



**Village Office**

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April 24, 2013

Mr. Loy Putney  
4286 Raymond Road  
Frankfort, MI 49635

Courtesy Copy:  
Mr. Bradley Putney  
810 Business Park Drive  
Traverse City, MI 49686

Re: Loy Putney Proposed Apartment Project, 1561 S. Scenic Highway, Village of Elberta

Dear Mr. Loy Putney:

As you may know, I am the Zoning Administrator for the Village of Elberta. Part of my job is to insure compliance with the Village Zoning Ordinance requirements, which Ordinance is intended to protect the rights and interests of all Village residents.

I am aware of certain activities you have undertaken to remodel the building changing the use of the building for occupancy as "apartments". As you may know, the prior use of the building was for a motel. Apartments are therefore a change of use.

I believe you were aware of the fact that because you were changing the use of the building you were required to obtain a Land Use Permit pursuant to Section 5.03 Land Use Permits and Permit Process:

- "1. No person shall erect, alter, raze, or move a structure or establish a new use or change a use for any parcel without a Land Use Permit."** (Emphasis added.)

Consistent with this Ordinance requirement, you filed an Application for Issuance of a Land Use Permit on January 9, 2013. I timely responded to your request by explaining, among

other things, that your proposed use could only be processed by the Village as an Application for a Special Use Permit/Application for Site Plan Review. You must have accepted my explanation since you did not file an appeal to the Zoning Board of Appeals to have my decision reviewed/reversed.

Further evidence of the fact you were aware you needed Village approval prior to proceeding with renovations was your filing of two separate Applications on February 26 (Application for Site Plan Review/Special Use Permit). Those Applications were timely processed and the Planning Commission began its review of those Applications on April 16, 2013. (Prior to that first meeting both you and your attorney were advised, in writing, to review all of the Ordinance requirements the Planning Commission is legally required to apply in determining whether or not your proposed use satisfies the Ordinance requirements. The Ordinance requirements apply to anyone in the Village pursuing approval of "apartments" within the Commercial District. Because the P/C determined you failed to provide information/documentation on many of the Ordinance standards, you were asked to supply additional information for the Planning Commission's review at its meeting scheduled for May 7.

I inspected your property on April 19 and determined that renovations/remodeling was underway but no one was occupying the property. On that same date Mr. Brad Putney was provided a letter from the Village attorney indicating that the Department of Agriculture has not advised you/taken the position that you are free to undertake the remodeling efforts and occupy the building without zoning approval. (Copies of emails were also provided to your attorney clearly alerting him to the fact the ALC rules do not supersede the Village's Ordinance requirements.)

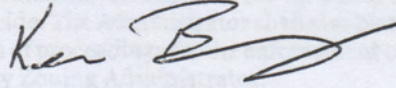
It is my understanding you have people occupying the building in spite of the notice to your attorney and in spite of the fact the Department of Agriculture has not authorized you to proceed with occupying the building without obtaining approval/complying with the local Zoning Ordinance.

Accordingly, under Section 5.08.1(b), please allow this letter to serve notice to you as a "stop work order" for continued remodeling efforts and for occupying the building without obtaining the proper permits/Village Council approval - all as clearly required under the Zoning Ordinance. Please be further advised that I intend to inspect the property on Monday morning, April 29, 2013, to confirm you have ceased all remodeling efforts and, more importantly, the people currently occupying the building have vacated.

I am attaching page 11, 16 and 17 of the Zoning Ordinance which outlines potential further enforcement action as a result of your intentional violation of the Zoning Ordinance, including the potential penalties under paragraph 5.

I trust if you or your attorney have further information concerning these issues, you will immediately provide a written explanation; otherwise, the Village would appreciate your voluntary cooperation and your continued participation in the process you invoked previously by filing your Applications for SUP/Site Plan Approval.

Sincerely,



Ken Bonney

Enclosures

- cc Loy Putney (via mail/with enclosures)
- Loy Putney (posted on entry door of building/with enclosures)
- Sharyn Bower (for distribution to Village Council members/with enclosures)
- Marcia Stobie (via email/with enclosures)
- Edgar Roy III (via facsimile or email/with enclosures)

5.03 LAND USE PERMITS AND PERMIT PROCESS

1. No person shall erect, alter, raise, or move a structure or establish a new use or change in use for any parcel without a land use permit.
2. Applications for permits shall be made to the Zoning Administrator on a form provided by the Village with an affidavit swearing to the information in the application, granting right of entry, and acknowledging that the application does not grant the applicant any rights. The applicant shall furnish permits, approvals, or evidence of assurances or approvals from the Benzie County Environmental Health Department, the Benzie County Road Commission, the Michigan Department of Transportation, the Michigan Department of Environmental Quality and any other regulatory agency with authority over the activity or use, if required, before the Zoning Administrator may issue a permit.
3. Nonconformities. A land use permit shall not be issued for any use or structure unless said use or structure and the lot on which situated meet all requirements of this Ordinance. However, a land use permit shall be issued for a use or structure and the lot on which situated on which one or more legal nonconformities exist. In such case, the land use permit shall clearly list each and every legal nonconformity. A permit shall not be issued for any use or structure and the lot on which situated if

**ARTICLE 5  
ADMINISTRATION AND ENFORCEMENT**

5.01 ADMINISTRATION. The provisions of this Ordinance shall be administered by the Council in accordance with the Michigan Zoning Enabling Act.

5.02 ZONING ADMINISTRATOR. A zoning administrator shall be appointed by and on such terms as determined by the Council. The Zoning Administrator shall administer and enforce this Ordinance, including the receiving and processing of applications for permits under this Ordinance, and appeals for variances or other matters the Board of Appeals or Planning Commission is required to decide. The Administrator shall also be responsible for the inspection of premises, the issuance of permits and institution of proceedings for the enforcement of the provision of this Zoning Ordinance. The Council may also appoint a Deputy Zoning Administrator.

The Zoning Administrator shall have the following duties and powers.

1. The Zoning Administrator shall interpret all provisions of this Ordinance.
2. The Zoning Administrator shall enforce all provisions of this Ordinance and shall issue all necessary notices or orders to insure compliance with said provisions.
3. The Zoning Administrator shall receive applications for and issue permits when all the provisions of this Ordinance have been met.
4. The Zoning Administrator shall make all investigations and inspections required by this Ordinance, and all investigations and inspections necessary to enforce this Ordinance, and may engage the assistance of the Fire Chief as deemed necessary in making such inspections. The Zoning Administrator may engage other expert opinion to assist in making such inspections subject to the approval of the Council.
5. The Zoning Administrator shall identify and process violations to this Ordinance. The Zoning Administrator shall be responsible for making periodic inspection of the Village or parts thereof for the purpose of finding violations of this Ordinance.
6. The Zoning Administrator shall keep official records of applications received, permits issued, fees collected, reports of inspections, and notices and orders issued.
7. The Zoning Administrator shall serve in an advisory role to the Planning Commission, the Board of Appeals, and the Council. The Zoning Administrator shall periodically or more, as necessary, attend Planning Commission, the Board of Appeals and Council meetings, and report on the status of zoning operations and any needed changes to this Ordinance. The Zoning Administrator shall also make recommendations concerning permit fee structures and zoning forms and propose solutions to any problems encountered in administering this Ordinance.
8. Before the Board of Appeals, the Zoning Administrator shall present case facts and explain decisions of the Zoning Administrator.
9. The Zoning Administrator shall identify, inventory, and monitor nonconforming uses.

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- public hearing shall be as provided in the applicable provision.
6. Registration to Receive Notice by Mail.
    - a. General. Any neighborhood organization, public utility company, railroad or any other person may register with the Clerk to receive written notice of all applications for development pursuant to Section 5.07.4.a.iii. The Clerk shall be responsible for providing this notification. Fees may be assessed for the provision of this notice, as established by the Council.
    - b. Requirements. The requesting party must provide the Clerk information on an official form proscribed by the Council to ensure notification can be made. All registered persons must re-register annually to continue to receive notification pursuant to this Section.

#### 5.08 VIOLATIONS.

1. It shall be the responsibility of the Zoning Administrator to initiate the procedure for removing or abating a violation of the Zoning Ordinance. Upon verification that a Zoning Ordinance violation exists, the Zoning Administrator shall either:
  - a. Give notice of violation by mail or in person to the property owner and the property possessor/occupant (if any). Such notice shall identify the subject property, identify the nature of the violation and the applicable parts of the Zoning Ordinance, direct the discontinuance of the violation, and specify the time period, which will be allowed for abatement of the violation. Or,
  - b. Issue a "Stop Work Order" if any one of the following apply:
    - i. The applicable permit or approval required under this Ordinance has not been issued.
    - ii. Work in progress does not comply with the applicable permit or approval granted under this Ordinance.
    - iii. A permittee fails to comply with any of the terms, conditions, or requirements of the applicable land use permit or a condition of the permit.
    - iv. A permittee fails to pay any fees required by this Ordinance or any other applicable ordinance.

The stop work order shall contain the same information required for the notice of violation (paragraph 1.a, above). In addition the stop work order shall contain the time of day that the order is issued, shall order all persons to stop work immediately, and shall state that failure to comply with the order or removal of the posted order may result in criminal prosecution. A copy of the order shall be posted on the property at a point visible from the street and shall be of a distinctive bright color.
2. The Zoning Administrator shall cancel a notice of violation or remove and cancel a stop work order when his/her reinspection confirms that the violation originally cited has been abated and that no new violation exists. A copy of the cancellation will be mailed or hand delivered to the property owner and the occupant if different from the owner.
3. If the violation is not abated or work continues after posting of the stop work order, the Zoning Administrator is authorized to issue a municipal civil infraction violation notice pursuant to the Village's Ordinance governing municipal civil infractions. Any person who violates any provision of this section shall be responsible for a municipal civil infraction, subject to payment of a civil fine as set forth in the Ordinance.
4. Nuisance Per Se. Any land, dwelling, building or structure which is erected, altered, razed or converted, or any use of any land, dwelling, building or structure which is commenced or changed after the effective date of this Ordinance, in violation of any of the provisions herein, is declared to be a public nuisance per se, and may be abated by order of any court of competent jurisdiction. In addition to other remedies, the Village shall have the right to commence a civil action in a court of competent jurisdiction to obtain injunctive or other relief that may be appropriate to stop, correct, or otherwise remedy a nuisance per se.
5. Penalties. Any person who shall violate any provision of this Ordinance in any particular manner, or who fails to comply with any of the regulatory measures or conditions of the Board of Appeals adopted pursuant hereto, shall, upon conviction thereto, be fined not exceed \$100.00 or may be imprisoned not to exceed 90 days, or may be both fined and imprisoned in the discretion of the

Court, and each day such violation continues shall be deemed a separate offense.

5.09 INTERPRETATION AND CONFLICT. In interpreting and applying the provisions of this Ordinance, the provisions shall be held to be the minimum requirements adopted for the promotion of the public safety, health, convenience, comfort, prosperity and general welfare. It is not intended by this Ordinance to interfere with, abrogate or annul any easements, covenants or other agreements between parties, provided, however, that where this Ordinance imposes a greater restriction upon the use of a building or land than existing easements, covenants or other agreements, the provisions of this Ordinance shall govern or control. Whenever the requirements of this Ordinance differ from the requirements of other lawfully adopted rules, regulations or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

5.10 DECLARATION OF ZONING MORATORIUM. Notwithstanding any other provision of this Zoning Ordinance, the Council may, by resolution, declare a moratorium on the issuance of any permit under this Ordinance, the processing of any permit application hereunder, the processing of any rezoning request, the processing of any site plan review, special land use request, or the processing of any other application made under this Ordinance. Such a moratorium may be declared by the Council only under the following conditions:

1. The Council finds, based on facts appearing in the public record before it, that such a moratorium is necessary to protect the public health, safety and welfare and that no other action short of imposing a moratorium can adequately protect the public health, safety and welfare;
2. The moratorium is for a limited period of time, not to exceed 6 months, but may be extended for no more than 1 additional 6 month period upon new and separate findings of fact required under subsection 1 above;
3. The moratorium is limited in its scope and area of application so as to only affect those matters and that area necessary to protect the public health, safety and welfare;
4. The resolution declaring the moratorium shall be published in a newspaper of general circulation within the Village;
5. The resolution declaring the moratorium shall specify the effective date of such moratorium which may be the date of publication or another date following such publication; and
6. The resolution declaring the moratorium shall be adopted by a vote of no fewer than 5 members of the Council.

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