier to prove to the court that the business has grown.

Legvold asked how a baseline is established. It comes from a thorough registration process where the activities of the business are described in some detail. This may entail a site inspection, a vehicle count, an aerial map showing the business footprint, etc.

Norkunas had questions about home occupations, using a contractor to illustrate his questions. If a contractor uses a trailer in their business, it cannot be parked in their yard. It must be parked in a garage or a 900 sq ft accessory building. Grittman agreed to that interpretation of the current ordinance. If a trucker owns a semi and it is not used exclusively for ag purposes, that semi cannot be parked in the yard. Grittman again agreed it is not allowable. Is it allowable for a person to purchase a property that has an accessory building on it which is greater than 900 sq ft and they start a business in that building? Grittman said the owner would need to apply for an interim use permit. If a person has a business in an accessory building, are they allowed to have a home office. Our current ordinances do not allow that, but Grittman pointed out it is a presumed right to have a business in your home. The final question was if you do not own the business, can you park a crane, semis and dump trucks in your yard. Grittman said he had not read the outdoor storage provisions of the current ordinance thoroughly enough to provide an answer, but most municipalities would not allow that. Norkonus said if a person doesn't own the business, they could likely park one truck outside. Or if a person owns a business and uses a van with a ladder rack, and it doesn't fit in a garage, it still cannot be parked outside. If a person owns a business with a semi and trailer, they would have to build a 75' x 11' building in order to comply with our current ordinances. This affects many more township residents than "a few."

Grittman said the biggest issue with proposed ordinances like this is the ongoing tracking. He suggests adding more definition to what a registrant needs to bring to the township. Grittman can help with crafting of both the information required and the registration form itself. Legvold asked if the PC had the latitude to task Grittman with anything needed to continue this process without going back to the board for funding approval. Malecha stated the board hired the planner, gave the ordinance to the PC to review, to involve the planner and bring it through to a public hearing if the PC choses to do so – suggesting it is not necessary to go back to the board for funding approval. Legvold would like this formalized in writing.

Grittman continued the discussion by saying that an appeals process be part of the ordinance, as these matters can become contentious. Legvold stated that it is problematic there is not a

feasible way to penalize or enforce upon a business that exceeds its baseline. Grittman said it is problematic in that any enforcement requires persistence which is costly. The advantage of this ordinance is the establishment of a baseline that we don't currently have. Volkert asked who typically does on site visits. Some municipalities appoint one person for site visits, in other cases it may be one or more PC members.

Legvold addressed the public health, safety and welfare aspect of the ordinance. Public health and safety can be measured, but what about the welfare of the neighbors of these businesses? How is their voice heard? A party barn example was described – loud music, cars parked everywhere. Grittman said the way to address that is during a public hearing with neighbors presenting an impact statement and addressing those concerns in the specifics of the ordinance. Some businesses may have to shrink a bit depending on the nature of the neighbor's concerns. Volkert said that in some surrounding townships, events with more than 50 people require a permit and perhaps a deputy for traffic control.

Legvold asked how often performance standards should be revisited. Two ends of the spectrum per Grittman. Some municipalities appoint an Enforcement Official, but a vast majority of small municipalities handle it on a complaint basis.

What makes a complaint a "legitimate" one? Who will decide that? Malecha said given all the time, effort, number of people involved, emotions – it is his hope that the work done by the PC will give a framework to the Board to handle complaints. The registration process should document the hours of operation (among other factors), and if a business is operating outside of those hours, that's a clear basis for a complaint. Legvold is not in favor of a complaint based compliance system. The registration process means the township has the information that is part of the town records and doesn't believe neighbors should have to initiate enforcement through complaints. Legvold thinks we need to have a periodic review system. Malecha suggested checking with Eureka Township. They went through a business registration process twenty (20) years ago. We could ask about their ongoing enforcement activities and how violations have been handled.

Volkert asked if permitting these land uses triggers how an assessor would view the property zoning. Grittman indicated each county assessor is different, but the taxation decisions generally follow how the land is being used and do not generally change the zoning.

Grittman summarized his recommendations: include an appeals process, be specific about what a registrant is required to provide to the township and address the reviewal aspect. Malecha gave some thoughts on what information a registrant would provide and suggested this would be something to be filed with the county for that property ID.

Malecha asked about the PC's next step. Norkunas suggested looking at various registration forms in use elsewhere and how Eureka handles its enforcement. Malecha asked what kind of timeline Gritman would need to tweak ordinance language, produce a registration form and include if there would be enforcement and periodic review. Gritman wants to make sure there is enough time for a thorough review by PC members before meeting again. He will send out a revised ordinance and comments before the October 13 PC meeting for discussion.

Norkunas made a motion to adjourn, Legvold seconded. Motion passed 5 – 0. The meeting adjourned at 8:15pm.

APPROVED – October 13, 2022



Ken Malecha, Chair



Jane Dilley, Town Clerk