

Lawyers Debate Green's Maple View Project's Change of Use

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proceeding for us and it is very important that we state our reasons for whatever decision we make," said Mr. Evashevski. "It's really important to have that record."

Serving on the Zoning Board of Appeals are Mayor Margaret Doud, aldermen Frank Blosswick, Mike Hart, Armand Horn, Dan Wightman, Jason St. Onge, and Armin Porter, and Planning Commissioner Lee Finkel.

In June, the Planning Commission agreed to allow a change of use for the structure, which now houses Island employees, to become a condominium containing 12 to 14 single-family apartments. The building is on the east end of Main Street near Mission Point.

After more than one hour, the board voted to dismiss the appeal on the basis of the first question,

which is whether Mr. Azzar is aggrieved because of the use change. Mr. Evashevski pointed out that an aggrieved party is required to suffer special damages, which are beyond any that other Island residents would experience. The board decided Mr. Azzar was not an aggrieved party, which dismissed the appeal.

Following that vote, Mr. Evashevski asked the appeals board to vote on the other two questions, which then would serve as a record for any further appeals in court.

The second question, would the Planning Commission's substitution of one non-conforming use (employee housing) for another (condominiums) increase the non-conformity of the use in an R-1 District? If the board voted yes, then the Planning Commission's decision would be

reversed. The third question, would the Planning Commission's substitution of one non-conforming use (employee housing) for another (condominiums) be contrary to the public health, safety, and welfare or the intent of the zoning ordinances? If the board voted yes, then the Planning Commission's decision would be reversed.

The Zoning Board of Appeals voted yes on both questions, but, since the appeal was dismissed because of the first question, the Planning Commission's decision will not be reversed.

Mr. Azzar did not attend but was represented by his attorney, Robert Shaver of Grand Rapids, and hired a court reporter to provide a record of the hearing in case he decided to make a further appeal. Mr. Green, who attended the appeal, was present with his attorney, Jim Young of Boyne City.

Each lawyer argued the three questions.

Mr. Shaver presented his client's case on the first question, stating Mr. Azzar was aggrieved because he had two properties within 300 feet of the Maple

View. "Mr. Azzar would suffer damages in connection with the value of his property and it has the potential to interfere with the benefits and future appreciation of this property," said Mr. Shaver.

"An aggrieved party has to have some sort of special damage," argued Mr. Green's attorney, Mr. Young. "In this case, it takes more than just simply saying, 'somehow my enjoyment of the property is going to be 'adversely affected.'"

Mr. Young also said, "The same with the question of, 'my property value is going to decrease.' That simply is contained in a letter from the attorney and guesswork by an attorney in a letter isn't sufficient to show that there might be a decrease in value. A letter from a realtor, a letter from an appraiser based upon a preliminary examination of the property, might be sufficient."

The appeals board weighed whether Mr. Azzar was more aggrieved than other property owners.

"I've asked twice now how it affects Mr. Azzar more than it affects the Hribars or Candy

(Smith), or Margaret Horn, and nobody can tell me that and I'm trying to at least follow the advice of our legal advisor," said Jason St. Onge.

Other board members noted that Mr. Azzar had two pieces of property in the area.

When Mayor Doud called for a motion, Lee Finkel proposed that the appeal be dismissed.

The final vote was four to three, with Frank Blosswick, Dan Wightman, Jason St. Onge, and Mr. Finkel voting to dismiss and Mike Hart, Smi Horn, and Armin Porter voting against the motion.

With the appeal then denied, the board moved forward at Mr. Evashevski's advice to still consider the remaining two questions.

On question two, Mr. Shaver argued that the R-1 non-conforming use for Maple View was grandfathered and to allow it, as a condominium, to be owned by multiple owners would increase its non-conformity. With potentially 12 to 14 owners, he said it would almost be impossible to bring the property in compliance with an R-1 district.

Mr. Green's attorney argued that ownership of the property is not relevant. He said that moving from 100 transient residents to 14 owner families in one building would not increase the non-conforming use of the land.

Mr. Evashevski also advised the board that, in his opinion, use of the land, not ownership, is what their decision should be based on when weighing the

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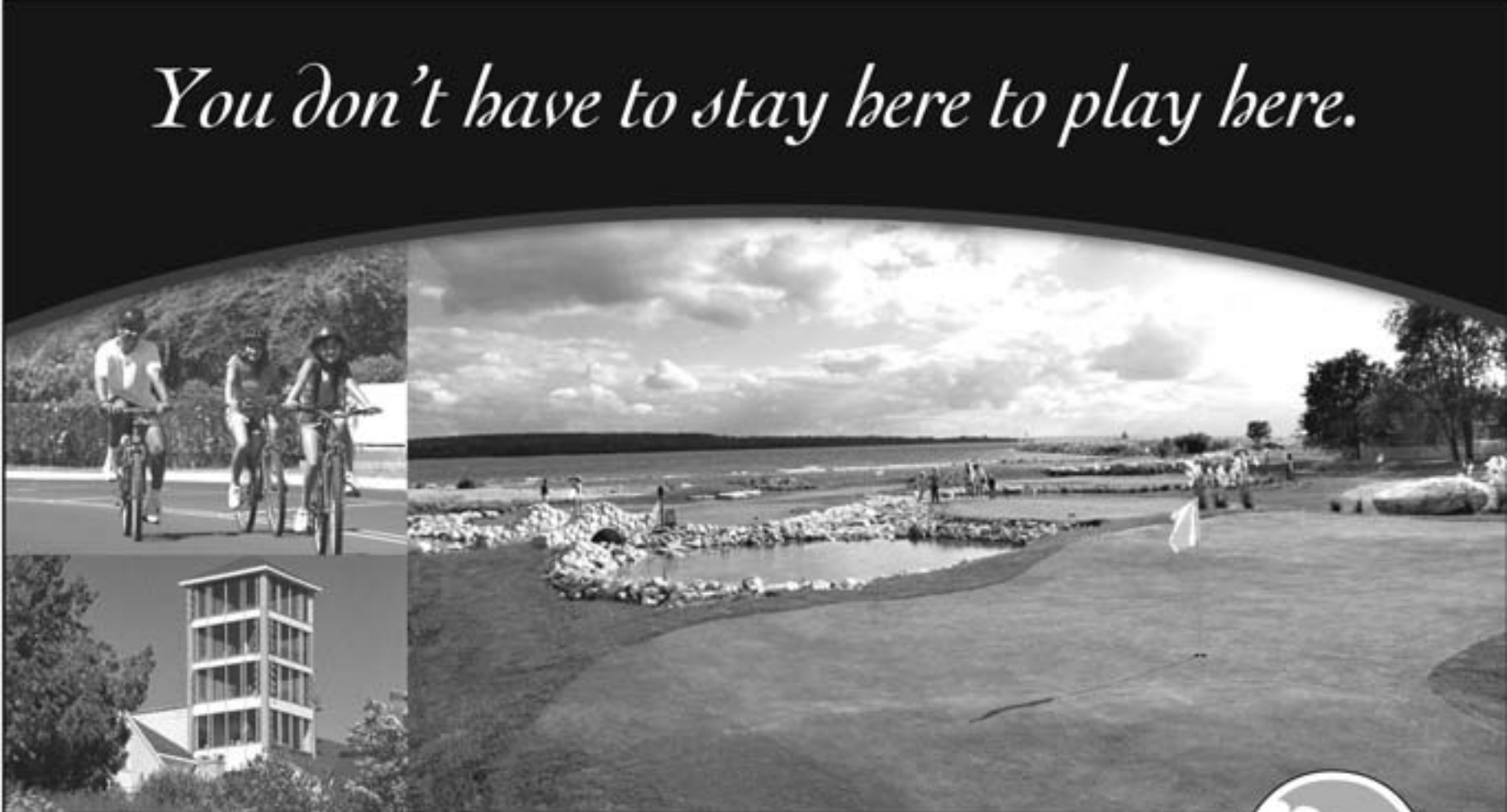
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