

December 15, 2015

The regular meeting of the Otsego County Board of Commissioners was held at the County Building at 225 West Main Street, Room 100, Gaylord, Michigan. The meeting was called to order at 9:30 a.m. by Chairman Ken Borton. Invocation by Commissioner Julie Powers-Gehman, followed by the Pledge of Allegiance led by Suzy DeFeyter.

Roll Call:

Present: Julie Powers-Gehman, Paul Beachnau, Paul Liss, Lee Olsen, Ken Glasser,  
Doug Johnson, Ken Borton, Bruce Brown.

Excused: Erma Backenstose.

Motion by Commissioner Paul Liss, seconded by Commissioner Lee Olsen, to approve the Regular minutes of November 24, 2015 with attachments. Ayes: Unanimous. Motion carried.

Consent Agenda:

Motion to appoint Melanie Youngs to the Health and Human Services Board with the term to expire on 10-31-2018. Ayes: Unanimous. Motion carried.

Motion to reappoint George Mertz to the Commission on Aging Board with the term to expire on 12-31-2018. Ayes: Unanimous. Motion carried.

Motion to reappoint Jeff Axford to the Emergency Medical Services Board with the term to expire on 12-31-18. Ayes: Unanimous. Motion carried.

Motion to reappoint David Baragrey to the Parks and Recreation Board with the term to expire on 12-31-2018. Ayes: Unanimous. Motion carried.

Motion to reappoint Abel Cruz to the Parks and Recreation Board with the term to expire on 12-31-2018. Ayes: Unanimous. Motion carried.

Motion to reappoint Paul Harmann to the Planning Commission Board with the term to expire on 12-31-2018. Ayes: Unanimous. Motion carried.

Motion to appoint Roberta Tholl to the Planning Commission Board with the term to expire 12-31-2018. Ayes: Unanimous. Motion carried.

Motion to appoint Michael Colosimo to the Zoning Board of Appeals with the term to expire 12-31-2018. Ayes: Unanimous. Motion carried.

Motion to grant authority to the County Administrator to amend all budgets up to \$10,000 per line item, with subsequent approval by the Otsego County Board of Commissioners at their January 12, 2016 regular board meeting. Ayes: Unanimous. Motion carried.

Motion to approve FY 2015 Court Budget Amendment. Ayes: Unanimous. Motion carried. (see attached)

Committee Reports:

Motion by Commissioner Paul Beachnau, seconded by Commissioner Paul Liss, to approve a budget amendment for 2016 to contribute \$50,000 to the Village of Vanderbilt for grant match for the Vanderbilt Trailhead Project and to provide \$5,000 to the Village of Vanderbilt for plan development costs. The \$50,000 grant match to be returned by the Village in the event the project does not move forward. Ayes: Julie Powers-Gehman, Paul Beachnau, Paul Liss, Lee Olsen, Doug Johnson, Ken Borton, Bruce Brown. Nays: Ken Glasser. Excused: Erma Backenstose. Motion carried. (see attached)

Motion by Commissioner Paul Beachnau, seconded by Paul Liss, to adopt Resolution OCR 15-40, in opposition to House Bills 4947 through 4966.

Roll Call Vote:

Ayes: Julie Powers-Gehman, Paul Beachnau, Paul Liss, Lee Olsen, Ken Glasser, Doug Johnson, Ken Borton, Bruce Brown.

Nays: None.

Excused: Erma Backenstose.

Motion carried/Resolution adopted. (see attached)

Motion by Commissioner Lee Olsen, seconded by Commissioner Doug Johnson, to adopt the proposed changes to the Otsego County Zoning Ordinance to Article 9 AR/Agricultural Resource, Article 17 Schedule of Dimensions, Article 21 Section 21.46, and Article 27 Township Participation in County Zoning, as presented. Ayes: Unanimous. Motion carried. (see attached)

Administrator's Report:

John Burt reported the County Commissioner District IV vacancy has received 8 applications, interviews to begin end of December; Courthouse plaza first café table has been installed; Land Use project completed; 26 applications received for the Parks and Recreation Director; Updating the Parks and Recreation plan.

City Liaison, Township and Village Representative:

Lou Ann Olsen reported Bonny Miller has been appointed and sworn in as Chester Township Supervisor effective January 1, 2016.

Commissioner Julie Powers-Gehman reported on the City Council meeting, Marijuana Ordinance passed, Audit was presented.

Correspondence:

Chairman Ken Borton received a letter from the Elmira Township Clerk regarding personal wireless cellular towers.

October financial reports were presented.

**New Business:**

Motion by Commissioner Ken Glasser, seconded by Commissioner Lee Olsen, to approve the November 20, 2015 Special Warrant and the December 1, 2015 Warrant for a total amount of \$50,777.62 Ayes: Unanimous. Motion carried.

Motion by Commissioner Paul Liss, seconded by Commissioner Julie Powers-Gehman, to approve the December 3, 2015 Special Warrant and the December 8, 2015 Warrant for a total amount of \$176,136.55. Ayes: Unanimous. Motion carried.

Motion by Commissioner Julie Powers-Gehman, seconded by Commissioner Ken Glasser, to approve the December 8, 2015 Special Warrant and the December 15, 2015 Warrant for a total amount of \$307, 272.10. Ayes: Unanimous. Motion carried.

Motion by Commissioner Bruce Brown, seconded by Commissioner Doug Johnson, to approve the Sportsplex Component Unit Agreement as presented. Ayes: Unanimous. Motion carried. (see attached)

Motion by Commissioner Paul Beachnau, seconded by Commissioner Doug Johnson, to adopt resolution OCR 15-39 honoring Lee and Lou Ann Olsen.

**Roll Call Vote:**

Ayes: Julie Powers-Gehman, Paul Beachnau, Paul Liss, Lee Olsen, Ken Glasser, Doug Johnson, Ken Borton, Bruce Brown.

Nays: None.

Excused: Erma Backenstose.

Motion carried/Resolution adopted. (see attached)

Motion by Commissioner Doug Johnson, seconded by Commissioner Ken Glasser, to appoint Randy Stults to the Parks and Recreation Commission with a term ending 12-31-2018. Ayes: Unanimous. Motion carried.

**Public Comment:**

Chairman Ken Borton opened up the meeting for public comment.

**Board Remarks:**

Commissioner Paul Liss reported on the transportation meeting, shop with a cop had 88 children this year; Casino in Vanderbilt is still in the process.

Commissioner Bruce Brown reported on the Sportsplex, hosted a hockey tournament this past weekend.

Commissioner Ken Glasser commended John for the work with the component units.

Commissioner Doug Johnson reported on the Parks and Recreation.  
Commissioner Paul Beachnau had no report.  
Commissioner Julie Powers-Gehman had no report.  
Commissioner Lee Olsen had no report.  
Commissioner Ken Borton had no report.

Motion by Commissioner Julie Powers Gehman, seconded by Commissioner Lee Olsen, to enter into closed session at the appropriate time to discuss settlement of pending litigation in accordance with the open meeting act, being MCL 15.268(c).--- (c) for strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement.

Roll Call Vote:

Ayes: Julie Powers-Gehman, Paul Beachnau, Paul Liss, Lee Olsen, Ken Glasser,  
Doug Johnson, Ken Borton, Bruce Brown.

Nays: None.

Excused: Erma Backenstose.

Motion carried

Entered into closed session at 10:23 a.m.

Returned to open session at 10:30 a.m.

Motion by Commissioner Paul Liss, seconded by Commissioner Lee Olsen, to ratify the 2016-2017 Police Officers Labor Council Tentative Agreement, as discussed in the closed session.

Ayes: Unanimous. Motion carried.

Meeting adjourned at 10:31 a.m.

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Kenneth C. Borton Chairman

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Susan I. DeFeyter, Otsego County Clerk



**OTSEGO COUNTY  
BUDGET AMENDMENT**

**FUND/DEPARTMENT:** 101-131

As provided for in the Uniform Budget and Accounting Act of 1978, as amended, and consistent with Otsego County Policy, the Administrator and Finance Director are hereby authorized to record the following adjustments to the budget.

Fund Type:  General  Special Revenue  Debt Service  Capital Project  Business-Type (Enterprise or Internal Svc)

**DESCRIPTION** 2015 Year End Projections

**REVENUE** Cover shortage within Part-time, and Payment in LIEU of Insurance.

Account Number	Decrease	Increase
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<b>Total</b>	\$	\$

**EXPENDITURE**

Account Number	Increase	Decrease
101-131-703.070 (Overtime)	\$	\$ 2,600.00
101-131-703.060 (Part-Time)	\$ 2,600.00	\$
	\$	\$
101-131-704.110 (Hospitalization)	\$	\$ 2,500.00
101-131-704.700 (Payment in LIEU of Ins)	\$ 2,500.00	\$
	\$	\$
<b>Total</b>	\$ 5,100.00	\$ 5,100.00

*Stacy J. Cray*  
Department Head/Signature

12/4/2015

Date

<b>Finance Department</b>
Entered:
By:

Administrator's Signature

Date

Board Approval Date (if necessary)

Budget Adjustment #

Posting Number



**OCR 15-40**  
**Opposition to Bills**

Otsego County Board of Commissioners  
December 15, 2015

**WHEREAS,** House Bills 4947 through 4966 would treat seventeen-year-olds as juveniles rather than adults; and

**WHEREAS,** By changing state statutes to define seventeen-year-old defendants as eligible for services in the juvenile justice system, this places pressure on an already under-funded court system and constitutes an unfunded mandate on counties; and

**WHEREAS,** According to the Michigan Department of Corrections, from 2003 to 2013, there were 19,118 seventeen year olds that went through the criminal court system; with additional offenders with lower level offenses not counted in those numbers; and

**WHEREAS,** Otsego County has concerns that the probate court system does not have the financial resources or capacity to handle a new population of offenders; and

**WHEREAS,** Without additional state funding, Otsego County could not absorb the costs of programming for this population in the juvenile system and services to younger offenders could be negatively affected; and

**BE IT RESOLVED THAT,** the Otsego County Board of Commissioners hereby urges the Governor and Michigan Legislature to not pass House Bills 4947 through 4966 as written; now, therefore, be it

**RESOLVED,** that a copy of this resolution is forwarded to Governor Snyder, Senator Stamas, Representative Cole, and the Michigan Association of Counties.

Committee Report

B. Planning Commission

1. Zoning Ordinance Amendments

**OTSEGO COUNTY ZONING ORDINANCE  
PROPOSED AMENDMENTS**

The following changes have been recommended by the Otsego County Planning Commission:

Article 9 AR/Agricultural Resource – amending language to reflect a Zoning Board of Appeals determination that Agricultural Equipment Auctions are a permitted use subject to special conditions.

Article 17 Schedule of Dimensions – amending ‘note g’ under to clarify that it applies to the HX/Highway Interchange zoning district.

Article 21, Section 21.46 – amending to update language referencing the Telecommunication Act (Act 104 of 1996 as amended) and the Michigan Zoning Enabling Act (Michigan Public Act 100 of 2006 as amended including Act 143 of 2012).

Article 27 Township Participation in County Zoning – amending to reflect that timeline extensions, per state law, for township response cannot be given for matters pertaining to items related to wireless communications towers.

\*The Otsego County Planning Commission is submitting a proposed amendment to ARTICLE 9 AR/Agricultural Resource zoning districts per the Zoning Board of Appeals decision on a comparable use:

***ZBA Motion:***

*The Zoning Board of Appeals makes the determination that Agricultural Equipment Auctions are a comparable use to Article 9.2.4 'Livestock Auction Yards' and therefore, under Article 9.2.24 and Article 18.44, Agricultural Equipment Auctions are a permitted use subject to special conditions and the conditions of Livestock Auction Yards in the Agricultural Resource District (AR).*

*Agricultural Equipment Auction Yards:*

**ARTICLE 9 AR AGRICULTURAL RESOURCE DISTRICT**

**SECTION 9.2 PERMITTED USES SUBJECT TO SPECIAL CONDITIONS**

The following uses may be permitted, subject to the conditions herein imposed for each use, the review standards of Article 19 and only after the review and approval of the site plan by the Planning Commission. [See Article 21 for applicable Specific Requirements for Certain Uses, if any and Article 23 for Site Plan Requirements.]

***Current language:***

**9.2.4** Livestock auction yards with accessory buildings on a minimum forty (40) acres site with a minimum width of six hundred (600) feet, provided that there is no nuisance imposed upon the surrounding farms or dwellings.

***Proposed language:***

**9.2.4** Auction yards for livestock and/or agricultural equipment with accessory buildings on a minimum forty (40) acres site with a minimum width of six hundred (600) feet, provided that there is no nuisance imposed upon the surrounding farms or dwellings.

\*The Otsego County Planning Commission would like your input in reference to the Highway Interchange Zoning District and 'note g'. A detail was omitted when previously presented concerning 'note g' and the maximum building height. It was referenced in the chart below but was not clarified in 'note g' itself as to the possible percentage to exceed.

**ARTICLE 17 SCHEDULE OF DIMENSIONS**

17.1 Table 1 - LIMITING HEIGHT, DENSITY, AND AREA BY ZONING DISTRICTS (See also Article 21.1 Accessory Buildings and Article 22 General Exceptions for Area, Height, and Use)

Zoning District	R1 & R2	R3	RR	FR & AR	Reserved for future use	Reserved for future use
Min. Lot Area (Sq. feet)	20,000 .46 acre	40,000 .92 acre	20,000 .46 acre	88,000 2.02 acre		
Min. Front Setback (b)(f)	25 ft	25 ft	25 ft	50 ft		
Max. Front Setback	NA	NA	NA	NA		
Min. Side Setback	10 ft	10 ft	10 ft	20 ft		
Min. Rear Setback	30 ft (a, h)	30 ft (a, h)	30 ft (a, h)	40 ft (a)		
Min. Lot width (k)	100 ft 150 ft Duplex	100 ft	100 ft	150 ft AR 300 ft Duplex		
Max. % lot coverage	25%	25%	25%	30%		
Max. Building height (l)	35 ft (g)	35 ft (g)	35 ft (g)	35 ft (g)		
Min. Ground Floor area of principal structure (Square feet)	720 (i)	720 (i)	720 (i)	720 (i)		
Min. Width of principal structure	20 ft (i)	11 ft (i)	20 ft (i)	11 ft (i)		
Zoning District	B1	B2	B3	I	HX	Reserved for future use
Min. Lot Area (Square feet)	10,000	10,000	20,000	40,000	10,000	
Min. Front Setback	30 ft (e)	30 ft (e)	30 ft (e)	30 ft (e)	30 ft (e)	
Max. Front Setback	NA	NA	NA	NA	NA	
Min. Side Setback	10 ft (e)	10 ft (e)	10 ft (e)	10 ft (e)	10 ft (e)	
Min. Rear Setback	20 ft (a, d, f)	20 ft (a, d, f)	20 ft (a, d, f)	20 ft (a, d, f)	20 ft (a, d, f)	
Min. Lot width (k)	100 ft	100 ft	100 ft	150 ft	150 ft	
Max. % lot coverage	NA	NA	NA	NA	NA	
Max. Building height (l)	35 ft (g)	35 ft (g)	35 ft (g)	35 ft (g)	35 ft (g)	
Min. Ground Floor area principal structure (Square feet)	NA	NA	NA	NA	NA	
Min. Width of principal structure	NA	NA	NA	NA	NA	

Minimum front, side and rear setbacks, and maximum lot coverage modifications of up to twenty-five percent (25%) may be approved by the Zoning Administrator for nonconforming lots, as described in Article 21.26.1 and 21.26.

- Note a: Lots within five hundred (500) feet of lakes, ponds, flowages, rivers, streams: see Article 18, LOTS NEAR WATER.
- Note b: Where the front yards of two (2) or more principal buildings in any block, or within five hundred (500) feet in existence at the time of the passage of this Ordinance (or amendment thereto), in the same zoned district or the same side of the road are less than the minimum front yard setback, then any principal building subsequently erected on the same side of the road shall not be required to provide a greater setback than the average for the existing two (2) or more principal buildings.
- Note c: On the exterior side yard which borders on a residential district, there shall be provided a setback of not less than twenty (20) feet on the residential side in B1, B2, B3 and HX.
- Note d: Loading and unloading space shall be provided in the rear yard in the ratio of at least ten (10) square feet per linear foot of front building wall. Loading space shall not be counted as required off-street parking. Loading zones may be located in other non-required yards if screened or obscured from view from public streets and residential districts.
- Note e: Off-street parking may be permitted in the front yard, except that a ten (10) foot wide landscaped buffer is maintained between the front lot line (or right-of-way line) and the parking area.
- Note f: No building shall be placed closer than forty (40) feet to the outer perimeter of such district or property line when said use abuts a residential district boundary.
- Note g: Subject to approval by the Planning Commission, the maximum height of buildings may be permitted to exceed the maximum stated in the Schedule by up to fifty percent (50%) in R1, R2, R3, RR, B1, B2 and HX Districts; and up to one hundred percent (100%) in all other districts, provided that the applicant can demonstrate that no good purpose would be served by compliance with maximums stated, (as in the case of steep topography, a Planned Unit Development (PUD), or larger site); and further, there is no conflict with airport zoning height restrictions; fire safety is maintained subject to local fire authority approval; and the light, air and/or scenic views of adjoining property is not impaired. The Planning Commission and or Zoning Board of Appeals cannot allow a WTG height greater than allowed in Section 21.47 or a Wireless Telecommunication Towers and Facilities greater than the height allowed in the Zoning District PRINCIPAL USES PERMITTED or PERMITTED USES SUBJECT TO SPECIAL CONDITIONS. Also see Article 22 GENERAL EXCEPTIONS FOR AREA, HEIGHT AND USE.
- Note h: Section 21.1 allows a rear setback of ten (10) feet for accessory buildings.
- Note i: The foregoing standards shall not apply to a mobile home located in a licensed mobile home park except to the extent required by state or federal law or otherwise specifically required in this Ordinance.
- Note j: In instances where the property is adjacent to a public right of way or ingress egress easement dedicated as permanent adequate access to one (1) or more lots, the setback shall be measured from that right of way or ingress egress easement.
- Note k: Specific allowable uses have greater minimum lot widths as required in the Zoning District allowable use lists.
- Note l: Specific allowable uses have greater allowable heights as stated in the Zoning District allowable use lists, Article 21 and Article 22, Section 22.3 Height Limits, of this ordinance

\*The Otsego County Planning Commission is submitting proposed language to ARTICLE 21/SECTION 21.46 as an update to the section.

*Current language:*

**SECTION 21.46 WIRELESS COMMUNICATIONS:**

The Telecommunication Act of 1996, as amended February 8, 1996, sets forth provisions concerning placement, location and construction of towers and related facilities for wireless services. The purpose of this Section is to establish general guidelines for the siting of wireless communications towers and antennas. The goals of the section are to:

- (1) Protect residential zoning districts from potential adverse impacts of towers and antennas;
- (2) Encourage the location of towers in non-residential areas;
- (3) Minimize the total number of towers throughout the county;
- (4) Strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;
- (5) Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on aesthetics in this tourism based county is minimal;
- (6) Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques;
- (7) Enhance the ability of providers of telecommunication services to provide such services to the county quickly, effectively, and efficiently;
- (8) Consider the public health and safety of communication towers; and
- (9) Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures. In furtherance of these goals, due consideration shall be given to the Otsego County master plan, zoning map, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

Wireless and cellular phone service are specially determined to not be essential services, nor to be public utilities as such terms are used in this Ordinance.

It is not the intent to create "antennae farms" with a number of monopoles and antennae in a small area. Also, it is not the intent to regulate ham radio antennae under this section, or to regulate towers installed at single family dwellings for personal television reception.

*Proposed language:*

**SECTION 21.46 WIRELESS COMMUNICATIONS:**

Reference the Telecommunication Act (Act 104 of 1996 as amended) and the Michigan Zoning and Enabling Act (Act 110 of 2006 as amended including Act 143 of 2012). These set forth provisions concerning placement, location and construction of towers and related facilities for wireless services, provide rules for changes to existing towers and set time frames for municipality action. The purpose of this Section is to establish general guidelines for the siting of wireless communications towers and antennas. The goals of the section are to: ...

\*The Otsego County Planning Commission is submitting proposed language to ARTICLE 27/TOWNSHIP PARTICIPATION per Michigan Zoning and Enabling Act (Act 110 of 2006 as amended including Act 143 of 2012) referencing the timeframe of ninety days for wireless communication cases before an automatic approval:

*Current language:*

**ARTICLE 27 TOWNSHIP PARTICIPATION IN COUNTY ZONING**

It having been established that the Township units of government in Otsego County are desirous of actively participating in zoning amendment and zoning procedures; and Otsego County having determined that such participation is needed in the zoning process,

NOW, THEREFORE, IT IS HEREBY DECLARED to be the policy of Otsego County that no zoning decision (with respect to those matters hereinafter set forth) affecting any particular township shall be made without the direct participation of said township so affected in accordance with the following procedures:

27.1 When a Petition is filed with the Otsego County Planning Commission with respect to any of the four (4) types of requests listed below, and then the procedure specified in 27.2 shall be followed prior to a decision being rendered by the County Planning Commission or the County Zoning Board of Appeals:

27.1.1 Changes in zoning district boundaries;

27.1.2 The approval of Uses Subject to Special Conditions, Special Approval Uses, and Special Land Uses;

27.1.3 The approval of Planned Unit Developments, all condominium projects, and all subsequent phases of an approved phased development;

27.1.4 Any appeal of an administrative decision, Ordinance interpretation, or variance.

27.2 Prior to a hearing by the County Planning Commission, the Otsego County Zoning Administrator shall forward, by certified or first class mail, said written petition to the township clerk of the township within which the property associated with the petition is located and shall execute and file an Affidavit of Mailing such petition.

Upon the approval or disapproval of the petition by the affected township, said township's clerk shall notify, in writing, the petitioning party and the Otsego County Zoning Administrator of the Township Board's decision. The Petition shall then be acted upon, with due regard to the affected Township's decision, by the Otsego County Planning Commission in conformance with this Ordinance.

In like manner, and under the same conditions, authority, and rule of policy, the Otsego County Board of Appeals, shall make no rule, interpretation or determination on any matter pertaining to a zoning variance (Article 26.2) affecting any particular township, without the Otsego County Zoning Administrator first forwarding, by certified or first class mail, said written petition to the township clerk of the township to be affected by said petition; the Zoning Administrator shall execute and file an Affidavit of Mailing as to such petition.

Upon the approval or disapproval of the petition by the affected township, said township's clerk shall notify, in writing, the petitioning party and the Otsego County Zoning Administrator of the Township Board's decision. The petition shall then be acted upon with due regard to the affected Township's decision by the Otsego County Zoning Board of Appeals in conformance with this ordinance.

The affected township shall take some official action to notify the county Zoning Administrator of its decision within forty (40) days after having received the written petition. The township may take an additional thirty (30) days to study the matter and take action thereon; but it shall file written notice with the Zoning Administrator within the original forty (40) days of its intention to take the additional time. It shall be presumed that the township waives its right to act if no action is taken within the applicable time period(s).

***Proposed language:***

The affected township shall take some official action to notify the county Zoning Administrator of its decision within forty (40) days after having received the written petition. The township may take an additional thirty (30) days to study the matter and take action thereon; but it shall file written notice with the Zoning Administrator within the original forty (40) days of its intention to take the additional time. **Exception:** Due to state law time frames for wireless communication towers, an extension beyond the original forty (40) days shall not be permitted. It shall be presumed that the township waives its right to act if no action is taken within the applicable time period(s).

\*The Otsego County Planning Commission held a public hearing for the following on October 19, 2015:

***2016-2021 Otsego County Capital Improvement Plan***

Motion made by Mr. Hartmann to recommend adoption of the 2016-2021 Otsego County Capital Improvement Plan to the Otsego County Board of Commissioners; Seconded by Mr. Mang.

Motion approved unanimously.

**AMENDED AND RESTATED  
AGREEMENT FOR OPERATING AND MAINTAINING  
OTSEGO COUNTY RECREATIONAL AND SPORTS FACILITY**

THIS AGREEMENT is made on this 15<sup>th</sup> day of December, 2015, by and between the County of Otsego, whose address is 225 W. Main Street, Gaylord, Michigan 49735 (hereafter "County" and "Commissioners") and the Otsego County Sportsplex, a Michigan non-profit corporation, whose address is 1250 Gornick Ave, Gaylord, Michigan 49735 (hereafter "SPORTSPLEX")

In consideration of the mutual agreement contained herein, the parties agree as follows:

**I. GENERAL AGREEMENT**

The Otsego County SPORTSPLEX, a nonprofit corporation, was established to provide a recreational and sports facility in Otsego County. The complex was constructed in 1995 and opened in early 1996.

**II. TERMS AND AMENDMENT**

**A. TERMS**

This Agreement contains the entire understanding and Agreement of the parties regarding the subject matter contained herein.

**B. DURATION**

The terms of this Agreement shall be for five (5) years commencing with the date of execution.

**C. EXTENSION**

(i) Further, the terms of this Agreement shall be automatically extended, unless otherwise modified in accordance with the terms set forth herein, upon renewal of the SPORTSPLEX millage. This automatic extension shall be for the period of the millage renewal.

(ii) Further, this Agreement may be extended for such lengths or periods of time as the parties may mutually agree upon in writing.

**D. AMENDMENT**

Further, the terms and conditions of this Agreement, as provided herein, may be amended at any time during the above stated period with the express mutual written consent of the parties who are then bound by the terms hereof.

**III. FINANCIAL GOVERNANCE**

**A. ANNUAL BUDGET**

(i) SPORTSPLEX will present an annual budget to the Commissioners prior to October 1<sup>st</sup> of each year in the format required by the Finance Committee for the operations of SPORTSPLEX for the following year beginning January 1<sup>st</sup>.

(ii) Prior to December 31<sup>st</sup> of each year, the Commissioners shall consider for approval the final budget for the operation of the SPORTSPLEX.

(iii) BUDGET AMENDMENTS: Budget amendments must be approved by the SPORTSPLEX Board and then forwarded to the Otsego County Finance Department. SPORTSPLEX shall provide an updated copy of its annual budget to the Otsego County Finance

Department each time the SPORTSPLEX budget is amended, ensuring that the County has a current, updated budget at all times during the fiscal year.

**B. FINANCIAL REPORTING**

- (i) Beginning with the quarter ended December 2015, SPORTSPLEX shall provide the following quarterly accounting reports to the Otsego County Finance Department:
  - (1) Balance Sheet – including all assets, liabilities, and fund equity
  - (2) Budget Report – including the amended budget and actual amounts for all revenues and expenditures.
  - (3) Quarterly reports must be submitted no later than the 15<sup>th</sup> day of the month following quarter-end.
- (ii) Beginning with the month ended October 2015, SPORTSPLEX shall provide the following monthly accounting reports to the Otsego County Treasurer:
  - (1) Report reconciling the general ledger balances in the receiving fund to the balances in the operating fund.
  - (2) Monthly reports must be submitted no later than the 15<sup>th</sup> day of the next month.
- (iii) SPORTSPLEX shall attest to the completeness and accuracy of all financial information. The County will rely on the reports to be complete and accurate upon submission.
- (iv) All corporate and financial records of SPORTSPLEX shall be available to the County or its auditors upon reasonable request.
- (v) AUDITS – SPORTSPLEX will be audited under the umbrella of the County, as a discretely presented component unit. The County may, at its discretion, engage the auditors to perform additional procedures. SPORTSPLEX and the County may find it desirable for SPORTSPLEX to be audited under separate cover (still included in the County's audit report as a discretely presented component unit). In such an instance, the County will choose the auditing firm.

**C. CUSTODY OF CASH AND INVESTMENTS**

- (i) All SPORTSPLEX monies shall be deposited with a bank or trust company designated by the County and approved by SPORTSPLEX. The monies may be kept in one bank account, and shall be invested as practical by the Otsego County Treasurer as authorized by law.
- (ii) All deposits must be accompanied by supporting documentation, in the format required by the Otsego County Treasurer.
- (iii) All transfers out for SPORTSPLEX disbursements must also be accompanied by supporting documentation, in the format required by the Otsego County Treasurer.
- (iv) SPORTSPLEX shall attest to the completeness and accuracy of the supporting documentation submitted for all deposits and disbursement transfers. The County will rely on the documents to be complete and accurate upon submission. SPORTSPLEX further attests that the deposits and disbursement transfers have been subject to the appropriate level of review before submission.

**D. FUNDS**

- (i) Operating Fund
  - a. Any amount of operating funds, which are appropriated to SPORTSPLEX by the Commissioners from the SPORTSPLEX operating millage, shall be expended for daily operations or capital improvements.
  - b. Such expenditures shall only be completed if they are included in the budget or approved by a specific resolution of the Commissioners.
  - c. All revenues raised by rates and charges of SPORTSPLEX shall be used solely for the operation and maintenance of SPORTSPLEX.

- d. The operating fund general ledger shall be maintained by SPORTSPLEX.
- (ii) Capital Outlay Fund
  - a. Maintenance and Capital Improvements tax revenues shall be deposited in this Fund as follows:
    - (1) Prior to March 1<sup>st</sup>, and as soon as received by the County Treasurer such taxes as have been received by the County Treasurer shall be deposited in accordance with applicable Michigan Law, and
    - (2) On May 1<sup>st</sup>, or as soon thereafter as the County Treasurer receives such taxes from the delinquent tax revolving fund, the balance of such taxes.
  - b. Any and all equipment required, by law, will be purchased by SPORTSPLEX in the name of the Otsego County to insure proper licensing and insuring of such equipment.
- E. SURPLUS/DEFICIT
  - (i) Surplus
    - a. Any surplus realized by SPORTSPLEX will be retained by SPORTSPLEX. During the budget process, SPORTSPLEX and the County will discuss potential uses of surplus monies (e.g. used for capital purchases, retained to enhance fund balance level, etc.).
  - (ii) Deficits
    - a. Should any year's operations result in a deficit (other than a planned reduction of fund balance that has been previously approved by the Commissioners), SPORTSPLEX agrees to:
      - i. Immediately meet with the Otsego County Budget and Finance Committee to develop a satisfactory deficit correction plan, which may include increased fees or reduced expenses.
      - ii. Should this action prove to be insufficient to correct the deficit operations, SPORTSPLEX agrees to revise the plan, and further increase fee revenue or cut expenditures to ensure that the deficit will be repaid in the next three quarters.
      - iii. Failure to operate without a deficit may result in termination of this agreement by the County.
- F. FIXING AND REVISING RATES; RATE COVENANT
 

The SPORTSPLEX shall propose rates and charges to the COUNTY for the use of the Facility by residents of the County, and the general public. After approval of the County, rates shall be fixed and revised from time to time by the SPORTSPLEX to produce the foregoing amounts, and the SPORTSPLEX covenants and agrees to maintain at all times such rates for services furnished by the Facility as shall be sufficient to provide for the foregoing. The rates set for Otsego County residents shall be less than the rates set for non-resident visitors.
- G. ASSETS
  - (i) All assets of SPORTSPLEX are the property of the County.
  - (ii) Accordingly, SPORTSPLEX shall follow the Otsego County Capital Asset Disposal Policy.
  - (iii) SPORTSPLEX will provide an updated list of all Capital Assets to the Otsego County Finance Department annually, each January for the preceding year.
  - (iv) SPORTSPLEX will provide an updated list of all Vehicles to the Otsego County Bus System each time a change is made to the list.
  - (v) The County shall provide property insurance, addressed in the PROPERTY INSURANCE section of this document.
- H. LONG-TERM DEBT

- (i) All long-term debt incurred by SPORTSPLEX must first be approved by the Commissioners, along with a financial plan to satisfy all debt requirements, submitted by SPORTSPLEX.
    - (ii) In the event of default of payments of long-term debt, refer to the EVENTS AND REMEDIES OF DEFAULT section of this document.
  - I. CAPITAL IMPROVEMENT PLAN
    - (i) SPORTSPLEX shall submit annually, along with its proposed budget, by October 1<sup>st</sup>, a five-year plan containing a list of planned building, equipment, and vehicle purchases and major repairs and maintenance on such items.
    - (ii) The plan and all such capital expenditures shall be approved by the Commissioners by December 31<sup>st</sup>, as part of the budget approval process.
  - J. OPERATING YEAR
    - (i) It is the expectation of the County to levy the full SPORTSPLEX millage permitted by law.
    - (ii) SPORTSPLEX shall have, as its operating year, one which shall coincide with the County's fiscal year which is the calendar year beginning in January. With the consent of the SPORTSPLEX, the County may levy less than the full millage.
- IV. MAINTENANCE AND REPAIRS
  - A. REPAIRS - PREMISES
    - (i) SPORTSPLEX shall, at its own expense, at all times during the term of this Agreement, keep the equipment and premises in good condition and repair, and shall make all necessary and desirable repairs, restorations and replacements, both structural and nonstructural, foreseen or unforeseen, and shall use all reasonable precautions to prevent waste, damage or injury.
  - B. REPAIRS - EXTERNAL
    - (i) SPORTSPLEX shall, at its own expense, also maintain in good repair and free from dirt, snow, ice, rubbish and other obstructions or encumbrances, the sidewalks, parking areas, yards, plantings, gutters and curbs in front of and adjacent to the premises.
- V. OPERATION AND MAINTENANCE
  - A. OPERATION AND MAINTENANCE
    - SPORTSPLEX shall, at its own expense, at all times during the term of this Agreement, operate and maintain the equipment and the premises.
- VI. ALTERATIONS
  - A. ALTERATIONS TO THE PREMISES
    - SPORTSPLEX will make such alterations, changes, additions or improvements in or to the interior or exterior of the premises as it shall determine to be beneficial. SPORTSPLEX shall make any changes or alterations in, on or about the premises, which may be required by any applicable statute, charter, ordinance or governmental regulation or order.
  - B. COSTS AND EXPENSES OF ALTERATIONS
    - All alterations and improvements shall be at SPORTSPLEX's sole expense.
  - C. OWNERSHIP OF IMPROVEMENTS
    - All alterations and improvements shall be the property of the County.
- VII. PROPERTY INSURANCE
  - A. COST OF INSURANCE

The COUNTY shall provide property insurance, which shall cover all real and personal property on the premises on a 100% replacement cost basis. Premiums for insurance required to be carried upon or with respect to the premises or the use thereof shall be deemed operation and maintenance expenses of the SPORTSPLEX.

**B. POLICY TYPE**

Such policy shall be an all risks policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without limitation, flood, theft, vandalism, wind, lightning, act of war or terrorism, and malicious mischief. Coverage shall also include the cost of extra expense, for a period of 12 months, incurred by reason of the total or partial loss or damage to the premises caused by an insured peril.

**VIII. LIABILITY/VEHICLE INSURANCE**

**A. COST OF INSURANCE**

SPORTSPLEX, at its expense, shall provide comprehensive/commercial general liability insurance protecting SPORTSPLEX, the County and the Commissioners of the County, the members of the Sportsplex Board and their respective agents, officers and employees.

Insurance shall include motor vehicle liability coverage for any Sportsplex/County-Owned vehicles.

Insurance shall include coverage for Hired Car and Non-Owned Auto.

**B. POLICY TYPE**

- (i) Such insurance shall provide coverage for the defense of actions brought against SPORTSPLEX, its Board, Officers, and Employees for, including but not limited to, negligence, malfeasance, misfeasance, errors, omissions, neglect, damages, intentional acts, or other actions arising out of the operation, maintenance and activities of SPORTSPLEX.
- (ii) Further, SPORTSPLEX agrees to maintain coverage, for malpractice or medical negligence to cover SPORTSPLEX, its Board, Officers, and Employees.
- (iii) Such insurance shall be in limits of not less than \$1,000,000 per occurrence for injury or death to any one person, not less than \$3,000,000 per occurrence for injury or death to more than one person, and not less than \$500,000 per occurrence for property damage.

**C. NAMED INSUREDS**

- (i) SPORTSPLEX and the County shall all be named insureds on all insurance policies required hereunder and all insurance proceeds shall be payable to SPORTSPLEX and the County according to their respective interests.
- (ii) Upon request, the County shall provide SPORTSPLEX or the SPORTSPLEX Board with certified copies of the insurance policies or other evidence indicating that the insurance is in effect.
- (iii) In addition, SPORTSPLEX or the SPORTSPLEX Board shall be notified in writing at least thirty (30) days prior to cancellation, non-renewal or any material reduction of the any coverage.
- (iv) All insurance maintained pursuant to this Agreement shall contain a clause or endorsement under which the insurer waives all rights of subrogation against any and all of the parties to this Agreement and their respective officers, commissioners, agents, and employees, with respect to losses payable under the policy.

- (v) Claims for loss due to damage to the premises under any policies maintained pursuant to this Agreement shall be adjusted with the insurance companies by the County after advice from SPORTSPLEX or the Sportsplex Board.
- (vi) The proceeds of any insurance shall be paid to the County, which shall deposit the funds in the capital improvement fund for the purpose of paying the cost of repair and restoration of the SPORTSPLEX premises and equipment.
- (vi) All policy forms, limits and deductibles shall be subject to approval by the County and SPORTSPLEX.

IX. OPERATIONAL INTEGRITY

A. OPERATIONS

The County covenants and agrees with SPORTSPLEX, subject to the performance by SPORTSPLEX of all of the terms, covenants, and conditions of this Agreement to permit SPORTSPLEX to operate the service for the County. SPORTSPLEX may employ such persons in such capacities as it deems advisable and may make such rules and regulations as it deems advisable and necessary to assure the efficient management and operation of SPORTSPLEX. Further, SPORTSPLEX, with the approval of the SPORTSPLEX Board, shall have the authority, power, and ability to obtain, lease, purchase, acquire or transfer, sell, or dispose of such equipment as is necessary to carry out its obligations to the citizens of Otsego County.

B. BOARD MEMBERSHIP

Recommendations for SPORTSPLEX Board Membership shall be forwarded to the County Board for approval.

C. PERSONNEL

- (i) All personnel staffing SPORTSPLEX equipment and premises, shall be deemed to be employees of SPORTSPLEX.
- (ii) The County Administrator (or designee(s) of the County Administrator) shall be on the hiring committee for the SPORTSPLEX Director position in the event of a vacancy. The Commissioners shall have the final approval on selecting the new Director.
- (iii) If applicable, the County Administrator (or designee(s) of the County Administrator) shall take part in the union negotiation process. The Commissioners shall have final approval of all union contracts.

C. CONTRACTING

SPORTSPLEX, with the approval of the SPORTSPLEX Board, shall have the exclusive authority to enter into such transport, standby and special event contracts or other agreements or contracts for services as deemed necessary to carry out its obligations to the citizens of Otsego County.

X. INSPECTION

Without notice and at reasonable times of the day, the County, through its officers, employees or agents, may enter upon the premises at any time during the term of this Agreement for the purpose of inspecting the premises and determining whether SPORTSPLEX is complying with the covenants, Agreements, terms, and conditions of this Agreement.

XI. EVENTS AND REMEDIES OF DEFAULT

A. EACH OF THE FOLLOWING SHALL CONSTITUTE AN EVENT OF DEFAULT:

- (i) SPORTSPLEX fails to submit and operate within the budget required by Section III.

- (ii) Any representation or warranty made by SPORTSPLEX in this Agreement, or which is contained in any certificate or other document delivered at any time pursuant to this Agreement proves to have been false, incorrect or incomplete in any material respect when made or deemed to be made.
- (iii) SPORTSPLEX fails to observe or perform any covenant or Agreement contained in this Agreement or in any certificate or other document delivered pursuant to this Agreement (other than those covered by clause (i) above) for thirty (30) days after written notice, as set forth herein, thereof shall have been given to SPORTSPLEX by the County.
- (iv) SPORTSPLEX files a petition in bankruptcy, insolvency, dissolution or for reorganization or arrangement under the laws of the United States or of any state, or voluntarily takes advantage of any such law, or act, or is dissolved, (voluntarily or involuntarily) or makes an assignment for the benefit of creditors.
- (v) If involuntary proceedings under any bankruptcy law or insolvency act or for the dissolution of a corporation are instituted against SPORTSPLEX, or if a receiver or trustee is appointed for all or substantially all of the property of SPORTSPLEX, and such proceedings are not dismissed or such receivership or trusteeship vacated within ninety days after such institution or appointment.
- (vi) SPORTSPLEX ceases to operate or indicates its intention to do so.
- (vii) SPORTSPLEX defaults on any long-term debt covenants or payments.

**B. REMEDIES IN EVENT OF DEFAULT**

If any event of default as defined in this Agreement shall occur and be continuing for a period of 90 days or more following written notice of default:

- (i) The County shall have the right, but not the obligation, to take any of the following action:
  - (a) The County may terminate this Agreement.
  - (b) The County, through its Commissioners, officers, agents or employees, shall, at all times, the have the right to enter the premises for inspection as set forth above, and to prevent waste, damage or destruction.
  - (c) In the event of financial insolvency, bankruptcy, or cessation of operations, all assets (including but not limited to: cash, investments, receivables, and capital assets), all liabilities (including long-term debt), and fund balances for all SPORTSPLEX funds shall revert to the County immediately.
- (ii) The rights provided for in this Section cumulative and are not exclusive of any other right, privilege, or remedy provided by law or in equity.

**XII. WAIVERS**

**A. FAILURE TO DELAY OR EXERCISE**

No failure or delay on the part of the County or SPORTSPLEX in exercising any right, power, or remedy contained in this Agreement shall operate as a waiver of any right, duty, requirement, or obligation provided by this Agreement.

**B. PARTIAL EXERCISE**

No single or partial exercise by the County or SPORTSPLEX of any right or remedy shall preclude other or future exercise thereof or the exercise of any other right or remedy.

**XIII. ASSIGNMENT**



COUNTY OF OTSEGO

By: \_\_\_\_\_

KENNETH BORTON

Chairman, Otsego County Board of Commissioners

**OCR 15-39**

**Recognition of Lee Olsen and Lou Ann Olsen**

Otsego County Board of Commissioners

December 15, 2015

**WHEREAS**, Lee Olsen has faithfully serving as a County Commissioner for over 15 years in District IV representing Chester and Charlton Townships; and

**WHEREAS**, Lee served as the Chairman of the Otsego County Board of Commissioners; and

**WHEREAS**, Lee received a B.S. in Health and Education from the University of Minnesota and a Masters in Health Education from Central Michigan University; and

**WHEREAS**, Lee was in military intelligence in the Army, having been stationed here in Gaylord at the courthouse in 1969/70; and

**WHEREAS**, Lee has devoted many years serving on various boards and committees in Otsego County including but not limited to the Budget & Finance Committee, Otsego County Planning Commission, the 9-1-1 Committee, the Local Emergency Planning Committee, the Commission on Aging, Huron Pines, the Northeast Michigan Council of Governments, the Northern Michigan Regional Entity, Straits Area Narcotics Enforcement, Township Officers Association liaison, the Groen Nature Preserve Visioning Committee, University Center Liaison, Otsego Conservation District, the County Infrastructure Committee, and the Parks and Recreation Commission; and

**WHEREAS**, Lou Ann served Chester Township in various roles for over 30 years including serving as its Supervisor; and

**WHEREAS**, Lee and Lou Ann both worked for Gaylord Community Schools; and

**WHEREAS**, Lee and Lou Ann have been married for over 45 years; and

**WHEREAS**, Lee and Lou Ann have a daughter Christine and son Brian, and have four wonderful grandchildren; and

**WHEREAS**, Lee and Lou Ann helped create stronger relationships between the County and the Townships; and

**WHEREAS**, Lee and Lou Ann have decided to enjoy their retirement by spending more time at their home in Arizona; and

**WHEREAS**, Lee and Lou Ann will both be missed in their respective rolls; now, therefore, be it

**RESOLVED**, that Lee and Lou Ann Olsen are remembered by their colleagues and the public for the giving of their time and talents to make Otsego County a better place to live and work; and be it further

**RESOLVED**, that the Otsego County Board of Commissioners commend and honor Lee and Lou Ann for their outstanding service to our community, and wish them to never have to pick up another snow shovel again.