

Introduction to the Gamble Testimony

The most useful portion of the January, 2007, Bench Trial, Elayne Shelton, Plaintiff, versus Powell Township, Defendant, and Lighthouse Three Inc, Defendant, was the testimony of Linda and Jeff Gamble. Their testimony uncovered (and answered) many more questions about the long relationship between Lighthouse Three, Inc and Powell Township, and the changes to Powell Township Zoning Ordinance and Comprehensive Plan which have occurred over the past years to accommodate the lighthouse development.

Unfortunately, this useful testimony did not come until the very end of the trial, but fortunately, many Big Bay residents and property owners were there to hear it in person¹, and fortunately a legal transcript was obtained for public viewing.

Background Explanation of Zoning Districts mentioned in this document:

The Powell Township Zoning Ordinance has two zoning districts that can be designated to properties with frontage on lakes and rivers within the township (LS/R and RS-10). The description of the zoning districts as worded in the recently revised Zoning Ordinance, nearly identical to wording in the previous Zoning Ordinance, is provided below:

- Section 313 District **LS/R** (Lake Shore and River) INTENT: "... those areas with frontage on lakes and rivers which, because of existing development, natural characteristics and accessibility, are suitable for development. Minimum lot size is 22,500 sq. ft. ²
- Section 314 District **RS-10** (Recreational structures" INTENT: "... designed for areas with frontage on lakes and rivers, which because of their natural characteristics, accessibility, and high cost of providing public services, are suited for less intensive development than the LS/R District and intended for recreational or seasonal development. Government services may not be provided on a year-round basis or may not be provided at all. Minimum lot size is 10 acres".

Also mentioned in this Testimony is Zoning District RR-5 (Rural residential 5 acre). This is interior ("non-shoreline" district), minimum lot size = 5 acres.

A commentary of the Gamble testimony is given on the following pages. [Click here to access the official transcript of their testimony.](#)

¹ The Gamble testimony, as well as the entire two-day trial, was heard by Big Bay residents Martha Bush and Jim Gratz, and property owners Bill Vanni, Gordon Niessen, Tina Gratz, and Elayne Shelton. Testifying on behalf of the Plaintiff were Tina Gratz, Bill Vanni, and Gordon Niessen. Attending the first day, prepared to testify on behalf of the Plaintiff (until the Judge ruled that the Powell Township ZBA zoning map interpretation was not to be addressed in the trial, because the issue had been later addressed by two rezoning meetings), were previous highly experienced Planning Commission members and residents of Lighthouse Road: Gene Champagne and Jerry Grenman. In addition, lighthouse enthusiasts from Wisconsin, Bob and Sue Jasch, attended both days of the trial. Finally, resident Jeanne Baumann, found time to attend a portion of the trial. The Lighthouse Three, Inc. / Powell Township side of the Courtroom was empty both days except for the defendants: Supervisor Vince Bevins, representing Powell Township, and Linda and Jeff Gamble representing Lighthouse Three, Inc, their attorneys, and a brief visit on the 2nd trial day from Linda Gamble's friend, Mary Ellen Krieg.

² 22,500 ft² = 1/2 acre. In addition, from Section 401, LS/R minimum lot width is 100 feet. RS-10 minimum lot width is 330 feet.

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5	2	<p>The Big Bay Point Lighthouse is owned by a “C” corporation, Lighthouse Three, Inc.</p> <p>Mr. John Gale, of Chicago, owns 50% of Lighthouse Three Inc.</p>	<p>Should Big Bay residents and property owners be concerned that a 50% owner of the lighthouse is not a resident of Big Bay? Should they be concerned about the preservation of the historical lighthouse? Should they be concerned that the extremely valuable original Fresnel lens, important to lighthouse enthusiasts, has been removed from the lighthouse property? Should they question why ample government funds available for lighthouse preservation, if needed, have not been requested?</p>
5 6	22-25 1-6	<p>Mr. and Ms. Gamble, who together own 50% of the lighthouse, served on the Powell Township Planning Commission from February 2001 to March 2004. Ms. Gamble served on the Powell Township Board from 2000 to 2004.</p>	<p>Do the minutes from the Planning Commission meetings and the changes made to the Zoning Ordinance while Lighthouse Three, Inc. were members, accepted as evidence during trial, and others also available to the public for further review, indicate self-serving interests of Lighthouse Three, Inc., at the expense and objections of many of their neighbors?</p>

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6	7-25	Good friend of Linda and Jeff Gamble, Pam Butterfield, who regularly socializes with the Gambles, served on the Planning Commission during the same time frame as the Gambles.	<p>Was it helpful to have a very good friend serve as Secretary of the Planning Commission, keeping minutes and records, based on public records serving from 2001 to 2007, and voting on numerous occasions to support the site condominium project?</p> <p>Based on public Planning Commission meeting minutes, supplemented with records from Marquette County Planning Commission, it appears that Ms. Butterfield voted / attended / participated as follows:</p> <ol style="list-style-type: none"> 1. Present in the March, 2003, Planning Commission meeting (see later comment, other sections of testimony), in which fellow member, Linda Gamble, presented their nonconforming LS/R issue. 2. Voted Aye to motion made by Jerry Sherman: Added Condominiums / multiple family dwellings to RR-5 zoning district (Sept 2003) 3. Made the motion, seconded by Jerry Sherman, and passed by the Commission, to permit condominiums / multiple family dwellings in the LS/R district (Sept 2003). 4. Seconded the motion made by Jerry Sherman, and passed by the Commission, to allow Condominiums / multiple family dwellings in RS-10 zoning district (Sept 2003). While the records of Marquette County Planning for this particular item note that J. Gamble and L. Gamble abstained from this vote, the note immediately followed their note of abstention: "REASON FOR THE CHANGE: Motion made by L. Gamble, seconded by J. Gamble, and passed by the Commission" 5. As Secretary, Ms. Butterfield was responsible for rewording various sections of the Zoning Ordinance. [NOTE: As of June, 2007, an FOIA is still outstanding with Powell Township: where is the documentation which supports the legal addition of Section 401 (g) which permitted 1 acre lot sizes in RS-10 zone with a conditional use?]. <p>Continued on next page</p>

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			<p>Pam Butterfield, Planning Commission Member, 2001 – 2007 Secretary, good social friend of Linda and Jeff Gamble, continued:</p> <p>6. After Marquette County Planning voted against the proposed addition of condominiums in RS-10 zoning district: Ms. Butterfield attended various meetings, with then Chairman Joe Stanley, to continue to address the March, 2003 nonconformance issue. [NOTE: After discussing how to resolve the nonconforming issue is several 2004 meetings, the Planning Commission voted in Sept, 2004, to address the nonconformance issue by minimizing their requirement to take action. The following changes (see strike-out text) was made to Section 906B: “...It is the purpose of this Ordinance to eliminate Class B Nonconforming Uses and Structures as rapidly as is permitted by law without payment of compensation. ...The Planning Commission shall, at its earliest possible time, arrange to have a comprehensive inventory of all nonconforming uses and structures located in Powell Township.” Added: The Planning Commission may create a comprehensive inventory of all nonconforming uses and structures located in Powell Township.]</p> <p>7. October, 2004 – Ms. Butterfield seconded the motion made by Jerry Sherman, passed by the Commission with one abstention (not hers), to allow the Lighthouse Three Inc conditional use permit for a twelve site condominium. [NOTE: Other than the major issues brought forth by members of the community and the later Appeal, the conditional use permit listed two wrong property IDs, referenced a legal description that differed significantly from the site condominium plan presented to the public in 2004, and failed to mention the portion of RS-10 zone in the lighthouse property per 1994 and 2002 Powell Township Zoning Maps (rezoned 2 years later) which did not allow condominiums by conditional use.]</p> <p>8. June 2005 – “Pam Butterfield made a motion to hold a special meeting with the Township attorney to discuss [the information presented by the Appeal of the site condominium approval].”</p>

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			<p>Pam Butterfield, Planning Commission Member, 2001 – 2007 Secretary, good social friend of Linda and Jeff Gamble, continued:</p> <p>9. August, 2005 – Pam Butterfield seconded the motion for a Public rehearing of the lighthouse Site condominium conditional use Permit. [NOTE: due to the Zoning discrepancy per 1994 and 2002 Powell Township Maps, the Township attorney later advised against this hearing, and it was postponed, to be blocked still later twice by Judge Weber’s injunctions, largely based on the Township ZBA meeting under direction of Joe Stanley].</p> <p>10. September, 2005 – Present when the PC approved the addition of this statement “At the Big Bay Lighthouse, a site condominium composed of single-family homes is being developed.", specific to one property owner, to the Township Comprehensive Plan. [NOTE: The Comprehensive Plan is a general guide to direct and promote goals and objectives which are important to the Big Bay community. This change to the Comprehensive Plan was approved by the Planning Commission nearly a year <u>after</u> they approved the Conditional Use permit for the development, and it was approved while the Permit was under appeal and considerable contention].</p> <p>11. June, 2006: Ms. Butterfield voted No to tabling the rezoning request from Lighthouse Three Inc., despite an earlier message from the Township attorney advising that this be done. Ms. Butterfield voted Yes to approve the lighthouse property rezoning changing a parcel from RS-10 to LS/R. [NOTE: Ms. Butterfield’s 2006 vote, with others, resulted in an official zoning that lent legality to the preceding 2004 Planning Commission approval of the Conditional Use Permit.]</p>

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8	2	Mr. Gamble testified that when he bought his property it was zoned LS/R.	This is correct – when Lighthouse Three Inc purchased the lighthouse, the zoning was LS/R. Up until the adoption of the 1994 zoning ordinance, the entire tip of the lighthouse point peninsula was zoned LS/R. However, in 1994, Powell Township changed the zoning in that area to RS-10, detailed on the official Powell Township Zoning Map, and confirmed by then commission members Gene Champagne and Jerry Grenman. After the adoption of the 1994 Zoning Ordinance, the Gambles’ property was no longer zoned LS/R, as indicated in both the 1994 Official Zoning Map on record with Marquette County Planning and the later 2002 CUPPAD zoning map, rendering the proposed (and “approved” by the Powell Township Planning Commission in 2004) development highly inappropriate.
8	10	When asked why he labeled his rezoning petition as RS-10, even though he thought his property was LS/R, he testified that he could not remember that he did this.	
8 9	19-25 1-4	Mr. Gamble said that the change in his zoning from LS/R to RS-10 was the result of a CUPPAD (the Central Upper Peninsula Planning And Development Regional Commission, an independent body responsible for overseeing the Planning Commissions) zoning map error, which occurred while he was on the Planning Commission, but went unnoticed by him until [Elayne Shelton] pointed out the discrepancy.	If the 2002 CUPPAD agrees with the 1994 official Powell Township Zoning Map, and both agree that the lighthouse property contained RS-10 zoning, is it likely that it really did contain RS-10 zoning? Should Mr. and Ms. Gamble have noticed, during ten 2002 reviews of the CUPPAD map during which time they were PC members, that the zoning for their property included a significant section of RS-10? Could the RS-10 portion that they later denied having, be the “two nonconforming parcels” that they mentioned in the March, 2003, PC minutes? Should a neighbor who understood little about zoning, be able to discover a zoning map discrepancy that the developers, Planning Commission, and Township Zoning Administrator (Vince Bevins) did not notice when they were carefully reviewing zoning maps, upholding the zoning ordinance, and approving the site condominium conditional use permit?

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9 10	11-23 1 - 2	Mr. Gamble refers to his property that was the subject of rezoning, as a “little teeny slice” three times during his testimony, and says that it was useless [unless it was rezoned to LS/R].	Per the preceding testimony of a professional surveyor, the “teeny slice” was nearly 4 acres, even though, as indicated in previous testimony and Exhibit, Mr. Gamble wrote on the application that the parcel was “less than one acre”. Did Mr. Gamble, the Planning Commission, and the Lighthouse Three Inc attorney, forget that there were other acres of surrounding property owned by Lighthouse Three Inc, which could have easily been combined with the “teeny” slice to make it a conforming 10 acre parcel, compliant with the RS-10 acre zoning district? Why would the Planning Commission ignore Zoning Ordinance Section 406, which says that when a nonconforming lot is held in common ownership with abutting parcels of land, the two or more parcels shall be considered combined as necessary to reduce or eliminate the non-conformity? This teeny parcel, if left RS-10 as much of the community felt it should have been, would have effectively removed four parcels from the proposed site condominium. Wouldn't this 10 acre parcel have been more consistent with many sections of the Zoning Ordinance? Does the 60 foot cliff, lack of development in the area, lack of road access, make it seem more like the intent of RS-10 zoning?
9	18-21	Mr. Gamble says that his time on the Planning Commission taught him that zoning “should go to property lines or ... a distinctive geographic feature.”	This is the same as the directive given by then ZBA-alternate Joe Stanley at the October 2005 ZBA meeting. Why did professional surveyor, Al Pierce, submit two letters and maps, one in the October, 2005 ZBA meeting, and another in the June, 2006 Planning Commission rezoning public hearing, which says zoning district lines following lot lines “...is far from the practice in this area. I am again furnishing the CUPPAD Zoning Map of Powell township on Marquette County Equalization map ... There is no attempt to follow lot lines with zoning district lines.”

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10	9-13	Mr. Gamble did not remember that two of the proposed condominium sites were nonconforming in 2003.	Would you remember a nonconforming issue, if it could potentially prevent your multi-million dollar development project and if your wife had mentioned it in a planning commission meeting, in which both of you served at the time and both of you were present?
10 11	18-25 1-9	Mr. Gamble confirms the validity of Trial Exhibit "19, March, 2003 Planning Commission meeting minutes.	
13	5-17	Mr. Gamble read the following excerpt from the March, 2003, Planning Commission meeting minutes: "Linda Gamble excused herself from the committee to explain their [Linda and Jeff] problem. They presented a site plan which was zoned Lakes & Rivers but 2 sites will be non-conforming. Would like to know what they could do. We cannot rezone, because it could be considered spot zoning. Check with Howard. Stay under 15 lots. Their attorney should be the one to help them. Planning Commission can add land condos in RR5 as a conditional use permit. Can petition us for re-zoning with signatures of all the property owners on lighthouse road okaying this."	This was a key piece of evidence. In your review of the Gamble testimony, do you believe that acceptable explanations regarding the nature of the 2 non-conforming sites were offered?

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14 15	16-25 1-7	When asked what the two nonconforming sites were, Mr. Gamble said that they were nonconforming because they were too deep and turned into RR-5 zoning district.	According to the site plan presented to the public in October, 2004, when the Conditional Use Permit was approved, there were nine (not two) lakeshore sites proposed, all of which had similar internal RR-5 zoning. Why were only two of the nine nonconforming? Is it possible that the two nonconforming sites, discussed with their fellow Planning Commission members, were the same area of RS-10 zoning discrepancy that would surface 2 years later?
15	8-22	When asked if he petitioned Lighthouse Road property owners for rezoning, as was recommended as an option by the Planning Commission, Mr. Gamble -said he did not take that option because "It proved unnecessary".	Should Big Bay residents and property owners be concerned that the Planning Commission would allow and make changes that would suit one property owner, avoiding the need to involve and petition property owners on Lighthouse Road?
16	8-10	Mr. Gamble said that having Jerry Sherman, an attorney, on the Planning Commission, kept them legal and very honest.	After many years on the Planning Commission, serving with Jeff and Linda Gamble, Jerry Sherman left in 2005, shortly after being elected Chairman. Since then, the Township Supervisor, Vince Bevins, has asked the Board three times to approve Mr. Sherman's re-addition to the Planning Commission. The Board did not approve. Why?
19	12-19	Mr. Gamble says that his earlier assertion regarding the nonconformity being due to the 4:1 ratio "might not be". He then says again that he does not know what was nonconforming about the two parcels.	

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21 22	6 - 25 1 - 5	Mr. Gamble confirms that the Planning Commission proposed allowing condominiums in multiple zoning districts while he and Linda were members of the planning commission.	
24	4 - 13	Mr. Gamble confirms that the description of the parcel subject to rezoning was an attachment to the first rezoning [application] submission, that Mr. Bevins had testified was nothing.	
29	2-18	When asked if he or his wife threatened to prevent the public from accessing the historic site if their development plans were not approved, Mr. Gamble includes these statements, "If it goes private, it will never again be open to the public. We are a --grandfathered in as a business in a residential district. Once we go private if it becomes a house for somebody, it will never go back to open to the public. And asked if again if this was a threat, Mr. Gamble said, "...that's the reality of the situation."	Why would a private sale preclude access by the public? Does this seem illogical? Does this seem like a threat? If the lighthouse structures are in the LS/R district, and the Zoning Ordinance allows Bed and Breakfast with a Conditional Use Permit in the LS/R district, is it possible that the Planning Commission would approve a Conditional use permit to allow the continuation of the Bed and Breakfast?
30 31	21-25 1-17	When asked if he understood the concerns of the people on the other side of the courtroom, and that they were averse to smaller parcels and the rezoning, Mr. Gamble answered that he could sell 100 foot lots instead of 200 foot lots. Mr. Gamble also added that the project is about keeping the trees and the path along the cliff, and that the condominium allows him to control what people do with the property after he sells it to them.	Could one of the reasons for the condominium project be that, given the soil conditions in the area, greater subdivision of land could be attained if an unconventional septic system could be shared? [NOTE: per the Part 31 Groundwater Discharge Permit Application, filed on behalf of Lighthouse Three, Inc, the following is proposed: multiple sewer mains, a 4,000 gallon interceptor tank, a 4,000 gallon settling tank, eleven individual 1,000 gal septic tanks, multiple pumping stations, and a 10,000 sq foot absorption field.]

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33	3-7	Mr. Gamble says that he has to split the property because a new owner could not afford the real estate taxes.	How is a single owner affording the taxes now? How did the previous owner afford the real estate taxes? Couldn't a conservancy, which according to Michigan law, would significantly reduce property taxes, be considered?
36	1-9	Mr. Gamble described the 2006 public hearing regarding his request to rezone his property as follows: "... it was hostile. It was crowded. There were a few people that believed in property rights, and there were an awful a lot of people there that wanted to hang me and – and the board." ... "Hostile to me, hostile to the board, hostile to Powell Township and anybody that represented it."	Why would so many people have been hostile? Were they justified?
37	17-18	Mr. Gamble feels like the past years of frustrating process are "because Elayne Shelton built her house with her backyard on my property".	If the past 3 years of meetings and letters and trials involved only Elayne Shelton's back yard, why would so many others be concerned? Could it be that there was something much bigger that was at stake ... like precedents set for other developments, or questions on why the Township has appeared to put so much effort into supporting one property owner?

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39	16-20	Mr. Gamble repeats that they had an attorney on the Planning Commission [Jerry Sherman] who kept them legal and fair.	Based on your review of testimony, zoning maps, and planning commission meeting minutes, do you think that the planning commission has been legal and fair?
40 41	9-25 1-15	Mr. Gamble describes the aesthetics of the proposed houses.	When will they figure out that the proposed color or type of construction of the houses is not the problem?
44 45	20-25 1-12	Ms. Gamble states that she believed, from the time the first survey of the site plan was made, until after 2002, that her zoning was 100% LS/R.	Does it seem odd that the President of Lighthouse Three, Inc, member of the Planning Commission for three years and Board member for 4 years, would not be aware that the majority of her acreage was zoned RR-5?
46	14-25	Ms. Gamble testifies that the June, 2006, public hearing regarding the rezoning of her property, was hostile towards her, her husband, the project, and the township.	Why would so many people have been hostile?
37 49	1-2 19-21	The Gamble testify that their effort has cost them thousands of dollars.	Is it possible that their neighbors, who never served on the planning commission to facilitate the development of their properties, have lost at least this amount in legal fees, professional surveyor fees, travel fees, lost pay from taking time off from work? And have suffered these losses without the possibility of later compensation?
50	1-10	Ms. Gamble did not believe that her friendship with Pam Butterfield had any persuasive value over Ms. Butterfield's decisions.	No comment needed. See previous sections.

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51-55		Ms. Gamble describes her years of community service to the town of Big Bay.	Was anything expected in return for years of community devotion and service? Should community devotion and service influence due process?
56 - 59		Ms. Gamble says that despite being on the Planning Commission while the CUPPAD zoning map was reviewed extensively, she thought that all of her property was zoned LS/R.	Why would a Planning Commission member / Developer, not know that the majority of her acreage was zoned RR-5?
59 60	12-25 1-23	Ms. Gamble remembers that Planning Commission Chairperson Linda Sherbinow had to be asked to modify her behavior during the planning commission meeting.	Is this consistent with reports that in every meeting, whether the Planning Commission or ZBA meeting, Chairperson Sherbinow was disrespectful, rude, and generally hostile to the opponents of the lighthouse project?
61	21-23	When asked, what were the two nonconforming lots she brought before the Planning Commission in March, 2003, Ms. Gamble said that she had discovered that two of their lots were in RR-5 and not lakeshore and river [LS/R]”.	If the 2003 Site Condominium Plan illustrated four RR-5 parcels, and the 2004 Site plan presented at the October, 2004, Planning Commission meeting indicated three RR-5 parcels (after a 5 acre parcel was removed from the site condominium project and labeled ‘Jeff Gamble private property’), does either three or four equal to 2?