

CHIKAMING TOWNSHIP PLANNING COMMISSION November 7, 2018
Approved

The public hearing was called to order by Jerry Kohn at 6:30 p.m. Commissioners Grace Rappe, Jerry Kohn, Richard Carlson, Andrew Brown, Gary Wood and Bill Marske were present. Doug Dow was absent.

Moved by Wood, seconded by Rappe, that all individuals making public comments be granted a maximum of 3 minutes to speak and the public hearing have a 2 hour maximum. Motion carried.

Public Hearing
Special Land Use No. 200

Elizabeth Nuti

Property Address: 14074 Minnich Rd.

Applicant is requesting a yoga studio in an agricultural district.

Public Hearing

Frank DeFrancesco introduced himself as an attorney speaking on behalf of Gary and Elizabeth Lang. DeFrancesco made reference to a letter submitted to the commission in advance outlining why the general standards set forth in Article 19, Section 19.03 have not been met by the request. He explained that the proposed use is not consistent with the Master Plan which states that businesses should be located in city centers and not diminishing of a rural neighborhood's peace and quiet.

Applicant, Elizabeth Nuti, came forth to speak on behalf of her request and presented a petition. Nuti informed the commission that the property is 30 acres with heavy woods, a single family home, a garage, as shed, and a barn with its own driveway. She explained that the barn was relocated to the property and has been updated with water, sewer, and HVAC. Nuti then described the yoga process and explained that the studio would add value to the community and quality of life that is consistent with the surrounding area. She explained that yoga classes are quiet and the barn is not visible from the street with plenty of room for parking. Classes are anticipated to take place 5 days a week with an occasional nature walk. Nuti observed that in the agricultural district the property could be used for much more invasive activities such as adult foster homes, a bed and breakfast, or a riding stable. She added that her low impact proposal is in alignment with Chikaming Township's future plans including section 21.05 of the Master Plan which encourages increased economic activity.

Wood suggested that Attorney DeFrancesco read his full letter, as presented to the commission, for a better understanding of concerns with the SLU. DeFrancesco read the full document into the record. His proposed findings stated that the application is not consistent with the Master Plan which encourages the clustering of commercial enterprises around city centers. Nor does the proposal protect the rural character of the township's open spaces. DeFrancesco mentioned that his client submitted that the site plan does not meet the requirements of Article 21. He continued that a yoga studio is not specifically listed as a

special land use and referred to *Witman v. Galien Township*, 37 Mich App 72 (2010) which requires that a properties' activities eligible for special use status be identified in the language of the ordinance. This Michigan Zoning Enabling Act (MZEA) requirement encourages uniformity and prevents an administrative body from engaging in rezoning by approving wholesale changes to the character of a zoning district. DeFrancesco shared findings that the requested SLU is not harmonious with the existing stable, rural, residential neighborhood. He then questioned if the building has a permit for use as a commercial building or a residential use. It was suggested that the township review if the septic system is designed for commercial use, if the buildings are confirming, if the barn complies with applicable commercial fire code, and requirements of the American Disabilities Act. In summary, DeFrancesco stated that his clients have a clear view of the barn and specifically purchased their property because of its rural nature away from town. He continued that they currently view cars coming and going, headlights, hear car doors slamming, which diminishes the reason they move to the area.

Jon Goldman came forth to speak in support of the SLU. He stated that *Whitman v. Galien* was a very different case that dealt with a proposed racetrack in a very rural area which he added is a misguided argument. Goldman expressed that a yoga studio downtown would have a very different effect than the current location.

It was requested that individuals making comments state their address.

Claudia Brown, residing on Minnich Rd., informed the commission that she lives around the corner from the property and has animals. She added that she grew up with 11 siblings and would like some peace and quiet. Brown was speaking in opposition to the SLU.

Jon Cordagan, resident of 5203 Browntown Rd., stated that yoga is very low impact on the surrounding neighborhood and what is being proposed is very different than what could exist there. He added that he appreciates that surrounding property owners care about their neighborhood but there is no impact on the neighborhood.

Richard Hoffman, resident of 13881 Minnich, calculated that he has lived there since 1999 and originally moved there for the peace and quiet. He encouraged anyone who does not live on his street to tell him about life there. He stated that classes 5 times a week would significantly change his neighborhood. He expressed that he does not want a mixed use neighborhood and he is concerned about increased traffic on a road with a blind curve.

Angela Richert, resident of Warren Woods Rd., stated that the Nuti's are fine people with impressive accomplishments. She stated that Nuti has been looking for space for while and her business provides a unique activity that helps keep young people in the community.

Dan Hollis, resident of Kruger Rd., stated that he appreciates living in a neighborhood with cattle. Hollis added that he and his wife both attend Skybird Yoga which has been a life changing experience having helped with physical pain. He added that Nuti is a great teacher and the barn provides the perfect quiet environment. Hollis observed that the barn is special and fits well with the surrounding rural area.

A Kaiser Rd. resident came forth to state that he is in strong opposition to the requested SLU due to the many places in town that the business could be located. He added that due to the extra traffic there have been instances that Minnich has felt unsafe.

Fred Lang, Three Oaks resident, observed that most people supporting the SLU do not live on Minnich Rd. and he does not understand how they can change a neighborhood they don't live in. He added that if residents do not want something in their neighborhood it should not go there.

Rene Renette, living directly across the street from the requested SLU, stated that she is not against the Nuti family and values them as neighbors. However, she feels the business would have large negative impact on the neighborhood. Renette explained that she bought her property 18 years ago due to the quiet nature of the neighborhood. She added that her grandkids visit frequently and she is concerned about them riding bicycle with the extra traffic especially considering the SLU would follow the life of the property.

Tim Hawkins, residing at 14260 Minnich Rd., came before the commission to state that he is completely opposed to the SLU. He stated that the Nutis came before the Tax Board in 2012 and withdrew their petition when the assessor noted the water and sewer situation. He added that his road is currently quite. He also asked that the building be reviewed to ensure it fits within commercial standards.

Susan Nuti, property owner, came forth to state that she did not go before the Tax Board but instead had a question about tax. She explained that she and her husband bought the property 20 years ago because they loved the house and surrounding land. They then added the 100 year old barn to house hobbies such as papermaking. The barn has since hosted a 50 year reunion and garden club events.

Wayne Freeling came forth to state he and his wife have lived on Minnich for 44 years and he is against the SLU because he feels it will compromise the quiet nature of the neighborhood.

Tammara Samuels of Union Pier came forth to state that she was on the Planning Commission for 10 years and understands the importance of maintaining the character of the neighborhood. She added that she has witnessed her neighborhood become much busier and the township needs to understand the importance of compromise to address pending change.

Leona Waldo came forth to state that she and her husband Tony live at 14355 Minnich Rd. which adjoins the Nuti property. She stated that she is highly opposed to the business proposed in the agricultural district and concerned that it opens a Pandora's box. Waldo continued that she feels there are plenty of other locations for yoga. She stated that Minnich is exquisite and asked the commission to preserve the neighborhood by denying the proposal.

Ryan Casey came forth to introduce himself as an exercise expert from Michigan City in support of the SLU. He explained that yoga fits within gym use and saying that it does not fit within the SLU is not true.

Pat Jordan, residing at 13928 Minnich Rd., came forth to state she has been there for the past 49 years. She added that she has added boulders to her front yard due to the current danger of her living on a curve. She added that she sees everyone coming and going and has had cars in her yard in the past due to the danger of the curve. She expressed that she feels the SLU would pose an increased safety issue.

Victoria Petroff came forth to state that she lives on Maple Street in Three Oaks. She observed that when the yoga studio was there she never noticed it. She expressed that yoga is very quiet and encourages participants to listen.

Amy Mader, resident of 12700 Highland Shores, brought attention back to the ordinances. Mader stated that the agricultural district is primarily designated for ag use but not exclusively. She observed that there currently exists 14 additional special land uses including cell towers and cemeteries. She pointed out that in section 14.05 recreation clubs and similar uses are allowed. Mader pointed out that Master Plan encourages year round businesses which the yoga studio would be.

Charles Potts the 3rd came forth to state that he lives in Stevensville, MI. Though, he will be moving to his father's home on Minnich. Potts stated that he believes in fitness and manages two Anytime Fitnesses. He added that as entrepreneurs, business owners seek to build their business and his concern is that the business would change and grow from a small yoga studio which would then alter the character of the community. He then asked the commission to respect the existing peace and serenity on that street.

Charles DuPonte residing on the corner of Minnich and Weechik Rd. came forth to state that he knows many local people who have stopped going to Sawyer because of the growing business and change that comes with it. He added that he does not want the character of the neighborhood to change and is concerned the SLU would follow the life of the property.

Elizabeth Meister came forth to state that she and her husband came to the area because of the peace and quiet. Meister observed that change and growth happen which cannot always be controlled. She added that growth needs to be sustainable and she feels the yoga studio is a quiet, respectful option since it could have been a shooting range.

Tony Margo stated that he grew up in the area and attended the first graduating class from River Valley. He informed the commission that he owns land on Minnich and is not disrupted by people shooting in his neighborhood he countered that he feels the yoga studio would be disruptive and considered spot zoning.

Abra Barrons, a full time resident in Galien, MI, came forth to state that she had a conversation with Nuti and she does not plan to expand her business based on the conversation. She added that Nuti's form of yoga is very quiet and her intention is to run a business at the same pace of her neighbors.

William Russel, resident of Minnich Rd, came forth to state that he has lived in Chikaming his whole life and never met the Nuti's. He expressed that his road is in bad shape already with flooding in the spring and does not need more traffic.

Garly Lang, resident of 19130 Minnich Rd., stated that this meeting should have taken place years ago prior to being built. He added that the Nuti's vision has always been an event barn with a residence they just went ahead and built it. He added that there is no building permit or sewer inspection for a venu barn or residence. Lang stated that he hopes that these things, along with the safety and quality of life of people living on Minnich, matters as this plan would be changing the lives of all people living on that road. Lang stated that this use interferes with the quality of life for the surrounding residences. He asked the commission to vote no for SLU 200 since it is not harmonious with the intended character of the neighborhood.

Anna Bradon, resident of 14194 Minnich Rd., came forth to state that her property adjoins the Nuti property. She stated that she had no idea that the yoga studio was there and Nuti never spoke to her about it. She added that the traffic has become horrendous on her road.

Joe Marlow, resident on Kaiser, with property on Minnich Rd. stepped forth to speak. He stated that not a single letter supporting the SLU was written by someone that lives on Minnich Rd. Marlow observed that he likes the road and surrounding neighborhood being rural and quiet. He stated that the plan does not fulfill standard 4 for approval.

Theresa Peterson, resident of 13886 Minnich Rd., stated that she moved there because of the road's rural nature. She is very concerned with a business being placed there regardless of what the business is. Peterson observed that no times or dates were specified by Nuti. She also expressed concern about additional use of the local water and sewer system.

A resident that walks Minnich Rd. every day came forth to state that she has noticed increased traffic pulling into the Nuti driveway already. She prefers that the neighborhood stay quiet.

Mary Margol, residing at 15407 Kaiser Rd, came forth to state that she also participated on the Planning Commision and had to deny a SLU in the past that was not appropriate for the neighborhood. She asked the Commission to understand that this plan is not appropriate for the area and approving it would be spot zoning.

A resident of downtown New Buffalo, Emma Brewster, came forth to state that she lives in a mixed use district. She stated that her understanding is that ag districts do allow for some business and the SLU would be a quiet fit.

Liz Lang, came forth to state that she lives next to the Nuti's. Lang expressed concern about increased traffic. She observed that many of the people speaking in favor of the SLU express fondness for the neighborhood and that is because the residence have been successful at keeping it quiet. She asked that the Commission deny the SLU and keep it that way.

Roger Kelly, resident of Lakeside, came forth to state that he enjoys riding his bike down Minnich Rd. Kelly stated that Nuti is very respectful of the neighbors and asks attendees of yoga classes to be very quiet. He is in favor of the SLU.

Carmen Cordagan, attendee of yoga and resident of Browntown Rd, stated that she is fond of Minnich Rd. and even though she does not live there she considers herself a steward of the land and quiet nature. She added that attendees of yoga do not intend to be disruptive.

The public meeting was closed and the regular meeting began.

The Agenda was reviewed. Marske moved to approve the agenda, supported by Wood. Motion carried.

Minutes of the prior October special and regular meeting were reviewed. Wood moved to approve the minutes, supported by Carlson. Motion carried.

Public Comments: None

Reports: None

Old Business:

Site Plan Review

5851 Sawyer Rd.

Proposed new restaurant in a vacant storefront.

Martin Smith, architect for the project, and Cecilia Peterson, property owner, came forth to speak on behalf of the plan. Smith pointed out that the plans were revised based on input from the Commission at a previous meeting. He explained that the parking was reconfigured, a screened dumpster was added, a location for snow to be deposited was determined, and runoff issues were addressed. Smith added that a parking agreement was created with neighboring Sawyer Garden Center which exchanged access for parking.

Moved by Rappe, seconded by Wood, to approve the site plan as presented. Motion carried.

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Marske observed that the request would change the character of the neighborhood and if the street were busier the situation would be much different considering neighbors have already noticed a change in traffic.

Carlson pointed out that compromises have been achieved in the past. He stated that limitations could maintain the environment as it is now such as restricting the use to indoor only or specifying which days and times classes may take place.

Kohn questioned if a better site plan exists and how many people would attend each class. He also questioned ADA compliance and the number of bathrooms.

Rappe stated that when she read goal 6 of the Master Plan she began to feel that there were issues with the request and, based on past surveys also in the Master Plan, the community feels it is important to preserve natural space. She added that goals of the area may change in the future but this request is not currently fitting with the the Master Plan.

Brown stated that he was impressed with the public's comments. He added that he feels there are appropriate places in the community where this business could do well. Brown stated that he feels starting the business three years ago and asking for a permit now muddled things up.

Wood stated that he is bothered that the studio has been in operation for a while and he feels the township rules and regulations matter. Wood stated that he thinks denying the plan is a loss for the community and he hopes a future compromise may be reached.

Moved by Rappe, supported by Marske, to deny SLU 200, with the suggestion that the applicant meet with members of the Minnich Road community to discuss revisions to this proposal that might lead to a compromise solution which will be acceptable to both the applicant and the neighboring community. Motion carried unanimously.

New Business:

Amendment to Planned Unit Development (PUD), Centennial Farms Condominium

Requesting minor adjustments to lot footprints.

Attorney Ben Schwartz spoke on behalf of Doug Johnson. Schwartz informed the commission that the development was started in 2005 and has 12 existing lots 6 of which have been sold. He informed the Commission that footprints were added in 2014. Schwartz shared drawings of the property and stated that people buying the lots are requesting detached garages which is altering the original footprints for the development.

Changes are being requested to lots 10, 11, and 12. Schwartz explained that the existing house on lot 11 was built too close to lot 12. Thus, a reduction in frontage on lot 12 is being requested from 177 ft. to 166 ft. The westerly set back on lot 11 was 35 feet and is now requesting a reduction to 10 ft. The east side set back on lot 11 was 35 ft. and is now requesting a reduction to 30 ft. Lastly, the unit 10 westside setback was 30 ft. and is now requested to be 10 ft.

Carlson observed an enlarged footprint of lot 11.

Realtor, George Lucas, stated that the market has changed since the initial creation of the development and buyers now want detached garages. Lucas added that the revisions meet the zoning ordinance.

Wood questioned how current property owners in the development feel about these changes. Schwartz stated that the law allows for changes to developments such as this without consent of other lot owners.

Moved by Wood, seconded by Rappe, to approve the requested amendments to the Centennial Farms Condominium Development. Motion carried.

SLU No. 201

Kristy Putnam, Peacock Place, 13436 Red Arrow Hwy, Harbert
Requesting multiple dwellings on a single lot, allowing managers permanent residence on-site, and requesting future mixed-use construction.

Kristy Putnam came forth to speak on behalf of her request. She read her written statement into the record. Putnam informed the commission that the current property consists of two houses on one acre. She added that because of changes in the proposed ordinance she is now requesting this SLU. Putnam explained that her business has existed for the past 8 years and no immediate changes are planned but in the future she would like to build a residence at the back of the lot. Putnam stated that she feels her request meets all standards for an SLU.

Carlson questioned what is shown as existing in her backyard. Putnam responded that there is currently an open field with trucks and trailers for storage.

Rappe questioned the current existence of an SLU. Putnam responded that it had been missing but she found it and it is for a single family dwelling. Rappe clarified that Putnam currently has a SLU in a commercial zone for a single family dwelling. Wood stated that the new ordinance will not require an SLU in these instances.

Putnam stated that she is requesting an SLU for multi-family which is currently allowed in Section 15.05 under Ordinance 87 allowing for multiple dwelling detached units on a single lot is permitted for single resort homes which her buildings are. She clarified that a single family resort home is currently permitted and will not be in the new ordinance.

Marske stated that he would like to see a more specific site plan. Putnam stated that all she is asking for is to waive required road frontage for her future residence in the back of her existing homes. Putnam stated that she could originally do this when she bought the property.

Wood clarified that under past split zoning Putnam would have been able to build a home on the back of her property. Putnam added that multiple family dwellings are not allowed in the future, even as a special use, and that is what she is asking for now. Putnam clarified that she has an existing SLU for one dwelling and she now has two dwellings which is permitted by the existing ordinance and will not be permitted by the new ordinance. Wood clarified that she has a legal nonconformity and she is concerned that in a year she would lose the use.

Putnam clarified that she is simply asking for a permitted multi-family use. Specifically three separate multi-family dwelling units. It was clarified that each residence should be single family. Putnam questioned what the issue with multi-family would be.

It was discussed that adding a private road to the back of the property may be better for the adjacent property.

Moved by Marske, seconded by Wood, to set a public hearing for SLU 201 at 6:30 on December 5th. Motion carried.

Public Comments: None

Adjournment:

With no further business before the Commission, Marske moved to adjourn the meeting at 10:03 pm. Supported by Brown. Motion Carried. Meeting Adjourned.

Respectively Submitted,
Bill Marske, Secretary, Chikaming Township Planning Commission