

**DRAFT**

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**ONEKAMA COMMUNITY PLANNING COMMISSION**

**PUBLIC HEARING AND REGULAR MEETING**

**THURSDAY, NOVEMBER 8, 2012, 6:30 P.M.**

The public hearing was called to order at 6:30 p.m. by Chairman Jim Trout.

The Pledge of Allegiance was said.

Members present: Doug Mortenson, Al Taylor, Bonnie Miller, Charlotte Straight. Also present: Zoning Administrator Kris Philpot, appellee Mike DeVoe, his daughter Annie DeVoe. Absent: Roger Cody, Craig Peterson, Tom Koon, Susan Barnard. (Note: Barnard recused herself from the hearing and did not attend it due to a conflict of interest).

**INTRODUCTION BY CHAIRPERSON:** Trout asked members to introduce themselves to the audience. He then explained the purpose of the public hearing. He said the public hearing is a Show Cause Hearing to consider revocation of the Special Use Permit issued to Northwoods Development LLC, for active violations.

Philpot explained what DeVoe's Special Use Permit allows. The violation is that he built a fence and corral for privately owned horses, which, under the Special Use Permit, would require him to ask for an amendment to his Special Use Permit to build it. Her staff report follows:

**TO:** Onekama Community Planning Commission

**FROM:** Kristine Philpot, Zoning Administrator

**RE:** DeVoe (Portage Point Inn) Show Cause Hearing  
Property Nos. 51-11-370-113-00 & 51-11-370-116-00 Commonly Known as the Ball  
Diamond

**HEARING DATE:** November 8, 2012

**STAFF REPORT:**

In accordance with the requirements of the Ordinance, the appellee and the adjoining property owners have been duly notified by first class mail and the notice for this hearing posted.

**STATEMENT OF REQUEST:**

The Zoning Administrator has requested a show cause hearing to allow the appellee an opportunity to demonstrate why the special use permit granted to Northwoods Development LLC should not be revoked for flagrant and continued violations. Specifically this violation involves building a fence around the property commonly known as the ball field without amending the special use permit or obtaining a land use permit. In addition horses are being kept on the property in violation of the special use permit.

**HISTORY:**

Northwoods Development (dba Portage Point Inn) is operating as a "Waterfront Resort Complex" and a "Planned

Unit Development” under a restated Special Use Permit approved July 31, 1995 and signed September 9, 1995 granting certain activities by “right of prior use” and final and preliminary approvals to other improvements. Mike Devoe is listed as president of Northwoods Development LLC. This permit has been amended from time to time as needed to allow new projects or variations of the projects given original approval.

### **FINDINGS OF FACT:**

1. The subject parcels are located in Resort-Residential 3.
2. Stables, horse boarding or equestrian activities of any kind are not referenced in the definition of a Waterfront Resort Complex.
3. The Zoning Administrator sent the 1<sup>st</sup> notice of violation on August 20, 2012.
4. On August 25<sup>th</sup> there was a conversation between the Zoning Administrator and Mr. DeVoe whereby time to comply was extended to 30 days for further review.
5. On September 19<sup>th</sup> a letter was sent with the results of the inquiry and another notice of violation. Mr. DeVoe did not respond to the letter. He did, however, add another corral and 2 more horses.
6. On October 1<sup>st</sup> a 2<sup>nd</sup> and final notice of violation was sent informing Mr. Devoe he had seven days to comply or a show cause hearing would be scheduled.

### **CONFORMANCE TO STANDARDS:**

Section 8607 of the Onekama Township Zoning Ordinance lists twelve standards to be used when considering a special use permits. In the opinion of the Zoning Administrator Northwoods Development by and through its President Mike DeVoe is in violation of those standards, specifically Sections 8607A, 8607B, 8607D, 8607G and 8607G.

### **ADDITIONAL COMMENTS:**

1. The special use permit makes no reference to any equestrian activities as an approved use.
2. Conforming to the special use permit creates no practical hardship for the resort the permit is issued for.
3. Mr. DeVoe has shown a consistent disregard for the terms of the special use permit issued for the operation of Portage Point Inn and the Zoning Ordinance in general. In doing so he has provoked the animosity of his neighbors and incited complaints which the Township has had to spend time and resources to respond to.

Respectfully submitted,  
Kris Philpot, Zoning Administrator

**PRESENTATION BY APPELLEE:** DeVoe: I didn't intend to create a problem that affects the Special Use Permit. I don't think this falls under that pervue .We were concerned about the horses, at the Rocking R Ranch, being elderly and where individual attention became a problem. One horse died. Philpot sent a letter to me that indicated the Right to Farm Act said I could have horses.

Philpot: I don't recall sending a letter and I don't have one in the file.

DeVoe: Regarding the parcel of land at the ball field, there's a misunderstanding on which part is owned by me and which is Northwoods Development LLC. We haven't put up permanent fencing. We would like to put up a nice wood fence. We have eight acres there; we used it for soccer, but the MRA didn't have insurance to cover it. There is ample parking room in the area designated for overflow parking. We are not trying to cause a fight, we just need to get the horses back here. They are working horses, but we couldn't utilize them this past year. Annie uses them to give lessons.

These horses were going downhill fast and needed personal attention. The fencing was put up because we weren't sure how the horses would take to it. I believe we are on proper ground. I spent all last winter coming in and asking about it.

Trout: Who is “we”?

DeVoe: The horses and that operation is the DeVoe family. I didn't see any conflict of business.

Trout: I looked at the blueprint and there are designated Special Use Permit areas.

DeVoe: The land is designated to sell and is usable for recreational activity. The Special Use Permit does not say anything about soccer, T-ball. I think it's reasonable. We have done quite a few trail rides over the years= this is not an activity we haven't done; we've also done carriage rides.

Miller: Are you looking at parceling that off from Northwoods to your own property?

DeVoe: We did that for the homes.

Trout:: When you sold property over what is controlled under the Special Use Permit. We have a dichotomy over what is controlled under the Special Use Permit and what is private. Nobody wants anything to happen to the horses. The corral appears to be a portable structure that can be moved. Horses are not the issue. The issue is how horses apply under the Special Use Permit.

**PUBLIC COMMENT:** Trout explained: those in favor would have no objection to the activity. Those opposed would consider horses permanently housed as a violation.

Betsy Berquist: I love animals; the animals are my problem. They stand out in the rain; now they are in the garage. You can't leave them in the rain. You need to have another structure to house them.

Winnie Baker: I don't mind the horses there at all. I do mind them on the beach or road as no one cleans up after them.

Ruth and Paul Hickman: We are here to listen. We have property next to Mike.

There was no rebuttal.

Annie DeVoe: The rain isn't going to bother them. They are going to stand in the field. We have a trailer that is open and there are trees, but they don't go in there. We did move them to the Rocking R during the summer storms. We have never not cleaned up after them; I always do. We definitely take better care of them than they were before; they weren't being fed. They have all gained well over 100 pounds now.

Philpot: I'm a horse person; I'm well aware that under the Right to Farm Act we must comply with those rules.

Trout: The issue is not the Right to Farm Act.

DeVoe: Regarding the horses' welfare: My garage was built to accommodate horses; it was originally designed in the drawings for the garage. I brought in portable 10 x 12 stalls. The Act is clear through June, 2012, that if we do a commercial farm activity—even if I built a barn—it does not require a permit.

Philpot: I have yet to find a case where a Special Use Permit is covered under the Right to Farm Act.

DeVoe should have asked for an amendment to his Special Use Permit.

Trout: The Planning Commission must grant or revoke an amendment to the Special Use Permit. You have to follow rules and regulations. You are allowed to sell property from Northwoods to use for your house. Why wouldn't you detach some property—either with an amendment of a sale—and sell it to yourself? I can't tell you that farm animals would be permitted if you did this.

DeVoe: The Right to Farm Act needs to be looked at. This is a hot issue in the State of Michigan; the Right to Farm Act steps in front of any zoning. Take a critical look at Kurt Schindler's written papers on this. I don't really want to be a court case, but my belief is we are in the right and are correct.

Trout: Whatever the zoning administrator told you in that regard—we are here to discuss the Special Use Permit and determine if your activity falls under that.

Miller: Do we have a copy of the Special Use Permit?

Trout: There's no reference in the Special Use Permit under Waterfront Resort Complex.

Philpot: I don't recall seeing an overall “recreational facility”.

Taylor: If it is listed it is allowable; if not listed, it is not allowable. DeVoe can still apply for an amendment to the Special Use Permit.

Trout referred to sections of the Special Use Permit for an explanation and read information on the description of the Special Use Permit/Waterfront Resort Complex.

Miller: Is there a reason why you didn't ask for an amendment or sell a piece of that land to yourself?

Taylor: In the Special Use Permit application, what is the process?

Philpot: I review the application, determine it is complete and send it to the planning commission.

Taylor: Would this be used as a judgment?

Philpot: Part of it; there are standards to follow. But after I wrote the first letter, he put up another fence. And, there is no place in the ordinance that I can find specifying the size of acreage for horses.

Straight: There needs to be more information from both sides.

Paul Hackman: Is there something in the ordinance regulating horses and the land area?

Philpot: Not at this time.

Mortenson: The discussion is comparing apples to oranges, in my opinion. I don't know why you didn't ask about this earlier.

Taylor: If we at this point, to not go to court, isn't the solution to ask for an amendment?

Trout: Northwoods LLC holds the Special Use Permit permit, not Mike DeVoe.

DeVoe: If I sell the property to myself, would I need an amendment?

Philpot: Because of the way the Special Use Permit is worded, would the Special Use Permit allow him to sell a portion of that land which is in the Special Use Permit?

Trout: I don't see any reason why this would not be allowed.

**Motion** by Trout, second by Mortenson to revoke the Special Use Permit granted to Northwoods Development LLC as amended and accepted on Sept. 28, 1995, by Mike DeVoe, president and managing member of Northwoods Development LLC. Said revocation action taken after a finding that Northwoods Development LLC is not in compliance with the terms and permitted use granted by said Special Use Permit. Said revocation is to be delayed through December 10, 2012 to allow Northwoods Development LLC to initiate options to correct the violation., which, in any case, will be corrected no later than May 8, 2012, or the Special Use Permit revocation will apply on that date.

Roll call vote: Doug Mortenson, Yes; Al Taylor, Yes; Bonnie Miller, Yes; Charlotte Straight, Yes; Jim Trout, Yes. Motion carried.

Hearing adjourned at 7:55 p.m. A five-minute break was taken.

Susan Barnard arrived at 8 p.m. to participate in the regular meeting of the Planning Commission. Charlotte left the meeting at 8 p.m.

Regular meeting called to order by Chairman Trout at 8:12 p.m.

**PROPOSED ZONING ORDINANCE AMENDMENTS:** Trout presented copies of the proposed changes—at this point—to the Onekama Zoning Ordinance prepared by the Onekama Community Planning Commission. Minor revisions were made to topics: Curbs and driveways, Fences, Sidewalks and Patios, Location of Accessory Buildings and Structures, Storage Buildings and Garden Sheds, Use of Parks, Public Access Areas, Right-of-Way and Other Public Owned Property.

**Motion** by Mortenson, second by Miller that the proposed changes in the zoning ordinance be referred to the Township Board with a public hearing to be scheduled prior to the Planning Commission's regular meeting on Thursday, Dec. 20, 2012, exact time to be announced. Motion carried.

**MINUTES: Motion** by Mortenson, second by Trout that the minutes of the October 18, 2012 Regular Meeting be approved as presented. Motion carried.

**PUBLIC COMMENT:** None.

**CORRESPONDENCE:** Letter received from Mr. And Mrs. George Ellis Jr.

**ADJOURN:** 9 p.m.

Submitted by  
Mary Lou Millard  
Recording Secretary

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Jim Trout, Chairman

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Charlotte Straight, Secretary

