

# KLEMEYER, FARLEY & BERNATHY, LLC

Attorneys at Law

JOHN H. KLEMEYER  
THOMAS F. FARLEY  
ROBERT F. BERNATHY

SANFORD D. BEECHER  
VICTOR A. DECKER III  
OF COUNSEL

Please reply to:  
 Millford  
 Hawley

402 Broad Street  
Milford, Pennsylvania 18337-9998  
570.296.6453  
Fax 570.296.2769

2523 Route 6, Suite 1  
Hawley, Pennsylvania 18428  
570.226.5771  
Fax 570.226.5140

E-mail: [contact@kfblawoffice.com](mailto:contact@kfblawoffice.com)

November 25, 2009

Tammy Lee Clause, Esquire  
Route 507- 191  
P.O. Box 241  
Newfoundland, PA 18445  
***By fax and regular mail***

*Re: Dingman Township – Lake Adventure*

Dear Tammy:

Your letter to me and the Township dated November 23, 2009 had been given to me for response. First of all this ordinance was not drafted to create a problem but rather to solve one. There are several property owners within Lake Adventure that require zoning and building permits for new work and it was found on inspection that their property, as presently developed, is not legal under the ordinances in place now or in place when the installation was done. Therefore, they required a variance. In order to avoid the need for every property owner similarly situated to go through a variance process this ordinance was proposed. The affected property owner for the first application and his attorney are very much in favor of it. You were asked to be involved in the process of preparing this ordinance but for timing reasons explained by you were not able to do so.

First of all the ordinance does not discontinue non-conforming uses so the case cited by you does not apply. It does require that such non-conformities be registered which is a requirement that has been recognized by Pennsylvania courts many times. Since a specific benefit is being granted to Lake Adventure property owners by virtue of this ordinance a time period to register was invoked. If you have any case law that states that this cannot be done please let me know. I have found none and the case you cite is on an entirely different subject.

The fifty foot setback for construction from bodies of water is state law. We did not make it up for Dingman Township. If a property owner has a non-conforming use on this issue he or she can register that use.

The issue of registration and permitting of seasonal uses is something that the Board and staff will have to address.

The fifteen foot height requirement was based upon information that Lake Adventure gave to us in the curative amendment hearing process and through Township research. If there are legitimate recreational vehicles (otherwise of the proper size) and accessory structures that are taller please provide evidence of that affect.

Zoning permit fees are on line at the Township website. There is currently no fee for certificates of nonconforming use. The lowest fee is \$50.00. Most applications are on line and all are at the office. They are standard. Shortly all forms will be on line. Permits are required before work is done not after. The staff works very hard to respond to permit requests promptly. The maximum time period is controlled by state law.

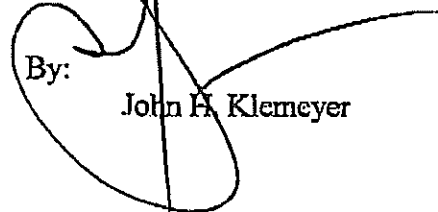
The Township agrees with you that all property owners within the Township have a right to maintain uses that are currently legally in place. The operative word is "legally". Just because it is there does not mean it was legal (conforming) when it was done. In many instances we have found that current uses are not legal. Hence, the need for variances. The proposed ordinance does not increase set backs and other standards over the ordinance currently in place, it makes them smaller. A significant effort was made to make the setbacks as reasonable as possible. Having no standards, however, was not an option. The suggestion that the zoning ordinance does not apply to Lake Adventure is patently false and unreasonable. The zoning ordinance applies to the entire Township. No community or property has the right to opt out.

The Township is pleased that the new Board intends to require compliance with covenants in the placement of new units and accessory structures. However, the Township has been told that before and the end result was that this was not done. The enactment of the state-wide building code has required the Township to get involved in accessory structures at Lake Adventure. This has caused our staff to go out in the field and their findings have indicated that self-administration of the covenants and ordinances was not working.

If you have further comments we would be happy to address them. However, the scheduled hearing will be held to accept public comment not for the interrogation of Township staff and Board members. This process was all done in good faith and you were invited to participate in that process. Although your Board has every right to advise its members to come to the upcoming meeting neither the Board nor anyone connected with the Township will be intimidated by a showing of numbers. The Township will do what it deems is right for its citizens whether 100 people show up or 2.

Please feel free to call me on this matter.

Very truly yours,  
KLEMEYER FARLEY & BERNATHY

By:   
John H. Klemeyer

JHK/  
Cc: Dingman Township