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Theodore W. Swift
1928-2000
John L. Collins
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Webb A. Smith
1938-2025

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Charles E. Barbieri
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Patrick E. Quinn
James A. Ryan
Charles E. Sarchet

May 18, 2025

Via Email

Inland Township Planning Commission
Inland Township Hall
19668 Honor Hwy
Interlochen, MI 49643

Re: Norris Special Land Use Permit

Dear Commissioners:

We understand the Planning Commission received an application from Scott Norris for a special land use permit to use 17426 Honor Highway (the “Property”) as a contractor yard. You have requested this Firm’s legal opinion, first, as to which zoning district the Property is in, and, second, if the Property is zoned in a residential district, whether use of the Property as a contractor yard is a protected nonconforming use. Our opinions and explanations follow.

Zoning District

The Township’s Zoning Map indicates the Property is zoned C-1, General Commercial:

[Image on following page]



The rezoning amendments at the end of the Township's Zoning Ordinance do not indicate that the Property has been rezoned to a district other than what is shown in the Zoning Map, nor has our Firm been provided with any documentation showing that the Property has been rezoned.

While the Property's tax classification is "401 – Residential, Improved," the tax classification of property does not determine the zoning of the property. Similarly, the zoning of a property does not dictate the classification of a property. The Planning Commission should not base zoning decisions on what appears on a property tax bill or assessment notice. Zoning is talking about what the use and building forms can and cannot be today and in the immediate future. The General Property Tax Act (MCL 211.34c(2)) provides for uniformity in property assessments and taxation and strictly defines each of the six tax classifications for real property in Michigan. Tax classifications talk about the actual use already on the land. The assessor classifies property based on what the current use of parcels is, for purposes of comparing like-land in order to calculate property values and generally uses a statewide classification system with uniform names.

Therefore, it is our opinion that the Property is within the C-1, General Commercial zoning district of the Township.

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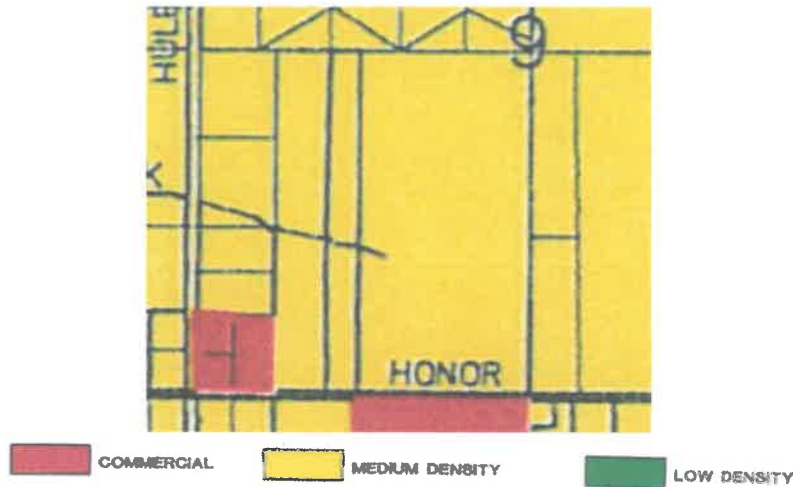
Master Plan

Under Section 10.4.D of the Zoning Ordinance, contractor yards are permitted in the Commercial district subject to special use approval. Article 12 of the Zoning Ordinance governs special use approvals. An application for a special use must be approved if the application meets the standards of the Zoning Ordinance. See § 12.2. As you know, the Planning Commission must approve a special use application if the Planning Commission makes the following findings:

- A. The property subject to the application is located in a zoning district in which the proposed special land use is allowed.
- B. The proposed special land use will not involve uses, activities, processes, materials, or equipment that will create a substantially negative impact on the natural resources of the Township or the natural environment as a whole.
- C. The proposed special land use will not involve uses, activities, processes, materials, or equipment that will create a substantially negative impact on other conforming properties in the area by reason of traffic, noise, smoke, fumes, glare, odors, or the accumulation of scrap material that can be seen from any public highway or seen from any adjoining land owned by another person.
- D. The proposed special land use will be designed, constructed, operated, and maintained so as not to diminish the opportunity for surrounding properties to be used and developed as zoned.
- E. The proposed special land use will not place demands on fire, police, or other public resources in excess of current capacity.
- F. The proposed special land use will be adequately served by public or private streets, water and sewer facilities, and refuse collection and disposal services.
- G. The proposed special land use complies with all specific standards required under this Ordinance applicable to it.
- H. The proposed special land use is compatible with the adopted Township Master Plan.

§ 12.4. The questions raised by the Planning Commission regarding Mr. Norris' application primarily deal with subsections A and H. As explained above, our opinion is that the Property is in the C-1, General Commercial zoning district.

As for subsection H, the Township's Future Land Use Map within its 2020 Master Plan shows the Property's future use as "Medium Density":



“Medium Density” is defined in the 2020 Master Plan as rural, mixed, and single-family residential uses. Of course, this would not include commercial uses such as contractor yards.

A zoning ordinance is a law with penalties and consequences for not following it. A master plan is a policy document that expresses intent. It is not an enforceable document and is not law. A master plan can be adopted by the Planning Commission – an appointed administrative body. A planning commission has no authority to adopt an ordinance or any other document that could be enforced with penalties. The planning commission can only *recommend* a zoning ordinance or zoning amendment to its legislative body. Rather, a township’s master plan is used to guide future zoning ordinances and amendments.

Simply put, the Future Land Use Map in the 2020 Master Plan does not and cannot dictate the actual current zoning classification of the Property and to the extent that subsection H would require as much it is unenforceable.

Non-Conforming Uses

Even if the Planning Commission determines that the Property is zoned residential or that Mr. Norris’ application otherwise fails to satisfy the Zoning Ordinance, the use of the Property as a contractor yard may be a protected nonconforming use.

A nonconforming use refers to a property use or structure that was legally established according to the zoning ordinance in effect at the time (or lawfully existing prior to any zoning regulations), but which no longer conforms to current zoning regulations due to subsequent changes in the law. This situation often arises when a municipality amends its zoning ordinance, rendering certain existing uses or structures incompatible with the new regulations. Under the Michigan Zoning Enabling Act (MCL 125.3208), property owners have a vested right to continue a nonconforming use if it was lawful when

established, and municipalities cannot retroactively prohibit such uses simply because zoning regulations have changed. However, nonconforming uses are generally subject to restrictions: they cannot be expanded, extended, or moved to a different part of the property, and changes to a different nonconforming use are typically not permitted unless the new use is less nonconforming or becomes compliant with current zoning. If a nonconforming use is discontinued or abandoned, local ordinances may prohibit its resumption, though courts often require clear evidence of intent to abandon rather than mere non-use. The law aims to balance the protection of property rights with the goal of eventually phasing out nonconforming uses to achieve the community's current planning objectives.

Section 3.3 of the Zoning Ordinance addresses nonconformities: In the event that any lawful use, activity, building or structure which exists or is under construction at the time of the adoption of this Ordinance and is not in conformance with the provisions of the zoning district in which it is located, such use, activity, building or structure shall be considered a legal nonconforming use and be allowed to remain as such.

We understand that the previous owner of the Property used it as a mobile home park and, allegedly, a "construction operation." More specifically, there was, or is, a structure on the Property where the prior owner stored construction equipment and materials. There was, or is, a second structure the prior owner used to repair vehicles. There was also an "Office" sign on the residence and a small office within the residence. In 1980, a special use permit was issued for a mobile home park on the Property, but we do not have a record of any permit for a contractor yard.

Without access to prior versions of the Zoning Ordinance, it is hard to determine whether use of the Property as a contractor yard was ever permitted on the Property to make it, now, a nonconforming use that would otherwise require a special land use permit. However, even if it is a nonconforming use, Mr. Norris may not expand that use. It is difficult to determine whether his plans are an expansion based on the documents we received.

It is worth noting that the Planning Commission need not consider whether the Property's use as a contractor yard is a protected nonconforming use until it would otherwise deny Mr. Norris' application. Additionally, please note that a history of nonconforming use does not amend the zoning classification of the property where the nonconforming use occurs. A change in zoning classification can only be achieved by an amendment to the Zoning Ordinance.

Conclusion

In summary, we are of the opinion that the Property is zoned C-1, General Commercial, and that the Planning Commission should consider Mr. Norris' application for a special land use permit for a contractor yard on that basis. Because contractor yards are permitted by special land use permits in the C-1 district, whether or not the use is a protected nonconforming use is likely not relevant. Furthermore, the

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long-term residential use of the Property, for which a special use permit was issued, has no bearing on the current zoning classification of the Property, nor does the Future Land Use Map affect current zoning application decisions.

We recommend that the Planning Commission consider Mr. Norris' application in conformity with the requirements of Zoning Ordinance § 12.4 (except to the extent that the Master Plan is referenced) as the Property is zoned C-1.

Please let us know if you have any additional questions or receive additional information that may impact our analysis.

Sincerely,

/s/ Mallory E. Reader

Mallory E. Reader