

February 14, 2008

The Regular meeting of the Otsego County Board of Commissioners was held in the Multi-Purpose Room of the J. Richard Yuill Alpine Center. The meeting was called to order at 9:30 a.m. by Chairman Glasser. Invocation by Commissioner Bates, followed by the Pledge of Allegiance led by Commissioner Johnson.

Roll call:

Present: Backenstose, Bates, Beachnau, Liss, Olsen, Glasser, Johnson, Hyde, Bentz.

The Regular meeting minutes of January 22, 2008 with attachments and the minutes from the Special meeting of February 5, 2008 were approved as presented.

Consent Agenda:

Motion to reappoint Charles Klee to the Planning Commission, term to expire December 31, 2010. Motion carried via unanimous consent.

Motion to approve OCR-08-05 Chief Executive Officer.

Roll Call Vote:

Ayes: Backenstose, Bates, Beachnau, Liss, Olsen, Glasser, Johnson, Hyde, Bentz.

Nays: None.

Motion carried/Resolution adopted. (see attached)

Motion to approve OCR-08-06 Airport Plow Truck Disposal.

Roll Call Vote:

Ayes: Backenstose, Bates, Beachnau, Liss, Olsen, Glasser, Johnson, Hyde, Bentz.

Nays: None.

Motion carried/Resolution adopted. (see attached)

Motion to approve Otsego County Ordinance 08-01 Rezoning 3689 Old 27 South.

Roll Call Vote:

Ayes: Backenstose, Bates, Beachnau, Liss, Olsen, Glasser, Johnson, Hyde, Bentz.

Nays: None.

Motion carried/Ordinance adopted. (see attached)

Administrator's Report:

John Burt reported there is an Infrastructure meeting on February 19, 2008 at 8:30 a.m. in room 207; Public Safety meeting scheduled on February 19, 2008 at 10:00 a.m. in the City-Council room; Budget and Finance meeting is scheduled for February 20, 2008 at 9:00 a.m. in Room 212; Citizens Jail Committee meeting is scheduled for February 21, 2008 at 5:30 p.m.

Elizabeth Haus reported the Village has the last budget workshop tonight.

Correspondence:

Chairman Glasser received from NEMCOG a public notice for Huron Pines.

New Business:

Motion by Commissioner Hyde, to approve Warrant B2008-5 in the amount of \$36,258.92 with prepaids in the amount of \$17,620.60 as presented. Ayes: Unanimous. Motion carried.

Motion by Commissioner Liss, to approve Warrant B2008-6 in the amount of \$62,174.73 with prepaids in the amount of \$85.28 as presented. Ayes: Unanimous. Motion carried.

Motion by Commissioner Johnson, to approve Warrant B2008-7 in the amount of \$230,127.02 with prepaids in the amount of \$49,955.15 as presented. Ayes: Unanimous. Motion carried.

Motion by Commissioner Olsen, to approve the Otsego County Commission on Aging Bylaw Amendments as presented. Ayes: Unanimous. Motion carried. (see attached)

Paul Beachnau was appointed to the Broadband Cooperative Liaison and John Burt as the alternate.

Motion by Commissioner Bentz, to approve Resolution OCR-08-07 in support of the Northern Michigan Broadband Cooperative.

Roll Call Vote:

Ayes: Backenstose, Bates, Beachnau, Liss, Olsen, Glasser, Johnson, Hyde, Bentz.

Nays: None.

Motion carried/Resolution adopted. (see attached)

Motion by Commissioner Beachnau, to approve the Sportsplex Operating Agreement as presented. Ayes: Unanimous. Motion carried. (see attached)

The Zoning Board of Appeals Appointments was removed until next meeting.

Board Remarks:

Commissioner Backenstose: Master Plan meeting.

Commissioner Olsen: Conservation District Meeting.

Motion by Commissioner Olsen, to allow movement of the Conservation District pole barn from the approved location to a new location across from the Land Use Services Building. Ayes: Unanimous. Motion carried.

Welcomed back Clark.

Commissioner Hyde: Welcomed back Clark.
Attended the MAC Conference.

Commissioner Bentz: Welcomed back Clark.
Health Department.

Commissioner Liss: Welcomed back Clark.

Commissioner Johnson: Attended MAC Conference.
Welcomed back Clark.

Chairman Glasser: Attended MAC Conference.
Kids Connection Meeting.
Reminded the Board the next Board meeting is February 26,
2008 at 7:00 p.m. at the Chester Township Hall.

Sheriff McBride reported that Brian Webber is doing training at the work camp.

Meeting adjourned at 10:12 a.m. at the call of the Vice-Chair.

Kenneth R. Glasser Chairman

Susan I. DeFeyter, County Clerk

RESOLUTION NO. OCR 08-05
Chief Executive Officer

OTSEGO COUNTY BOARD OF COMMISSIONERS
February 14, 2008

WHEREAS, Resolution OCR-26-87 established the Otsego County Office of Emergency Services as the coordinating agency responsible for county-wide emergency preparedness; and

WHEREAS, Resolution OCR-26-87 establishes the powers and duties of the Chief Executive Officer of the County in times of Emergency or Disaster; and

WHEREAS, it is prudent to create a line of succession for Chief Executive Officer for such times of Emergency or Disaster; now, therefore, be it

RESOLVED, that the line of succession for Chief Executive Officer in times of Emergency or Disaster is as follows;

Chairman of the Otsego County Board of Commissioners
Vice-Chairman of the Otsego County Board of Commissioners
County Administrator

RESOLUTION NO. OCR 08-06
Airport Plow Truck Disposal

OTSEGO COUNTY BOARD OF COMMISSIONERS
February 14, 2008

WHEREAS, the Gaylord Regional Airport is in possession of a plow truck (vehicle identification number: 299E1870156 C) that is no longer usable; and

WHEREAS, the value of the plow truck is negligible; and

WHEREAS, the Otsego County Transportation and Airport Committee Recommended the disposal of said plow truck; now, therefore, be it

RESOLVED, that the Otsego County Board of Commissioners authorizes the transfer of the plow truck to A&L Iron Metal Company.

OTSEGO COUNTY
ORDINANCE NUMBER; 08-01

AN ORDINANCE TO AMEND THE CURRENT OTSEGO COUNTY ZONING MAP
SO THAT THE BELOW DESCRIBED PARCEL OF LAND IS REZONED AS INDICATED.

OTSEGO COUNTY, STATE OF MICHIGAN ORDAINS:

Section 1. The current Otsego County Zoning Map shall be amended so that the following described parcel of land shall be rezoned as indicated:

Common Address: 3689 Old 27 South Gaylord Michigan

General Location: Old 27 south

Township: Bagley

Tax ID Number: 010-021-300-090-00

Legal Description: Attached

Existing Zoning: B-2

New Zoning: B-3

Section 2. Validity

If any section, provision or clause of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any remaining portions or application of this Ordinance which can be given effect without the invalid portion or application.

Section 3. Effective Date.

This Ordinance shall become effective eight (8) days after its first publication.

OTSEGO COUNTY

BY: _____
Ken Glasser, County Board Chairman

BY: _____
Susan DeFeyter, County Clerk

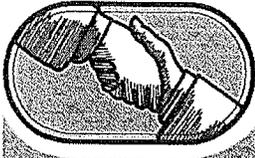
Otsego County
Land Use Services department

1068 Cross Street
Gaylord, Michigan 49735
989-731-7420 *Fax 989-731-7429

3689 Old 27 South Gaylord

Tax ID. 010-021-300-090-00

COMM @ S¼ COR, TH N1°14'12"E 1,420.34' FOR POB, TH N87°31'11"W 527.5', TH N3°24'52"E 65.01', TH N87°31'11"W 141.46', TH N1°12'30"E 295.43', TH S87°03'35"E 666.76', TH S1°14'12"W 355.08' TO POB. SEC 21, T30N-R3W.



*We Help.
We Care.*

OCCOA

OTSEGO COUNTY COMMISSION ON AGING

120 Grandview Blvd. ♦ Gaylord, Michigan 49735

989-732-1122 ♦ Fax: 989-731-2739 ♦ occoa@occoaonline.org ♦ www.OtsegoCountyCOA.org

January 14th, 2008

Mr. Ken Glasser, Chairman
Otsego County Board of Commissioners
Mr. Lee Olsen, Commissioner Liaison
Otsego County Board of Commissioners

Dear Sirs,

On behalf of the Board of Directors of the Otsego County Commission on Aging, the attached By-Laws of the OCCOA are submitted for approval.

The cover page outlines all changes with callouts and highlights.

The changes are centered in Article III, page 2 eliminating the geographic and election district requirements of board members, and reducing the number of members to nine (9). It also eliminates voting privileges for the Commissioner Liaison, per county legal findings.

Respectfully Submitted,

Jack Thompson
Board Chairperson

Arnold Morse
Executive Director

BOARD OF DIRECTORS

Jack Thompson *president*
Mary Sanders *vice president*
Mary King *secretary*

Richard Beachnau *member*
James Camiller *member*
Joe Duff *member*
Rudi Edel *member*
Jim Mathis *member*
Margaret Richards *member*
Pat Slominski *member*
Lee Olsen *Otsego
County Board
of Commissioners
representative*

Arnold Morse *executive
director*
Dona Wishart *director*

Cover Page

ARTICLE III

BOARD MEMBERSHIP

All changes are on page 2.
The new page is presented in
the By-Laws, showing
finished text.

Changed
from 12
to nine
(9).

SECTION ONE: Citizens residing in Otsego County concerned with promoting and safeguarding the welfare of older adults are eligible to be appointed as a board member.

SECTION TWO: The Board of Directors of the OCCOA will have twelve (12) members, each appointed for three (3) years. In addition, the Board of Commissioners shall appoint one County Commissioner to act as Liaison Officer for one year. **The Liaison Officer shall have full privileges of the OCCOA Board.**

Sentence Eliminated

Paragraph "B"
changed to "new
paragraph below."

A. Alternate terms will be determined and will require three (3) or **four (4)** members of the OCCOA board to be appointed each January 1st.

Eliminated

B. The OCCOA shall have one (1) member representing each of the nine (9) electoral districts as set forth for the election of the Otsego County Board of Commissioners. Three (3) members at large shall be appointed. To the extent feasible, the OCCOA Board members will include a diverse cross-section reflective of the local population.

New paragraph: **The OCCOA shall have nine (9) members from across Otsego County. To the extent feasible, the OCCOA Board members will include a diverse cross-section of the local population.**

C. The OCCOA will submit recommendations for member appointments to the Otsego County Board of Commissioners for their consideration. The County Board of Commissioners will have the final approval for OCCOA board members.

"D" is
eliminated

D. Board membership shall be limited to five (5) successive 3-year terms.

ARTICLE IV

REMOVING A BOARD MEMBER VACANCIES

A. If, in the opinion of the OCCOA Board of Directors, a member of the OCCOA board is no longer capable of fulfilling his or her responsibilities, or is no longer operating in the best interest of the OCCOA, the board of directors may, by 2/3 vote, remove the board member.

OTSEGO COUNTY COMMISSION ON AGING BYLAWS

ARTICLE I

NAME OF THE AGENCY

The name of this commission shall be the **Otsego County Commission on Aging**, also referred to as the Commission, Commission on Aging or OCCOA.

ARTICLE II

STRUCTURE AND ACTIVITIES

The OCCOA is established by the Otsego County Board of Commissioners as an agency to be primarily concerned with the county's services and responsibilities to the older adults of Otsego County. The OCCOA and the Board of Directors shall be responsible to implement and administer the charges as set forth in the bylaws and to be accountable to the county Board of Commissioners. The OCCOA is a county agency that will coordinate, provide and initiate programs, public and private, and promote the independence and well-being of older adults of Otsego County, Michigan. The Board of Directors shall govern the agency.

The Board of Directors of the OCCOA has responsibilities to oversee, govern, and supervise OCCOA activities as follows:

- Provide leadership, consultation and assistance to interested groups or individuals who foster the well-being of our older adults;
- Accumulate, tabulate, and study the factual data related to older adults and their resources;
- Disseminate information concerning services and programs having to do with social, economic, health and housing needs of the aging;
- Seek resources and funding for the provision of services to the aged in Otsego County;
- Plan and implement programs consistent with the agency mission statement, utilizing all available resources;
- Cooperate with existing governmental and private agencies in order to develop and make available needed resources for older adults throughout Otsego County.

ARTICLE III

BOARD MEMBERSHIP

SECTION ONE: Citizens residing in Otsego County concerned with promoting and safeguarding the welfare of older adults are eligible to be appointed as a board member.

SECTION TWO: The Board of Directors of the OCCOA will have nine (9) members, each appointed for three (3) years. In addition, the Board of Commissioners shall appoint one County Commissioner to act as Liaison Officer for one year.

- A. Alternate terms will be determined and will require three (3) members of the OCCOA board to be appointed each January 1st.
- B. The OCCOA shall have nine (9) members from across Otsego County. To the extent feasible, the OCCOA Board members will include a diverse cross-section of the local population.
- C. The OCCOA will submit recommendations to the Otsego County Board of Commissioners for their consideration. The County Board of Commissioners will have the final approval for OCCOA board members.

ARTICLE IV

REMOVING A BOARD MEMBER VACANCIES

- A. If, in the opinion of the OCCOA Board of Directors, a member of the OCCOA board is no longer capable of fulfilling his or her responsibilities, or is no longer operating in the best interest of the OCCOA, the board of directors may, by 2/3 vote, remove the board member.

ARTICLE IV (CONTINUED)

**REMOVING A BOARD MEMBER
VACANCIES**

- B. In the event of removal of one or more appointed members, the OCCOA board will seek nominations for replacements to serve out the remainder of the removed board member's term. These nominations will be submitted to the Otsego County Board of Commissioners for appointment. No board member who has been removed will be eligible for nomination.
- C. Vacancies on the OCCOA shall be filled for the unexpired term in the same manner as regular appointed members.
- D. Members whose term has expired may serve until replaced or re-appointed.

ARTICLE V

OFFICERS

SECTION ONE: Elected Officers

The elected officers from the OCCOA shall consist of a Chairperson, a Vice Chairperson, a Secretary, and a Treasurer. The officers shall be elected at the annual meeting of the OCCOA in February of each year. In the event of a vacancy within any of these offices, the OCCOA shall elect a new officer for the balance of the unexpired term of office.

SECTION TWO: The duties and responsibilities of the officers are as follows:

- A. The CHAIRPERSON shall preside at the meetings of the board and the executive committee; shall appoint persons to chair committees deemed necessary for conducting the business of the OCCOA; shall be a member ex-officio of all committees.
- B. The VICE CHAIRPERSON shall perform such duties as are assigned by the Chairperson, including the performance of official duties in the absence of the Chairperson.
- C. The SECRETARY shall ensure that minutes are taken at all meetings of the board and formal executive committee meetings when actions are decided on behalf of the OCCOA.
- D. The TREASURER shall chair the ways and means committee

(if active), and shall ensure through the Directors that an audit or financial review is conducted.

ARTICLE VI

EXECUTIVE COMMITTEE

SECTION ONE: Personnel of the Executive Committee shall consist of the four elected board members who are the officers of the OCCOA Board.

SECTION TWO: The duties of the Executive Committee include the general charge and control of the affairs and program operations of the OCCOA. Proceedings will be reported to the OCCOA Board when interim formal actions have been required.

SECTION THREE: The Executive Committee shall hold meetings, which may include telephonic or electronic meetings, as needed to conduct necessary business of the OCCOA between regular OCCOA meetings. Three of the four officers must participate.

SECTION FOUR: When acting in place of the full board of the OCCOA, any vote by the executive committee must be unanimous by the participating committee members.

ARTICLE VII

MEETINGS

SECTION ONE: The OCCOA board shall hold regular meetings with no less than 6 meetings per year. The Chairperson may call other meetings, giving proper notice to all OCCOA board members and the public in compliance with the Open Meetings Act. Written notice of the meetings shall include a mailing prior to the meeting. This mailing will contain minutes of the previous meeting, the future agenda, financial reports and committee reports as needed.

SECTION TWO: Special committees may be appointed by the Chairperson as needed for the necessary business of the board.

ARTICLE VIII

DELEGATION OF AUTHORITY AND DUTIES BY BOARD OF DIRECTORS

SECTION ONE: All officers, executives, managers, employees and agents shall be charged with such duties and authority as usually pertains to such offices in an agency of the type described in these bylaws. The officers, executives, and managers shall have such management

authority and perform such duties as may be determined by resolution of the board of directors of the OCCOA.

ARTICLE IX

AMENDMENTS AND RULES OF ORDER

SECTION ONE: The bylaws of the OCCOA may be amended by a two thirds (2/3) vote of the appointed members of the OCCOA board followed by a two thirds (2/3) vote for approval by the Otsego County Board of Commissioners, provided proper notification has been made to every member of the OCCOA board.

SECTION TWO: All assets, real property and personal property will revert to the benefit of the local government if the organization dissolves, or to a 501 (c) (3) organization. The OCCOA will remain as a non-profit entity in perpetuity.

SECTION THREE: The OCCOA will conduct all activities without regard to race, color religion, creed, gender, national origin, age, marital status, veteran status, sexual orientation, or the presence of handicaps, disabilities, or any other basis protected by state or federal law.

Approval of OCCOA By-Laws by the Board of Commissioners

July 9, 2002

The regular meeting of the Otsego County Board of Commissioners was held at the J. Richard Yuill Center. The meeting was called to order at 9:35 a.m. by Chairman Johnson. Invocation by Commissioner Glasser, followed by the Pledge of Allegiance led by Commissioner Liss.

Roll Call:

Present: Bates, Liss, Olsen, Lord, Chavey, Johnson, Bentz, Glasser.

Absent: Beachnau.

Others present: Peter Comings, Tacy Schlink, Mary Sanders, Jeff Garfield, Bob Harden, Jean Nowicki, Bill Less, Dawn Johnston, Cle Leask, Elizabeth Haus, Michael Zalewski, Sean Watson, Joe Gruszczynski, James McBride, Allen Lowe, David Hoecherl, Mike Reling, Lambert Chard, Evelyn M. Pratt.

(Main part of minutes edited to show only the approval of OCCOA Bylaws).

Olsen:

Discussed the Millage request handout.

Reported on the Charlton/Chester/Dover Townships Clean-up.

Reported on Parks & Rec.

Reported on the County Forum.

Reported on 9-1-1.

Reported on Commission on Aging.

Motion by Olsen, seconded by Lord, to adopt OCR-02-039 that the bylaws for the Otsego County Commission on Aging as amended on July 9, 2002 be accepted as presented.

Roll Call Vote:

Ayes: Lord, Chavey, Johnson, Glasser, Bentz, Bates, Liss, Olsen.

Nays: None.

Absent: Beachnau.

Motion carried/Resolution adopted.

January 22nd, 2008

Mr. Ken Glasser, Chairman
Otsego County Board of Commissioners
Mr. Lee Olsen, Commissioner Liaison
Otsego County Board of Commissioners

Dear Sirs,

On behalf of the Board of Directors of the Otsego County Commission on Aging, the attached By-Laws of the OCCOA are submitted for approval.

The cover page outlines all changes with callouts and highlights.

The changes are centered in Article III, page 2 eliminating the geographic and election district requirements of board members, and reducing the number of members to nine (9). It also eliminates voting privileges for the Commissioner Liaison, per county legal findings.

Respectfully Submitted,

For the Board,

Arnold Morse
Executive Director

Dona Wishart
Director

**RESOLUTION NO. OCR 08-07
Broadband Cooperative Support**

OTSEGO COUNTY BOARD OF COMMISSIONERS
February 14, 2008

WHEREAS, access to broadband internet services affects the quality of life for many of Otsego County citizens; and

WHEREAS, many rural areas in Northern Lower Michigan are without Broadband Internet services; and

WHEREAS, the lack of broadband internet service drastically effects health care, education and emergency services, as well as hinders economic development in these areas; and

WHEREAS, a diverse group of stakeholders from both the public and private sector have come together and are investigating the possibility of forming a Broadband Cooperative; and

WHEREAS, this Cooperative known as the Northern Michigan Broadband Cooperative, is seeking ways to extend broadband internet service through Northern Lower Michigan; now, therefore, be it

RESOLVED, that the Otsego County Board of Commissioners supports and endorses the efforts of the Northern Michigan Broadband Cooperative in their pursuit of addressing the broadband needs of Northern Lower Michigan.

**AGREEMENT FOR OPERATING AND MAINTAINING
OTSEGO COUNTY RECREATIONAL AND SPORTS COMPLEX**

THIS AGREEMENT is made on the ____ day of _____ 2008 by and between the County of Otsego, whose address is 225 W. Main Street, Gaylord, Michigan 49735 (hereafter "County") and the Otsego County Sportsplex, a Michigan non-profit corporation, whose address is 1250 Gornick Ave, Gaylord, Michigan 49735 (hereafter "Sportsplex")

Recitals

- A. WHEREAS, the County owns the Otsego County Sportsplex property, facilities and contents;
- B. WHEREAS, the Sportsplex has been incorporated pursuant to the provisions of Act 162 of the Michigan Public Acts of 1982, as amended, to construct, equip, lease or own, manage and operate a recreational and sports complex in the County, which includes, without limitation, an indoor ice skating rink and swimming pool for use by residents of the County and the public; and
- C. WHEREAS, on August 2, 1994; the electors of the County authorized the County Board of Commissioners to levy a tax of not to exceed .80 mills (\$0.80 per \$1,000) for a period of 12 years, 1994 through 2005, inclusive (the "Capital Improvement Millage") to provide the funds required to acquire or construct, furnish, and equip a recreational and sports complex which would include an indoor ice skating rink and swimming pool for use by the residents of the County and the public; and
- D. WHEREAS, on November 7, 2006, the electors of the County also authorized the Count Board of Commissioners to levy a tax of not to exceed .25 mills (\$0.25 per \$1,000) for a period of five years, 2006 through 2010 inclusive (the "Sportsplex Operating Millage") to provide the funds required to operate the recreational and sports complex; and
- E. WHEREAS, the County has had an agreement since 1995 with the Sportsplex to operate the Sportsplex;
- F. WHEREAS, the County wishes to continue to hire the Otsego County Sportsplex to operate the Sportsplex;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

Agreement

1. TERM. The term of this Agreement shall commence on February 6, 2008, and shall terminate at the end of five (5) years thereafter, unless extended or terminated in accordance with the provisions hereof.

In the event that either the Sportsplex Director or the Parks and Recreation Director officially announce his/her retirement, the County may terminate this Agreement by giving written notice 120 days prior to the intended termination date.

2. SPORTSPLEX DUTIES & REQUIREMENTS. The Sportsplex agrees to follow the following rules & procedures:

- A. Annual Budget. (i) Prior to September 1, 2008 and to each September 1st thereafter, Sportsplex shall prepare and present to the County a proposed budget for the operation of the Sportsplex for the subsequent fiscal year beginning January 1st.

The budget shall estimate the maximum amount of revenue which the County can obtain from: (1) the Sportsplex Operating Millage during the next fiscal year, (2) any unexpended amounts from the prior year's operations, (3) estimated revenues from fees and charges proposed to be charged for the operation of the Sportsplex facility for such year, and (4) other sources including, but not limited to, gifts, grants, and donations.

Prior to December 31 each year, the Board of Commissioners shall approve a final budget for the operation of the Sportsplex facility which approval shall be accompanied by a resolution authorizing the levy of such amount of the Sportsplex Operating Millage as the Board of Commissioners deems appropriate. In addition, if sufficient money remains after payment of principal and interest due from the Capital Improvement Millage levied for such purposes, the Board of Commissioners may authorize its expenditure for capital improvement purposes after a request is received from Sportsplex. This authorization can be included in the final budget or in a separate resolution adopted by the Board of Commissioners.

If the Board of Commissioners fails to approve the budget by December 31st, Sportsplex shall submit a plan for closing the Sportsplex facility and on the following January 1st shall vacate the Sportsplex facility until the County Board of Commissioners approves the budget.

- B. Balanced Budgets and Corrections of Quarterly Deficits. Sportsplex agrees to operate the Sportsplex facility within the budgets approved by the Board of Commissioners. Should any quarter's operations result in a

deficit for such quarter, Sportsplex agrees to (a) immediately meet with the Otsego County Budget & Finance Committee to develop a satisfactory deficit correction plan, which may include increased fees or reduced expenses, or (b) should this action prove to be insufficient to correct the deficit operations, Sportsplex agrees increase fee revenue sufficiently to insure that the deficit will be repaid in the next two quarters.

- C. Failure to Operate Without a Deficit. Should Sportsplex fail to operate the Sportsplex facility within a balanced budget for more than six months, the County shall have the right to terminate this agreement.
- D. Fixing and Revising Rates; Rate Covenant. Sportsplex shall propose rates and charges for the use of the Sportsplex facility by residents of the County and the general public. Sportsplex covenants to propose rates and charges which will be sufficient, after taking into account the tax revenues expected to be appropriated by the County pursuant to Section 2 hereof, and including revenue from any other sources, to provide for the payment of the administration and operation expenses of the Sportsplex facility, such expenses for maintenance as may be necessary to preserve the Sportsplex facility in good repair and working order and expenses incurred in any subsequent expansion of the Sportsplex facility; and to provide for such other expenditures and funds for the Sportsplex facility as are required by this Agreement. After approval of the County, rates shall be fixed and revised from time to time by Sportsplex to produce the foregoing amounts, and Sportsplex covenants and agrees to maintain at all times such rates for services furnished by the Sportsplex facility as shall be sufficient to provide for the foregoing.
- E. Operating Year. The Sportsplex shall be operated on the basis of an operating year which shall coincide with the County's fiscal year.
- F. Establishment of Funds and Accounts; Flow of Funds. All operating revenues from the Sportsplex, including such operating tax revenues appropriated by the County, may be used by Sportsplex to meet its obligations under this Agreement and shall be deposited as collected and set aside in a depository account to be known as the "receiving fund, and shall be transferred periodically in the manner and at the times and in the order of priority hereinafter specified:
 - 1. Operation and Maintenance Fund. All revenues received from the Sportsplex shall be set aside as collected in a fund to be designated "operation and maintenance fund." Operating tax revenues shall be deposited in the Fund as follows: on March 1st, such taxes as have been received by the County Treasurer by that time, and on May 1st, or as soon thereafter as the county Treasurer receives such taxes from the

delinquent tax revolving fund, the balance of such taxes. Every quarter from the revenues in the receiving fund, there shall first be set aside in the operation and maintenance fund, such amount as is required, taking into account the monies expected to be received from the Sportsplex operating levy, to provide for the payment of the Sportsplex's current expenses of administration, operation, and such maintenance as may be necessary on a quarterly basis to preserve the Sportsplex in good repair and working order.

2. Capital Improvement Fund. Out of the remaining revenues in the receiving fund, there may be next set aside in the capital improvement fund such sums as Sportsplex may deem advisable. All monies in the capital improvement fund shall be used solely for capital improvements such as capital purchases, equipment (including Zambonis), and repairs, replacements, improvements, enlargements or extensions to the Sportsplex.

3. Appropriations of operating moneys or capital improvement moneys from the County. Any amount of operating moneys which are appropriated to the Sportsplex by the Board of Commissioners from the Sportsplex Operating Millage may be used for operations or capital improvements so long as the expenditures are included in the budget required by Section 2, Subsection A, or approved by a specific resolution of the Board of Commissioners.

4. Surplus Fund. Subject to having been approved in the budget required by Section 2, Subsection A, or to a specific approval by the Board of Commissioners, revenues remaining in the receiving fund at the end of any fiscal year after all periodic transfers have been made therefrom as above required shall be deemed to be surplus and may be left in the receiving fund or may be transferred to a fund to be designated "surplus fund" and subsequently transferred to any of the funds herein authorized. All revenues raised by rates and charges for use of the Sportsplex shall be used solely for the Sportsplex.

G. INVESTMENTS. All monies in the Sportsplex funds shall be deposited with a bank or trust company designated by the County and approved by Sportsplex. The monies in the several funds of the Sportsplex may be kept in one bank account, in which event the monies in the bank account shall be allocated on the books and records to the respective funds as herein provided. Monies in the several funds and accounts shall be invested by the County Treasurer as authorized by law.

H. REPAIRS. Sportsplex shall, at all times during the term of this Agreement, keep the Sportsplex and the premises in good condition and repair, shall make all necessary and desirable repairs, restorations and replacements

thereof, structural and nonstructural, seen or unforeseen, and shall use all reasonable precautions to prevent waste, damage or injury. Sportsplex shall 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.

- I. OPERATION AND MAINTENANCE. Sportsplex shall, at all times during the term of this Agreement, operate and maintain the Sportsplex and the premises. Operation and maintenance shall include (but not be limited to) the providing of all utilities, snow removal, exterior ground care and all personnel services, equipment and supplies of whatever nature as shall be necessary or expedient for the operation and maintenance of the Sportsplex and the premises. Premiums for insurance required to be carried upon or with respect to the Premises or the use thereof and taxes or assessments levied upon any party hereto on account of the ownership or use thereof or rentals or income therefrom shall likewise be deemed operation and maintenance expenses. 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 the Sportsplex.
 - J. ALTERATIONS. After approval of the Board of Commissioners, Sportsplex may make such alterations, changes, additions or improvements in or to the interior or exterior of the Sportsplex or premises as it shall determine to be beneficial to the Sportsplex. Sportsplex shall make any changes or alterations in, on or about the Sportsplex which may be required by any applicable statute, charter, ordinance or governmental regulation or order. All alterations and improvements shall be at Sportsplex's sole expense. All alterations and improvements shall be the property of the County and shall remain upon and be surrendered to the County with the Sportsplex and the premises at the termination of this Agreement. Sportsplex shall save the County and the members of the Board of Commissioners harmless and free from all cost or damage in respect to any alterations to the Sportsplex or the premises.
3. COUNTY PERFORMANCE OF REPAIRS AND MAINTENANCE. In the event that Sportsplex fails or neglects to make all necessary repairs or to properly maintain the Sportsplex or the premises or fulfill its other obligations as set forth in this Agreement, the County or its agents may, but are not in any way obligated to make such repairs, maintaining the Sportsplex and premises, or fulfilling such obligations. All costs and expenses incurred as a consequence of the County's actions shall be repaid by Sportsplex to the County within thirty days after Sportsplex receives copies of the receipts showing payment by the County for such repairs, maintenance or other obligations. Except in the case of emergency, the County shall give Sportsplex ten days written notice before taking any such

action.

4. INDEMNIFICATION. The Sportsplex hereby agrees to defend, release, indemnify and save harmless the County, its officers, agents and employees from and against (a) any and all loss of or damage to property or injuries to or death of any person or persons, including property and employees or agents of the County, and (b) any and all claims, demands, suits, actions, liabilities, costs, expenses, or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, in any way resulting from, or arising out of the condition, occupation, maintenance, alteration, repair, use, or operation of the premises or any part of it. . The Sportsplex's obligations set out in this paragraph shall survive the termination of this Agreement.

5. INSURANCE. The following insurance policies shall be obtained and kept in force during the entire term of this Agreement:
 - A. Property Insurance. The County shall provide, to be paid by the Sportsplex, property insurance which shall cover all real and personal property on the premises on a 100% replacement cost basis. Such policy shall be on an all risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without limitation, flood, theft, vandalism, and malicious mischief.

 - B. Liability Insurance. The County shall provide commercial general liability insurance, excepting Subsection C below, to be paid by the Sportsplex.

 - C. Employee/Board Liability Insurance. The Sportsplex shall maintain, at its cost, liability insurance coverage for employees of the Sportsplex, its Board of Directors, and its operations. Such policy shall name the County as additional insured.

 - D. Motor Vehicle Insurance. The Sportsplex shall maintain, at its cost, motor vehicle insurance for all Sportsplex vehicles. Such policy shall name the County as additional insured.

 - E. Workers Disability Insurance. The Sportsplex shall maintain, at its cost, worker's disability insurance.

6. DAMAGE OR DESTRUCTION. In the event of the partial or total destruction of the Sportsplex facility during or after construction, or if the Sportsplex facility is for any reason made unusable, Sportsplex shall have no duty to operate the Sportsplex facility until it is repaired. Sportsplex shall give the County immediate notice of any damage or destruction.

If the County determines that it is in their best interest to repair, restore, or

replace the Sportsplex facility, the County shall cause the prompt repair, replacement, and rebuilding of the Sportsplex facility. In such event, all Insurance proceeds received by the County or the Authority, on account of such damage or destruction, less the actual cost, fees and expenses, if any, incurred in connection with adjustment of the loss, shall be deposited in the capital improvement fund and applied to pay for the cost of the restoration, including the cost of temporary repairs or for the protection of property pending the completion of permanent restoration, and shall be paid out from time to time as restoration progresses.

In no event shall the County be required to repair, replace, or rebuild the Sportsplex facility, nor to pay any of the costs or expenses thereof beyond or in excess of any insurance proceeds, plus any funds that Sportsplex contributes. To the extent the estimated cost of repairs exceeds the amount of any insurance proceeds, Sportsplex may pay such costs or expenses of repairs beyond or in excess of any insurance proceeds. Such amounts shall be deposited in the capital improvement fund prior to commencement of such repairs or restoration. If the actual costs of such repairs or restoration is less than the estimated cost, the amount of such excess, including any excess insurance proceeds, shall remain on deposit in the capital improvement fund. If the actual costs exceed the estimated cost, the County shall pay such additional amounts, which shall be reimbursed by Sportsplex as soon as there are sufficient Sportsplex revenues to do so after payment of operation and maintenance.

7. OPERATIONAL INTEGRITY. 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 Sportsplex for the County.
8. INSPECTION. Without notice, the County, through its officers, employees or agents, may enter upon the Sportsplex at any time during the term of this Agreement for the purpose of inspecting the Sportsplex and determining whether Sportsplex is complying with the covenants, agreements, terms, and conditions hereof.
9. SPORTSPLEX REPRESENTATIONS AND WARRANTIES. Sportsplex represents and warrants that:
 - a. Sportsplex is a Michigan nonprofit corporation which is exempt from federal income taxation under Section 501(c) (3) of the Code, duly organized, validly existing, and in good standing under the laws of the State of Michigan.
 - b. Sportsplex has all requisite corporate power and authority to lease and operate the Sportsplex and carry on its business as now conducted and as Sportsplex contemplates such business to be conducted in the future.

c. The execution, delivery, and performance by Sportsplex of this Agreement is within its corporate powers, has been duly authorized by all necessary action, and does not contravene or constitute a default under any provision of applicable law or regulations or of the Articles of Incorporation or Bylaws of Sportsplex, or of any agreement, judgment, injunction, order, decree, or other instrument binding upon it.

d. The officers of Sportsplex who will execute this Agreement, and all other documents, instruments, and agreements required to be delivered or contemplated hereunder are or will be duly authorized to execute the same.

e. This Agreement constitutes a valid and binding agreement of Sportsplex, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the enforcement of creditors' rights and by general principles of equity.

f. There is no action, suit, or proceeding pending or, to the knowledge of Sportsplex, threatened against Sportsplex before any court or arbitrator or any governmental body, agency, or official in which an adverse decision would materially and adversely affect the ability of Sportsplex to make any of its payment obligations under this Agreement or which in any manner questions the validity of this Agreement.

10. SPORTSPLEX COVENANTS. Sportsplex covenants and agrees that so long as this Agreement shall remain in effect and until the full and final payment and performance of all obligations hereunder, unless the County waives compliance in writing:

a. Sportsplex will promptly inform the County of any occurrence which constitutes an event of default as defined in this Agreement or which, with the giving of notice or the lapse of time, or both, would constitute such an event of default and of any other occurrence which materially affects its financial condition adversely or its ability to comply with its obligations under this Agreement.

b. It is expected that the premises will be exempt from payment of real estate taxes. To the extent that the premises or the Sportsplex become subject to any form of ad valorem taxation, Sportsplex shall pay and discharge, before the same become delinquent, all taxes and assessments of whatever nature which may be levied or assessed against the premises or the Sportsplex, unless and to the extent only that such taxes or assessments shall be contested in good faith by appropriate proceedings and Sportsplex shall have set aside on its books adequate reserves with respect thereto.

c. Sportsplex shall maintain its existence as a Michigan nonprofit corporation in good standing in the State of Michigan and shall comply with all governmental

laws, regulations, and orders applicable to it, the failure to comply with which would have a material adverse effect on the financial condition, business, or operations of Sportsplex or would affect the validity or enforceability of this Agreement.

d. Sportsplex shall maintain its tax-exempt status under federal income tax laws and regulations and none of its revenues, income or profits, either realized or unrealized, and none of its other assets or property will be distributed to any of its employees, or inure to the benefit of any private person, association or corporation, other than for the lawful corporate purpose of Sportsplex.

e. Subject to Section 20(b) hereof, Sportsplex shall not create or permit to exist any lien, mortgage, pledge, or other encumbrance on the premises.

11. ENVIRONMENTAL MATTERS. Sportsplex will not permit any of the premises to be contaminated or the source of contamination of any other property, by any substance that is now or hereafter regulated by or subject to any applicable federal, state, or local law, ordinance, rule, regulation or order that regulates or is intended to protect public health or the environment or that establishes liability for the investigation, removal, or clean up of, or damage caused by, any environmental contamination, including, without limitation, any law, ordinance, rule, regulation, or order that regulates or prescribes requirements for air quality, water quality, or the disposition, transportation, or management of waste materials or toxic substances (the foregoing are collectively referred to herein as "environmental laws")

At its sole cost and expense, Sportsplex shall; (1) pay when due the cost of compliance with all relevant environmental laws; (2) keep the premises free of any lien imposed pursuant to any environmental laws; and (3) furnish the County with any reports on environmental assessments/audits of the premises.

Sportsplex shall indemnify and hold the County and the members of the Board of Commissioners, and its agents, officers, and employees, harmless from and against all costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims and demands of every kind or nature, including reasonable attorney's fees, that shall be asserted against or incurred by any of the foregoing by reason of (a) any representation or warranty by Sportsplex in this section being inaccurate in any material respect; (b) any failure of Sportsplex to perform any of its obligations under this section; or (c) any past, present, or future condition or use of any part of the premises (whether known or unknown) , other than an "excluded condition or use", including without limitation, liabilities arising under any environmental law. An "excluded condition or use" of the premises is one that (A) does not exist or occur, to any extent, at any time before Sportsplex has permanently given up possession and control of the premises, and (B) was not caused, or permitted to exist, in whole or in part, by any act or omission of Sportsplex. Indemnification of the County under this section shall not limit any other

right or remedy that is available to the County. The indemnification under this section shall survive the termination of this Agreement.

12. DEFAULT AND TERMINATION. Each of the following shall constitute an event of default:

- a. Sportsplex fails to submit and operate within the budgets required by Section 2.
- b. Sportsplex fails to pay when due any amounts paid by the County for repairs or maintenance pursuant to this Agreement, and such failure shall continue for thirty days after notification from the County of the obligation by Sportsplex to make such payments.
- c. 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 incorrect or incomplete in any material respect when made or deemed to be made.
- d. 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 clauses a and b above) for thirty days after written notice thereof shall have been given to Sportsplex by the County.
- e. 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 or makes an assignment for the benefit of creditors.
- f. 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.
- g. Sportsplex ceases to operate the Sportsplex or indicates its intention to do so.

13. REMEDIES IN EVENT OF DEFAULT. Remedies in Event of Default. If any event of default as defined in this Agreement shall occur and be continuing:

- a. The County shall have the right, but not the obligation, to take any of the following action:
 - (i) The County may terminate this Agreement, or without terminating this

prohibits Sportsplex from entering the premises.

(ii) As principal tenant of the Authority, the County shall have the right to enter the premises at all times.

(b) Sportsplex shall have the duty to promptly transfer or assign to the County all money, bank accounts, and assets of any kind related to operation of the Sportsplex upon any event of default.

The rights provided for in this Section 12 are cumulative and are not exclusive of any other rights, powers, privileges, or remedies provided by law or in equity.

14. WAIVER. No assent, expressed or implied, to any breach of any one or more of the terms and conditions of this Agreement shall be deemed to be or taken to be by the County or Contractor as a waiver of any subsequent breach of such terms and conditions or of any right the County or Contractor may have for damages.
15. OPTION TO RENEW. Upon expiration of the initial term of this Agreement, the County shall have the option of extending the initial term hereof for a maximum of two additional renewal terms of five years each.
16. ASSIGNMENT. Sportsplex agrees not to sell, assign, mortgage, pledge or in any way transfer this Agreement or permit anyone other than the general public to use the premises, in whole or in part, except as set forth in this Agreement.
17. AMMENDMENT. This Agreement contains the entire understanding and agreement of the parties as to the subject matter hereof and may be amended only by written agreement of all parties who are then bound by the terms hereof.
18. NOTICES. All notices, requests, and other communications to any party hereunder shall be in writing and shall be given to such party at its address set forth below or such other address as such party may hereafter specify:

If to Sportsplex: Otsego County Sportsplex
1250 Gornick Avenue
Gaylord, MI 49735
Attn: Sportsplex Director

If to the County: County of Otsego
225 W. Main Street, Room 203
Gaylord, MI 49735
Attn: County Administrator

19. NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Agreement, the Contractor agrees not to fail or refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation,

terms, conditions or privileges of employment against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

20. COMPLIANCE WITH LAWS. The Contractor shall comply with all provisions of federal, state, municipal, local and departmental laws, ordinances, rules, regulations, and orders which would affect the Agreement and the performance thereof and those engaged therein. This includes obtaining all applicable permits and licenses. If necessary, the County administrator will provide the Contractor with reasonable assistance in obtaining any required County licenses or permits. However, the Contractor shall not apply for any permits or licenses in the name of, or on behalf of, the County. If during the term of this Agreement any unforeseeable changes in such laws, ordinances, rules and regulations, or orders occur which result in actual significant increased costs to the Contractor, the Contractor may submit to the County a written request for an equitable adjustment to reimburse it for such costs. The request shall include documentation of the costs claimed by Contractor, identification of the change in law, ordinance, rule, regulation or order which caused the increased costs, and a statement of the reasons why the change was not reasonably foreseeable and the reasons why the change caused the increased costs. The County administrator may in his discretion grant or deny an equitable adjustment after review of the information submitted by the Contractor.
21. SEVERABILITY. If any, part, portion or provision of this Agreement shall be found or declared null, void, or unenforceable for any reason whatsoever by any court of competent jurisdiction or any governmental authority having authority thereover, only such part, portion, or provision shall be affected thereby and all other parts, portions and provisions of this Agreement shall remain in full force and effect.
22. HEADINGS. The heading contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
23. ENTIRE AGREEMENT. The parties acknowledge and agree that the provisions contained herein constitute the entire agreement between the parties as to the subject hereof, and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications to this Agreement shall be valid unless they are contained in an instrument, which is executed by all the parties with the same formality as this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

WITNESSES

COUNTY OF OTSEGO

By: _____

John M. Burt

Its: Otsego County Administrator

SPORTSPLEX

By: _____

Its: