

**Au Train Township, Planning Commission
Special Meeting**

Wednesday, February 12, 2025 – 6:00pm
Au Train Township Hall - N7569 Spruce St – Au Train, MI 49806

MINUTES

- **CALL TO ORDER** - The meeting was called to order by Chair Cain at 6:04pm, followed by the Pledge of Allegiance.
- **ROLL CALL** – Members present: Chair Jason Cain, Secretary Scott Smith, Member Matt Lang, Township Board Liaison John Carr. Absent: Vice Chair Scott LaCombe

Others present: Township Supervisor Tom Balmes, Zoning Administrator Donna Shields, Peggy Smith, Duane Newton, Dan & Phyllis LaCombe, Bob & Tina DesArmo, Ashley Worden, Jeff Cromell, Wyatt Seaberg, Brian & Kristen Van Wieren

- **APPROVAL OF AGENDA** – Motion by Cain, second by Carr to approve agenda as presented. Motion Carried
- **APPROVAL OF MINUTES** – Motion by Cain, second by Smith to approve minutes of the January 16, 2025 Planning Commission Meeting. Motion Carried
- **PUBLIC COMMENT** – None
- **BOARD COMMENTS** – None
- **ZONING ADMINISTRATOR REPORT** – Zoning Administrator Shields presented her report of January activity to the Commission. Report is on file and available on the Township website. Shields also noted the re-implementation of the memo board on the north wall of the Township building outside next to the Assessor’s and Zoning entrance. Upcoming planning meetings, hearings, zoning reports and other zoning related information will be posted there.
- **PUBLIC HEARINGS**

- a **Wyatt Seaberg requesting conditional use of a short-term rental at N7768 Ridge Road, Munising Parcel ID# 001-325-024-00**

Chair Cain opened the hearing at 6:13 pm.

The hearing opened with the staff report given by ZA Shields. See *Staff Report to the Planning Commission, February 12, 2025, Attachment A.*

The applicant, Wyatt Seaberg had no comments at this time, though the commission had questions that were answered by Mr. Seaberg clarifying there is really only one finished floor and one bedroom, as the garage, while finished is not living space. He plans to rent year-round.

When asked if he would consider posting the road for traffic direction, speed limit and such he indicated that he was awaiting direction from his attorney on the road easement issues.

Chair Cain opened the public comment period at 6:25 pm

Public comments were heard from Bob DesArmo who referenced his written comments sent prior to the hearing. He has concerns with snowmobiles that are riding out of the other rental of Mr. Seaberg's. He stated that they are running over trees on the edge of his property and leaving beer cans in the road.

Public comments were heard from Kristen Van Wieren who also referenced written comments she had sent prior to the hearing. She also expressed concerns with snowmobiles riding onto private property and ignoring No Trespassing signs and traveling down the private road to enter the private properties. Her concerns were also with the number of people now occupying the area and traveling the private road and how that has changed the character of the neighborhood which was once a quiet area. She feels it has affected her ability to ride her horse on the private road as she fears the traffic will spook the horse.

Public comments were heard from Phyllis LaCombe who referenced her written comments sent prior to the hearing. Her concerns are that this was once a friendly quiet area where you knew your neighbors. Now with the short-term rentals you don't know who the people are that come and go and this changes the area.

Wyatt Seaberg gave public comments stating that more of Ridge Road is snowmobile trail in the winter than it is a plowed county road. That while there is snowmobile traffic on Ridge Road, it's not all because of his rental.

Public comments were heard from Duane Newton. Mr. Newton commented on the fact that there are no short-term rental limitations in place and that the applicant should be allowed per the zoning ordinance to have a short-term rental.

Written public comments were also received and shared with the Commission prior to the hearing from Gregory & Kristine Lindquist who are not in favor of the rental. All written comments received are on file.

Chair Cain closed the public comment period at 6:35 pm

PC Carr made comment in reply to concerns about capping of quantities of short-term rentals. He stated that the Township Board was against implementing any caps for it was too difficult to control. ZA Shields added on to that discussion stating that regulation of quantity is not something that can be done through the Zoning Ordinance. She stated that it takes a separate police power ordinance to cover that which is how Marquette and Munising handle that. Along with the police power ordinance, it takes staff to administer, track, follow up etc. There becomes a waiting list and when a property sells, the use does not stay with the land. The list opens up to next in line. Shields stated that this Township does not have the staff or the funding for such, and even if we did, everything that stands today would still continue as a non-conformity, legally.

Chair Cain addressed the Commission regarding the private road. He stated that he had asked the Township Attorney Bill Nordeen for a written legal opinion regarding use of the private road in conjunction with short-term rentals. Cain proceeded to read the letter aloud. See letter dated February 10, 2025: *O'Dea, Nordeen, Burnik, & Pickens, P.C. Attorneys at Law Attachment B.*

After much discussion about how one might determine when a given number is too many, it was decided that the use of the road was no longer an issue and that they would stand by Attorney Nordeen's opinion that the short-term rental places no more burden on the use of the road than the landlord himself might.

The discussion by the board turned to signing of the private road. Possibly posting speed limits, direction, etc. but there were concerns about enforcement of such. The board decided to move on to the 802A standards.

The general standards from Section 802A of the Au Train Township Zoning Ordinance were reviewed by the Board. See *Statement of Facts and Findings Attachment C.*

Section 802A Item #2 failed 3-1. Items #3 and #5 failed due to split vote. The remaining items passed. Attention was turned to Item #2 to determine if there might be a condition that could be imposed that would allow this item to pass. Unfortunately, no potential conditions were realized. It was decided to not pursue further potential conditions for the other failed items as this request fails approval simply by Item #2 not passing.

Motion by Smith, second by Carr to deny the conditional use of a short-term rental for Wyatt Seaberg at N7768 Ridge Rd, Munising, Parcel ID# 001-325-024-30, based on failure to meet Section 802A Standard #2 of the Au Train Township Zoning Ordinance.

Roll call vote was taken. Smith: Yes, Carr: Yes, Cain: Yes, Lang: Yes
Motion carried 4-0

Chair Cain closed the public hearing at 7:26 pm

- **OLD BUSINESS –**
 - a The final draft of the Planning Commission bylaws was presented. Motion by Cain, second by Smith to approve the bylaws of the planning commission as amended in previous session. Motion carried 4-0

- **NEW BUSINESS –**
 - a A CUP hearing for Jennifer Stewart requesting a short-term rental located at E5647 Au Train Riverview Dr, Au Train, Parcel ID# 001-450-019-00 was scheduled for Wednesday, March 19, 2025 at 6:00 pm

- **CORRESPONDENCE/ANNOUNCEMENTS –** Chair Cain acknowledged receipt of several comments received in e-mail during the month from Duane Newton.

- **PUBLIC COMMENT** – None
- **BOARD COMMENT** -- None
- **NEXT MEETING** – Thursday, February 13, 2025 at 6:00 pm
- **ADJOURN** – Motion by Carr, second by Smith to adjourn at 7:31 pm. Motion Carried

Minutes submitted by: Donna Shields, Recording Secretary, to the Au Train Township Planning Commission

Approved: March 12, 2025

Signed: _____ on file _____
Donna Shields – Recording Secretary

Signed: _____ on file _____
Scott Smith - Secretary

Staff Report to the Planning Commission

Conditional Use Application for Short-term Rental

Prepared by: D Shields, Zoning Administrator

File #: 25-001-325-024-30

Applicant: Wyatt Seaberg, Owner

Address: N7768 Ridge Road, Munising

District: Rural Residential 1/2

Zoning District of surrounding parcels: Rural Residential 1/2

Existing land use: Single family dwelling - residential

Adjacent Land Uses: Single family dwelling - residential, Short-term rental

Findings of Fact:

- Zoning history: The RR1/2 District changed in 2022 to allow Short-term rentals as conditional uses. Prior, the closest allowed would have been Bed & Breakfast as a conditional use. No Resort or other lodging was allowed in this district prior to the 2022 amendments. Amendments are usually made because there is a need for zoning to keep up with change. Short-term rentals were a huge change not only for us but across the nation as people no longer wanted to stay in hotels, and many property owners saw this as an investment for themselves as well. Renovating properties and turning them into short-term rentals offered through the likes of Airbnb and VRBO. etc. But amending of the Zoning Ordinance does not happen arbitrarily, more over it takes many public meetings, review by others, chance for the public to comment on changes and requires final approval and a hearing by the Township Board. Present day, Short-term rentals in the Rural Residential 1/2 district are numerous, not just in our Township, but also surrounding areas as Alger County offers many attractions for those that love the outdoors.
- This property is accessed by way of a private road easement. The District Courts have given us a ruling on use of the private road for a commercial venue such as a resort as being too burdensome because of the increase in traffic. However, the

ATTACHMENT A

Township's Attorney William Nordeen has rendered in his legal opinion to us that in his application of caselaw to Short-term rentals that "The typical renting of one's residence, in a month-to-month capacity or longer has long been accepted by Michigan law of not increasing the burden on an access easement to the property. The reasoning is that a renter does not pose any greater use of the easement than if the landlord was using the easement in the same manner. The burden analysis does not change for short-term rentals. Similar to typical renters (month-to-month or longer) short-term renters do not use the easement in any manner that the landlord could not similarly use the easement."

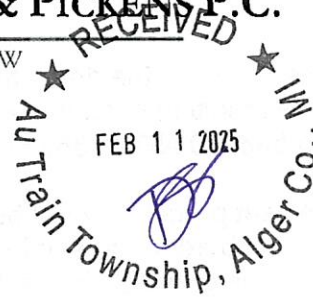
- While the surrounding neighbors may not themselves partake in outdoor activities such as snowmobiling, atvs or other such sports that they may find noisy, or disruptive, the facts are that they are all legal activities in our area. There are no rules of the private road that disallow such vehicles as there is no road association formed which would be required to legally implement such. Yes, there may be some folks that are disrespectful of others property or operating outside of the allowed noise limits, but those issues can happen with full time neighbors and are not unique to just "short-term" renters and should be dealt with by law. The planning commission may wish to add condition(s) to an approval if they deem fit, that would include posting within the rental, not only the noise ordinance, but also terms that give the exact route out of area to the trail, asking vehicles to stay on the right side of the road, and travel at speeds no more than Xmph. Signage on the road edge could also be a condition stating this limit, and also showing the route and forbidding travel in the direction of the private homes.

O'DEA, NORDEEN, BURINK, & PICKENS P.C.

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February 10, 2025

Via Email Only
Cainproprietary@gmail.com

Jason Cain
Au Train Township Planning Commission
N7569 Spruce Street
Au Train, MI 49806

Re: Legal Opinion on Short-Term Rentals and Burden on Easement

Dear Jason:

I understand you are requesting a legal opinion concerning the issue of whether a short-term rental increases the burden on an access easement.

I will start with historical case law concerning the burden on easements and then I will apply that law to the newer issue of short-term rentals.

Caselaw

Generally, an easement is limited to uses that are reasonably necessary and convenient to the dominant tenement (user of the easement) and that places as little burden as possible on the servient tenement (owner of the land). . . [t]he owner of the easement has qualified possession so far as it is necessary for his or her enjoyment of the easement. *Unverzagt v Miller*, 306 Mich 260, 10 NW2d 849 (1943); *Morrill v Mackman*, 24 Mich 279 (1872).

The owner of an easement (user of the easement) for roadway purposes must be assured of unobstructed passage for the owner, the owner's invitees, and the owner's guests. *Murphy Chair Co v American Radiator*, 172 Mich 14, 137 NW 791 (1912).

An easement must be used strictly for the purposes for which it was granted or received. The owner of an easement may not materially increase the burden of it or impose a new and additional burden on the servient tenement. *Delaney v Pond*, 350 Mich 685, 86 NW2d 816 (1957).

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As a general rule, if the dominant estate (parcel using the easement for access) is divided, all resulting parcels take a share in the easement . . . *Von Meding v Strahl*, 319 Mich 598, 30 NW2d 363 (1948).

The dominant parcel may not be subdivided into so many parcels that the resulting use would unduly burden the servient estate beyond the use contemplated when the easement was granted. In *Henkle v Goldenson*, 263 Mich 140, 248 NW 574 (1933), the Michigan Supreme Court held that a subdivision of the dominant tenement from one lot to five would not impose any unlawful additional burden to an unlimited right-of-way, **since a mere increase in the number of persons using it is not unreasonable.** (Emphasis added).

On the other hand, in *Bang v Forman*, 244 Mich 571, 222 NW 96 (1928), the court held that a subdivision of the dominant tenement resulting in an increase in lots from 27 to 50 was an unlawful increase in the burden.

Application of Caselaw to Short-Term Rentals

The typical renting of ones residence, in a month-to-month capacity or longer, has long been accepted by Michigan law of not increasing the burden on an access easement to the property. The reasoning is that a renter does not pose any greater use of the easement, than if the landlord was using the easement in the same manner.

The burden analysis does not change for short-term rentals. Similar to typical renters (month-to-month or longer), short-term renters do not use the easement in any manner that the landlord could not similarly use the easement.

Couple that with the Supreme Court's holding in *Henkle, supra*, where an increase of a single lot into five lots (and presumably five individual houses using the easement), was not an unduly burdensome increase to the easement.

I opine that use of a residence as a short-term rental does not, in of itself, create an undue burden on the access easement.

If you have any questions, please do not hesitate to contact me

Very truly yours,



William T. Nordeen

WTN/

cc: Au Train Township

STATEMENT OF FINDINGS AND CONCLUSIONS - CUP HEARING

Date of Hearing: February 12, 2025	Request: Short-term Rental
Applicant: Wyatt Seaberg	Parcel ID#: 001-325-024-30
Address: N7768 Ridge Road, Munising, MI 49862	

Section 802 – Basis of Determination / General Standards

A. The Planning Commission shall review the particular circumstances of the conditional use request under consideration in terms of the following standards and shall approve a conditional use only upon a finding of compliance with each of the following standards as well as applicable standards established elsewhere in this Ordinance.

- 1. The conditional use shall be designed, constructed, operated, and maintained in a manner harmonious with the character of adjacent property and surrounding area.**

Discussion:

PC Smith stated that this is a single residential structure tucked into a wooded area like most in the surrounding area with multiple acres. There are two other STRs in the area. PC Smith's thoughts were that adding another rental changes the density of STRs which changes the area. There was some disagreement with that thought. Chair Cain's thought was that the STRs mimic the daily lives of any other rental and that the free market would dictate whether they stayed as STRs or reverted back to long term residents. It was decided that this was better discussion for Item 802A #2.

Roll Call: Carr: Yes, Lang: Yes, Cain: Yes, Smith: No

- 2. The conditional use shall not change the essential character of the surrounding area.**

Discussion:

PC Lang asked Mr. Seaberg if he thought adding this short-term rental changed the essential character of the area. In short, Mr. Seaberg did not think it was changing anything further. PC Smith felt strongly that having the existing STR (barn-dominium) roughly 500 ft from this and at some point, the PC would be revisiting that resort which is also within that 500 feet, that the area is going to become a real commercial area.

Roll Call: Smith: No, Lang: No, Cain: Yes, Carr: No

- 3. The conditional use shall not interfere with the general enjoyment of adjacent property.**

Discussion:

Discussion centered around the facts that were already discussed about snowmobiles traveling where they shouldn't and littering and the noise they present. It was felt that any signage wouldn't alleviate the problem. It was once thought that the PC could condition the approval by not allowing rentals to snowmobiles or ATVs,

but ZA Shields warned against that stating that would interfere with a person's civil liberties. That you can't take away one person's right to do something that everyone else is allowed to.

Roll Call: Cain: Yes, Lang: Yes, Carr: No, Smith: No

4. The conditional use shall represent an improvement to the property under consideration and the surrounding area in general.

Discussion:

Mr. Seaberg has already made improvements to the property by removing much of the junk left behind by the previous owner, including a shipping container. It was generally agreed that Mr. Seaberg would maintain the property in good order.

Roll Call: Smith: Yes, Carr: Yes, Lang: Yes, Cain: Yes

5. The conditional use shall not be hazardous to adjacent property, or involve uses, activities, materials, or excessive production of traffic, noise, smoke, odor, fumes, or glare.

Discussion:

Chair Cain felt that any traffic wouldn't be excessive and that any smoke from campfires etc. wouldn't be anything more than the owner themselves might produce. PC Smith felt that it would go back to the ORVs and snowmobiles producing noise. PC Lang thought that if the former owner still lived there and if they had ORVs or snowmobiles it would be no different. PC Smith felt that you had to put yourself in the place of what it would be like living in that neighborhood. When you have issues at night, the Sheriff doesn't have anyone working and the State Police won't come out.

Roll Call: Smith: No, Cain: Yes, Lang: Yes, Carr: No

6. The conditional use shall be adequately served by essential public facilities and services, or it shall be demonstrated that the person responsible for the proposed conditional use shall be able to adequately provide for the services and facilities deemed essential to the conditional use under consideration.

Discussion:

No issues noted. Accessible via private road for emergency services and trash pickup service at Ridge Road.

Roll Call: Cain: Yes, Carr: Yes, Lang: Yes, Smith: Yes

The conditional use shall not place demands on public services and facilities in excess of current or immediately planned capacity.

Discussion:

It was agreed that it should be no more so than a long-term resident.

Roll Call: Carr: Yes, Smith: Yes, Lang: Yes, Cain: Yes

7. The conditional use shall be consistent with the intent and purpose of this Ordinance, and the objectives of any adopted county or township development plan.

Discussion:

Chair Cain and PC Carr felt this use dove tails with the Master Plan. PC Smith felt he wasn't sure it fit with the intent of the Rural Residential district as described in the ordinance.

Roll Call: Smith: No, Lang: Yes, Carr: Yes, Cain: Yes

Approved

Motion to approve the (request) [] for (applicant) []

located at (address) [] Parcel ID# 001-[]

The following conditions shall apply: (list, if any)

Denied

Motion by Smith, second by Carr to deny the conditional use of a short-term rental for Wyatt Seaberg located at N7768 Ridge Road, Munising, Parcel ID# 001-325-024-30

Reason(s):

Failure to meet Section 802A Item #2 of the Au Train Township zoning ordinance.

Motion Roll Call: Smith: Yes, Carr: Yes, Cain: Yes, Lang: Yes Motion passed 4-0