

To: Onekama Township Planning Commission, September 21, 2023
From: Dan Norbeck, 2398 Crescent Beach Rd.

OPINION

Everyone would like to see the iconic and beloved "Portage Point Inn" restored to a state of genteel grandeur.

So it's significant that Suzanne Schulz, the professional planner who reviewed the Special Use Permit for us in 2017, described the project in her opening paragraph as a "Hotelminium." While we still want to *believe* that a Hotel or Inn is coming back to life, if the Planning Commission doesn't pay *very* close attention, we may wake up one day to a waterfront hodgepodge of apartments legally described as condominiums for the benefit of VRBO slumlords. We've been told that the "Marina" and "Boat Barn" will only operate as an accessory use to a "Hotel," but in fact, a "Marina" was redefined by the Township Board in 2016 as an accessory use to a "Waterfront Resort Complex," that by definition could be little more than a condominium association with a working pizza oven and shuffleboard court, dwarfed by an 80 slip Marina and monstrous 54,000 square foot Boat Barn in a residential zone. The ongoing decline of the premises is concerning; persistent disregard of community standards should be alarming. Promises need to be replaced by performance. Because the "Marina" has no permanently fixed relationship to the "Condos," the Planning Commission needs to require, and the Township enforce, separate SUPs for Windfalls Landing, LLC and the Portage Point Inn Condominium Association.

A brief look at the history and present state of the Portage Point Waterfront Resort Complex raises significant concerns that demand enforcement of the existing Special Use Permit and, in any amendments going forward, strict, explicit, and time bound performance requirements for Windfalls Landing, LLC and separately, members of the Portage Point Inn Condominium Association. Broadly speaking, these concerns entail environmental, civil, and judicial issues.

Environmental Issues

In 2001-2002, the Portage Lake Environmental Association, re-energized under the leadership of citizens Dave Wallace and Andy Cook, lodged a formal complaint against Northwoods Development, LLC, alleging that the Portage Point Inn was polluting Portage Lake with sewage. As a result of the lawsuit brought in the Western District of Michigan on behalf of the Environmental Protection Agency by United States Assistant Attorney Thomas J. Gezon, the "Inn" was subject to a 2003 Consent Decree ordering remediation of the damaged shoreline and payment of a substantial civil penalty. Michigan Department of Environmental Quality records dating from 2007 appear to indicate that the Portage Point Inn's septic drain fields could not support further expansion or even continued operation of the hotel. In 2013, Robert S. Gezon, through Windfalls Landing, LLC, acquired the Portage Point Inn at a sheriff's sale.

In late 2014, Windfalls connected three dwellings to the existing Beech Lodge drain field without a permit, and was cited in 2015 by the MDEQ for illegally creating a public sewer system. In 2014, Windfalls was issued a permit from the MDEQ for the construction two new public wells, with the proviso that Windfalls "would place a covenant on the deed prohibiting further development of anything new within the 200-foot isolation area of these wells." Windfalls is now requesting an amendment to the SUP allowing the construction of new dwellings within 200 feet of new well #4 and 100 to 200 feet of new well #5. In light of the apparently unresolved 2015 violation and encroachment on the mandated well isolation radius, the request to permit this new construction should be denied. Furthermore, the condition and capacity of the existing wastewater treatment systems, as recommended by Suzanne Schulz, FAICP in her review of the existing SUP, should be evaluated before any new construction impacting wastewater is considered.

The proximity of the underground fuel storage tanks for the proposed marina to *all* of the wells on the premises of the Portage Point Waterfront Resort Complex poses, an unnecessary and, in my opinion, unconscionable hazard to the public water supply and public health. Even with secondary containment, the standard isolation distance of public wells from underground fuel storage tanks in the state of Michigan is 2000 feet.

According to site plans provided to EGLE by Fleis and Vandenbrink, the lawn area to the south of the "Hotel" building is the site of two large septic drain fields. Installation of a basement (rather than helical piles) below the "Hotel" structure may create a subsurface dam, impeding the flow and filtration of drain field effluent, as well as groundwater pressurized by the adjacent dune. The advisability of such a scheme, including a second "dam" created by the proposed in ground pool on the lakeside of the "Hotel," should be reviewed by structural and environmental engineers prior to consideration by the Planning Commission.

As recommended by Suzanne Schulz, FAICP, impervious surface calculations should be provided for all of the premises subject to the SUP. Unless grandfathered, coverage in excess of 35% is permitted only by a variance outside the purview of the Planning Commission.

Civil Issues

Although the existing SUP appears to permit Windfalls to store--with some important restrictions-- construction materials, boats, and boat trailers, the SUP mandates that the storage areas be defined and screened from view. Although formal action has been taken against an adjacent property owner, none has been taken against Windfalls, and the "Ballfield" is now an unmitigated eyesore. This offense alone has eroded public support for expansion of the Portage Point Waterfront Resort Complex.

More seriously, the parties responsible for the installation and use of a private dock on 9th street, a Public Road End, are subject under MCL 324.30111b to prosecution for a *criminal* misdemeanor.

Until these violations are adjudicated, the goodwill of the community for an expanding Waterfront Resort Complex will continue to peel off faster than the paint on the PPI Condos.

Judicial Issues

The construction of the marina and boat house as approved in the current SUP cannot proceed until the 9th and 7th Street Road Ends, extending from Portage Point Drive to the water's edge of Portage Lake, are legally vacated. To my knowledge, Windfalls has not yet filed a complaint with the 19th Circuit Court to initiate this process. In 2004, the Michigan Court of Appeals upheld the lower court's determination that 7th Street is public property, upon which therefore *nothing* new can be built. In fact, should the Manistee County Road Commission ever be persuaded to improve 7th Street, the Court declared that the southern end of the Hotel would have to be demolished. Full and fair disclosure requires that these public property rights, and special limits to private property rights, if any, be depicted clearly on the SUP site plans as well as within the condominium association master deeds.

The original, 1902 Plat of Portage Point shows that 7th Street and 9th Street both intersected Portage Avenue, a public street of variable width lying between a westerly line in the upland and the historic eastern shoreline. Although the westerly line of Portage Avenue appears on some site plans produced by Nordlund and Associates, it is unlabelled perhaps because the segments of Portage Avenue most relevant to the Portage Point Inn were vacated by Court order in 1979 (Liber 382, Pg 628-632). Unfortunately, this omission is highly consequential. Although Portage Avenue, excepting the 9th and 7th Street road ends, was vacated from Lot 3 Block 3, across the "Hotel Reserve," and to Lot 4, Block 25, the Court expressly ordered "that no new permanent structures shall be constructed or located in any portion...of Portage Avenue which [has] been vacated..." A new in ground pool, and most of the onshore components of the expanded marina, cannot be constructed in the proposed locations.