.Doug Hankes

President: Jabez Partners

9410 Elizabeth Lake Rd., White Lake, Mi 48386

1/24/14

RE: Illegal order to abandon a non-conforming mixed use

Dear Mr. Baroni, and soon to be Chief Klein;

I am hereby challenging Shawn and Lisa’s order to not expand the use of a non-comforming use within the structure at the above address.

I have included a page from J. Craig Smith and Scott M. Ellsworth’s legal guide to zoning regulations. For the uninformed, this is considered “the Bible” of zoning regulation across the country. (It is accepted by the American Association of Realtors, the National Society of Planners, Etc., so planners etc, have a history of the evolution of zoning ordinance, and where it is today, with the intent of uniform understanding of property rights, constitutional rights, etc.

Please note, in the attached “code”, that pre-existing uses go with the structures on that land, or the use of the land.. And perhaps Lisa’s confusion is over the general rule, that non-conforming uses cannot be expanded or enlarged. This applies to the uses or structures on the land, not the interior use, as long as it maintains the use preceding the ordinance. So when the general rule says non-conforming uses cannot be expanded or enlarged, it means the footprint ON THE LAND cannot be expanded, or even more technically, the cubic volume as well. Like you not only can’t build out but you cannot build up. (Second story). For example, if my property had three mixed use buildings on it, those buildings cannot exist without the land, but the land can exist without the structures. Therefore the no expanding clause would refer to the land. I cannot add more non-conforming structures, or expand any of the structures on that land. However that clause DOES NOT refer to re-formatting of uses that were in effect at the time of the new zoning ordinance, WITHIN EACH STRUCTURE. If each of these structures were mixed use at the time of zoning changes, they may add significant value TO THE LAND, because of their existing uses, which cannot be taken away, without encroaching , on the Constitutional Rights of the owner.

For example, the structures on the land, will retain their mixed use, if that use is maintained. If one of the structures became all one use, then that structure would loose its mixed use status forevermore, but not the other structures. The unaffected structures would retain THEIR INDIVIDUAL mixed use status..if maintained. They can expand or contract those uses in each structure, AS LONG AS ALL USES ARE MAINTAINED. THIS IS THE VALUE TO THE PROPERTY, THAT CANNOT BE TAKEN AWAY!

That leads to the “highlighted” portion of the code. (a non-conforming use may be extended through the same building provided no structural alteration of the building is proposed or made for the purpose of the extension"

This is why, when Deb and I signed the existing land contract with Gertrude Biddock, owner of record, her attorney advised us; whatever you do, DO NOT allow the building to become all one use or the other, or you will lose Gertude’s mixed use status, and thereby degrade the value of her property. He said, like if your business does really well, and it wants to take over the whole building, KEEP one apartment open, so you do not lose her mixed use, and break your land contract. WHOOPS! You may want to expand the residential use someday, if your business falters.

Obviously, her attorney was familiar with real estate law, and not so much Shawn and Lisa’s “interpretation “ of it.