

Clearwater Township

Planning Commission

Regular Meeting of November 1, 2021, Rescheduled to November 8, 2021

As approved December 6, 2021

Call to Order, Pledge of Allegiance:

Chair Von See called the meeting to order at 7:00 p.m., and opened with the Pledge of Allegiance.

Roll Call of Members and Recognition of Visitors:

Commissioners present: Cassasa, Fields, Keyes, Leffew, Von See.

Township officials: Via Zoom Supervisor and Acting Zoning Administrator Backers.

Public: Andrew "Denny" Corrado, Wendy Corrado, Dan Packer, Adam DeVaney.

Approval of Agenda:

MOTION by Keyes, second by Casassa, to accept the agenda as presented. Motion carried.

Call for Disclosure of Conflicts of Interests:

Chair calls for commissioners to disclose any real or potential conflicts of interests. None

Approval of Minutes:

MOTION by Casassa, second by Von See to accept the minutes of October 4, 2021 as presented. Motion carried.

Public Comment for Matters Not on the Agenda:

None.

Commissioner Comment for Matters Not on the Agenda:

None.

Regarding the correspondence:

Documents received from Mr.DeVaney were included in the meeting packet. They are:

1) Statement in opposition to Riegel rehab project; 2) Request for amendment to zoning ordinance Article XVII Agricultural District; and 3) Draft Short Term Rental ordinance proposal. accompanied by supporting reference materials.

The letter of objection should be part of the township's record of the Riegel residential rehab project proposal.

MOTION by Leffew, second by Keyes, to place Adam DeVaney's letter of objection in the record of the Riegel residential rehab prooject proposal. Motion carried.

Mr. DeVaney's letter of objection is hereby incorporated into the record and a copy is attached to the permanent copy of these minutes as [Att A].

Discussion regarding the language modification requested to Article XVII Agricultural District, resulted in the decision to ask the Township Board whether to get an opinion from our current legal counsel on how to proceed.

The state legislature is currently working on the matter of short term rentals; the draft submitted for our consideration comes from the Suttons Bay ordinance, which Mr. DeVaney informs us is closely harmonized with the current work at the state level.

Old Business:

Marijuana Regulation Information – presentation by Denny Corrado (Regal Security Consultants). Mr. Corrado gave an overview of the current status of the cannabis industry in Michigan, as well as his experience with assisting municipalities in crafting proper ordinances for regulating cannabis businesses within their borders. He spoke on the advantages of moving in a deliberate, step-by-step manner, so as to complete the process correctly. He reviewed the changes that have come along in recent years, the need to stay current on legislative changes, and the potential for a reliable revenue stream for the township. He mentioned that this industry is not more tightly regulated than the liquor industry. He is currently working with several of our neighboring townships and villages (Whitewater, Mancelona, Fife Lake).

His fee structure is a \$600 retainer and \$75 per hour after the retainer is met. The steps include a meeting at which the primary decisions are outlined, such as what we do want to permit and what we don't and where facilities might be located or prohibited; followed by the writing of the appropriate ordinance. He encouraged us to take the time to do it right and not make mistakes of haste that could result in lawsuits against the township.

Commissioners noted that the Township Board would like to be certain the population is on board with moving ahead. So, public input will be an important factor in our process.

Mr. Corrado will put together a proposal and work through Keyes to get it to the Township Board for consideration.

Report of Planning Commission Chair:

Chair Von See – reported that he will be away next month and Vice Chair Leffew will conduct the December meeting.

Report of Township Representative:

Trustee Keyes – reported that the Township Board meeting had to be postponed and he missed the rescheduled meeting. He has contacted Consumers Energy with regard to fixing the street lights that are out. Casassa commented that at that meeting it was decided that Clerk Booy will be the FOIA coordinator and will be paid an hourly wage for that work separate from her wage as the Township Clerk. By definition, the Clerk is the FOIA coordinator unless the Board designates another person for the position. Concern was expressed that since there were only

three Board members present, including Clerk Booy, who would have been expected to recuse herself from that vote, perhaps the vote should have been delayed until the next meeting.

Report of ZBA Representative:

Commissioner Casassa – reported that the Spillane variance request has been withdrawn. There is a public hearing scheduled on the 15th for a variance request from the Brant family who want to rebuild a significant portion of their nonconforming home, located in Torch Bridge Court, because of water damage.

The ZBA spent time reviewing the section of Ordinance 22 that deals with nonconformities, so as to secure their own understanding of the governing rules.

The ZBA modified its bylaws language with regard to handling conflicts of interest and removed the requirement for the person who recuses self from participation in discussion to also physically absent self from the room.

The next regularly scheduled meeting is the January 3, 2022, joint meeting with the Planning Commission.

Report of Zoning Administrator:

Acting Zoning Administrator Backers – reported that he has compiled a listing of the land use permits issued since April. A land swap deal went through that created a “bowling alley” lot and that will have to be rectified. Some new businesses have come into the township that he believes should have come before the Planning Commission but didn’t. He says these are mostly pontoon boat businesses. He is writing a letter to these businesses to bring them into compliance with our ordinances, applying for special use permits where applicable.

We have a potential candidate for the Zoning Administrator position, a retired real estate person with a background in land use. Backers hopes to interview and be able to hire a new Zoning Administrator before the end of the year.

There will be a personnel payroll workshop on November 16, to review all current pay amounts and schedules and make recommendations for consideration at the next budget cycle.

There is a court order coming down soon that will authorize the county sheriff to shut down the RV Park being operated against the wishes of the property owner. Once it comes through, the remaining residents will be given time to leave, then the operation will be shut down.

We need a civilized way to regulate the operation of Air B&Bs within our township and control the behavior of their clients. One piece of the solution may lie in a specific definition for Air B&Bs that distinguishes them from other short term rentals. Since the owners of Air B&Bs are generally not local residents, but investors from downstate or other states, who work through local property managers, we want to hold those managers responsible for the behavior of the clients. DeVaney interjected that the draft ordinance he has submitted makes use of the distinctions Suttons Bay has applied to Air B&Bs and ordinary owner-occupied B&Bs.

Finally, Backers indicated that although he dislikes telling anyone what they may do with their own private property, there are community standards that have to be met.

New Business

Commissioner Leffew asked of Trustee Keyes what the status is of the Underhill bridge. Keyes responded that what he does know is that the property owner made a deal with the road commission that included having the bridge fixed and it appears the road commission has dropped the ball. The issue is between the property owner and the road commission and does not involve the township at all.

Closing Public Comment:

There was none.

Adjournment:

MOTION by Fields, second by Leffew, to adjourn. Adjournment at 8:22 p.m.

Next Meeting: December 6, 2021

Respectfully submitted,

A handwritten signature in cursive script that reads "Tina Norris Fields".

Tina Norris Fields

Secretary

**Statement in Opposition to the Development of a
Residential Recovery Center on
Gillett Rd NW in Clearwater Twp., MI**

OCTOBER 27, 2021
ADAM C. DEVANEY
7219 Gillett Rd NW Rapid City, MI 49676

To: Clearwater Twp. Planning Commission

From: Adam C. DeVaney, LCSW

7219 Gillett Rd NW

Rapid City, MI 49676

231-620-7977

To All Planning Commissioners and Whomever this May Concern,

I am writing you today as a resident of Gillett Rd NW in Clearwater Township. We all are aware that Dr. Riegel and his investors are looking to purchase the 160-acre property across from the Clearwater Township Cemetery for the purpose of opening a residential and outpatient recovery center for those struggling to overcome addictions.

It is my purpose today to express in writing the specific ways that I am opposed to the approval of this development along with the reasons why. Some of this has already been shared during the past three public meetings.

Addressing Any Concern that I May Have a Conflict of Interest: I am a licensed clinical social worker, and I own and operate a behavioral health and an opioid recovery practice in the Village of Kalkaska. Other than outpatient counseling (a standard counseling practice), I do not currently offer any types of services that would directly compete with the planned development, nor do I plan to in the future. While I am very supportive of the idea of increasing access to recovery services in our area, I do not believe that this *location* is appropriate, and my opposition to this development does not come from a professional but from a personal/resident perspective.

Why Am I Opposed to Approval of This Development?

As a resident of Gillett Rd NW, I can say that one of reasons I purchased my home on this road was the privacy, the overall lack of traffic and the peace and quiet that Gillett Rd NW offers. At the peak of summer tourism, my road may experience up to 30 +/- 10 cars passing my home daily. In fact, during the summer months, there seems to be as many ORV's as there are cars that pass my home. This is equivalent to around 15 cars going down my road and leaving again.

Most nights when I get done meeting with my clients, I go home, eat dinner and go for a walk down to and around the cemetery with my wife and 4-year-old. We rarely see more than one car during this 45-minute walk, and that is my neighbor who works evenings. Otherwise, we will typically not have any cars pass us except when our close neighbors randomly come or go. It is quiet, and that is why we purchased our home there. Moving to this location was a deliberate decision to feel safe from traffic while raising our child and to have a safe and quiet place to have our farm animals.

So, why am I opposed to this proposed development?

1. This development would increase traffic on Gillet Rd NW to the point that it would more closely resemble commercial zoning.

Here are the conservatively estimated numbers of cars that will travel down our road daily once this recovery center is operating:

- **Staff**: Estimated 30 Staff Members = **Up to 60 cars passing my home**
This will vary as not all the employees will work every day, but this estimate is close to what we will experience. This does not include the same car traveling down the road multiple times per day for lunch or other activities off-site.
- **Residents**: Potential for up to 5-10 new Residents/Detox patients/visitors daily = **Up to 10-20 cars passing my home**
- **Drug Testing Facility**: This is difficult to estimate precisely, but if the recovery center gets the sole contract for Kankaska County (*currently nobody is offering this service in the county except the county jail staff*), then we can easily assume that there might be *up to or more than 75 people* who will have to come to get tested on a nearly daily basis due to drug or drinking related charges. This alone will create the potential for an additional **150 cars per day passing my home** on Gillett Rd NW give or take approximately 30. These numbers are based on reports from my clients and my understanding of the volume of testing currently being done. Typically, these types of programs are only open for around 2 hours or less per day, so these traffic estimates would be in a *very small window of time* thereby increasing the *impact* of this traffic increase by several magnitudes. People who are getting tested are under very real pressure through probation/parole/bond to show for their tests, and this makes it more likely for people to be speeding down our road in order to make their deadlines.
- **Outpatient Counseling**: If the planned development also offers outpatient recovery counseling on the proposed site (another standard part of the overall business model), which they have stated that they will likely do to the Township Supervisor, then this will potentially represent *at least* an additional 20-40 people per day resulting in up to **40-80 cars per day passing my home**. This could be less if he does not take government insurance, but many practices are successful with a cash based/sliding fee scale model as well. Some may be required to attend by the courts.
- **Commercial Vehicle Deliveries and Center Transport Vehicles**: The ongoing commercial nature of this location will also require commercial vehicles to travel down Gillett Rd NW to keep the program stocked with food and other essential items. The recovery center itself will also have to transport clients regularly for appointments and meetings. This could add a minimum of an additional **10 vehicles passing my home per day**.
- *These traffic numbers are very conservative estimates, and they could vary by as much as 50 or more cars either way. My understanding of how these types of business work is based on my professional experiences, and these numbers would be expected to grow over time as the recovery business grows.*

- **Estimated New Traffic Number:** *Up to or More Than 280 cars per day plus or minus 50 cars on any given day once the practice is up and running.*
- This impact would be well beyond the typical home-based business or adult foster care homes/childcare business.
- It is my opinion that the proposed recovery center would fundamentally change the traffic volume on Gillett Rd NW, and by my understanding of the original zoning's intent, it would be beyond the allowable impacts within our current zoning under Agricultural.
- *As a resident of Gillett Rd NW, I feel that this is a substantial change to the area that would essentially change the road's traffic volume from residential/agricultural levels to commercial levels.*

2. During the developers' representative's public presentations, they have not shared with the commission or the public two parts of their model that, taken together, create the largest potential impact on the surrounding areas.

- This development has been presented to the planning commission and the public three times on their plans for this recovery center. At none of those times did they include information on their plans to:
 - Offer Drug Testing at his facility
 - Offer Outpatient Counseling at his facility
- These are standard parts of the residential recovery center business model, yet we only heard about them as the public when our Township Supervisor mentioned them after talking with the developers' representative outside of the public Planning Commission meetings. I for one am very grateful that our Township Supervisor shared this information with us.
- As a resident of Gillett Rd NW, I feel that these are major omissions. These two services together could conservatively add up to as many as **190-230 cars per day +/- 30** traveling on Gillett Rd NW once his facility is fully operational.
- **Why were these parts of his model not shared during the three presentations to the public? Surely, any professional would be proud to offer these valuable services in a model like the one that has been presented.**
- How many other aspects of this proposal are being omitted from the Planning Commission and the public?
- How many other services will be added once this is approved, built, and opens as a recovery center, and how much will this increase the traffic on Gillett Rd NW beyond my estimates?
- How will the unforeseen impacts of an ever-increasing expansion of services be experienced by those who live in the area surrounding this center?

3. During the three public presentations, it has been stated that the proposed recovery model will be an asset to the community as we deal with rising issues around addiction, especially opioid addiction, in our area.

- Based on the public presentations and my understanding of how this model works, this is not likely to be a facility that will be accessible to the public at large and will not be the asset to our community and those in need who live here as presented. The model they are proposing will likely exclude many clients who might benefit from these services in our area.
- The facility as it is proposed, will be a high-end and expensive service. Based on my experience and understanding of this service model, it will likely be in the \$30,000+ range for 20 day stays. The “glamping”/geodesic sites are not likely to be an affordable option for most of the people who live in our area and struggle with addiction.
- **I have publicly asked the developers’ representative on two different occasions if his investors plan to accept *Medicaid* and *Medicare* insurance from their clients. It was stated twice that they will *not be doing so*. This means that the majority of people in our area who need this service will not be able to access it. It will be limited largely to wealthy patrons from outside the area.**
- I have been transparent with the fact that I own a recovery clinic in our area, and because of this, I feel I have a good sense of the economic status of those in need of this type of treatment locally. Our clients are about 75% Medicaid/Medicare clients. Because of this, we keep our addiction services as affordable as possible and take Medicaid and Medicare as well as commercial insurances for our outpatient counseling services ensuring that as many people as possible have access.
- While I do not oppose high end recovery centers as a professional or as a resident, it is *simply not accurate* to suggest that this will be developed to help the majority of those living in our area struggling with addiction since based on the type of insurance clients have the center will be excluding 3 out of 4 people in our area.
- Based on the public presentations, the investors plans are to develop a 3-story main building on the highest peak in our county with views of Skegemog and Torch Lakes. With the addition of 10 geodesic domes, the investors are clearly looking to attract very wealthy clients from all over the world, and this will likely not include many people from our area.
- **Professionals who need lower property costs for very large developments often attempt to sell their services as beneficial to those in the area who need them when, in fact, they are not likely to be accessible to most people. It seems to me that these developers are doing this when they present this high-end residential retreat as a benefit for those who are struggling with addiction in our township or county.**

3. The developers are now utilizing a single word omission in our township zoning to attempt to avoid a special use permit. That word is “Foster”.

- This is the language from the township’s website regarding the special meeting that took place on August 23rd, 2021:

Clearwater Township Public Hearing

The Clearwater Township Planning Commission will hold a public hearing at a special meeting on Monday, August 23rd, at 7 pm. The meeting will be held at the Community Center, 5407 River St NW, to consider a petition from Andrew Riegel for a Special Land Use permit to construct an **Adult Care Facility** (emphasis added) on parcel numbers 40-004-022-001-00, 40-004-015-038-10, and 40-004-022-003-00.

- The developers initially asked for a special land use permit. This was denied based on our Master Plan and our zoning ordinances.
- Our Planning Commission and the public gave a genuine attempt to find them a different location in our township, but we were unable to find a suitable property.
- When the developers realized that we had a word missing in our zoning for adult foster care facilities, they dropped their special use application in favor of simply going into the location on Gillett Rd NW under the existing agricultural zoning.
- **This appeared to me to be an attempt to exploit a loophole in our zoning based literally on one single word.**
- I have also put in a formal request to amend the zoning ordinance ARTICLE XVII AGRICULTURAL DISTRICT 17.02 PERMITTED USES Section B to include the word “Foster” as defined by state law.
- Michigan law does not make any reference to “adult care facilities”. The regulations for an adult foster care agency or home are very detailed, and the regulations are lengthy. They would be impossible for a residential treatment facility to qualify for, and they are specifically intended to define a relationship between a service provider and a client that intertwines the client’s finances and activities of daily living with that of the foster service agency. This is not what a residential addiction treatment facility does.
- **As pointed out to the Planning Commission and the public by Commissioner Leffew, Michigan law also specifically forbids a residential drug treatment facility from applying for or qualifying as an adult foster care facility. The specific statute is:**

ADULT FOSTER CARE FACILITY LICENSING ACT Act 218 of 1979

This Act defines what an adult foster care facility is in Michigan Law. It specifically excludes:

“400.703 Definitions; A., 4,h (h) An establishment commonly described as an alcohol or a substance use disorder rehabilitation center, except if licensed as both a substance use disorder program and an adult foster care facility and approved as a co-occurring enhanced crisis residential program, a residential facility for persons released from or assigned to adult correctional institutions,

a maternity home, or a hotel or rooming house that does not provide or offer to provide foster care.”

- **The developers’ representative was asked at the special Planning Commission meeting if he and his investors were planning to apply for and acquire a state license for a “Adult Foster Care Home”. He publicly stated that they were not planning to do this.**
- According to our township zoning, any business entity under an “adult care...facility” is expected to follow state law regarding their operation. It states, “...as may be required by state law.” In this case, it is my understanding that any entity claiming to be an “adult care facility” would be regulated as an “adult foster care facility” under state law. If the model currently being proposed is barred under state law from being an “adult foster care facility”, then it would also be barred under what I believe was the intent of the original creators of our zoning.
- **It appears to me that the developers and their public representative are attempting to avoid a special use permit in Clearwater Township by asserting that they are proposing an “adult care facility” when in fact they would be specifically barred from claiming to be an “adult foster care” facility under state law.**

As a resident of Gillett Rd NW, I am clearly very concerned with the impact that approval of this facility will have on my neighborhood and the surrounding areas should this development go forward as planned. The traffic on my road will increase by a conservative estimate of 6-9 times what it is today. This will fundamentally impact the experience of living on this road and will change the character of the area.

I am supportive of increasing our community resources, and the addition of more addiction treatment in our area is exactly why I chose to open an outpatient recovery center myself in Kalkaska. Based on my professional experiences, it is my understanding that the proposed business model will not accomplish this in our area without accepting government insurance plans.

To the best of our knowledge, we do not have a place for this center in our township. We can all agree that this is not ideal. However, we have zoning in place for a reason, and it is my understanding and opinion that the proposed business model simply does not fit with our current zoning or master plan at the location he wishes to purchase and develop.

Thank you for taking the time to consider my concerns.

Sincerely,



Adam C. DeVaney, LCSW