OTSEGO COUNTY
PLANNING COMMISSION
April 17, 2017
6:00 PM

MEETING WILL BE IN THE PLANNING AND ZONING MEETING ROOM LOCATED AT 1322 HAYES ROAD

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF MINUTES: From March 20, 2017 meeting
5. CONSENT AGENDA
6. OTHER
7. PUBLIC PARTICIPATION FOR ITEMS NOT ON THE AGENDA:

   (Please identify yourself for the record. All comments will be limited to two (2) minutes)
8. PUBLIC HEARINGS:
9. ADVERTISED CASES:
10. UNFINISHED COMMISSION BUSINESS
    1. Case PZSU16-004:

       Johnson Oil Company, property owner, has requested a Special Use Permit for property located in Otsego Lake Township:

       900 Marlette Rd
       Frederic, MI 49733
       090-028-300-010-01

       Property is located in a HX/Highway Interchange Zoning District
       PZSU16-004-proposed use of the property is to install an eighteen thousand (18,000) gallon propane tank at their existing gas station site
    2. Section 23 Site Plan Review/Application – *Proposed changes*
11. NEW BUSINESS
12. REPORTS AND COMMISSION MEMBER'S COMMENTS:
    1. Otsego County Parks & Recreation report/Judy Jarecki
    2. Land Use Services report/Jim Mouch
    3. Selected Planning and Zoning Decisions: 2005/Zoning Information
13. ADJOURNMENT

Otsego County Planning Commission

Proposed Minutes for March 20, 2017

Call to Order: 6:00pm by Vice-Chairperson Jarecki

Pledge of Allegiance

Roll Call:

Present: Vice Chairperson Jarecki, Mr. Borton, Mr. Hilgendorf, Mr. Brown, Ms. Nowak, Mr. Klee, Mr. Caverson, Mr. Bauman, Ms. Corfis

Absent: Mr. Hartmann, Mr. Arndt-arrived 6:02pm

Staff Present: Mr. Mouch, Ms. Boyak-Wohlfeil

Public Present: Ed Johnson, Johnson Oil representative, David Delaney, Johnson Oil Attorney, Jack Udebrock and Leo Sensbaugh, OLT Planning Commission members, Ken Bradstreet, Wolverine Power representative, Randy Stults

Approval of minutes from: January 16, 2017

Mr. Borton requested a correction on page four (4), last paragraph fourth sentence… *'The monies saved will be used at the trailheads.'* changed to *'The monies saved **could possibly be** used at the trailheads.'*

Motion made to approve minutes as corrected by Mr. Brown; Seconded by Mr. Bauman

Motion approved unanimously.

Mr. Arndt arrived 6:02pm.

Consent Agenda: None

Other: None

Public participation for items not on the agenda: None

Public Hearing:

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Frederic, MI 49733
090-028-300-010-01
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PZSU16-004-proposed use of the property is to install an eighteen thousand (18,000) gallon propane tank at their existing gas station site

Vice-Chairperson Jarecki stated the case and opened the public hearing.
Public Hearing open: 6:03pm

Ed Johnson, Johnson Oil representative, stated the building on Marlette was currently heated with a flame operated vaporizer system. The proposed tank would allow them to remove that system and create a safer form of heating their building. A pump would also be added to permit any of their trucks in the area to top off their tanks while servicing customers in lieu of driving to Gaylord. He stated it would not be used as a main filling station; they had larger tanks in Gaylord and Lake City for that purpose.

Mr. Arndt asked Mr. Johnson to point out the different components he was discussing on the site plan.

Mr. Hilgendorf questioned the evaporator marked 'to remain' on the site plan.

Mr. Johnson stated that would be removed along with the two (2) existing LP tanks.

Ms. Corfis, Otsego Lake Township representative, stated the case had been heard at the Otsego Lake Township Planning Commission meeting and the Township felt there was not enough information provided on the site plan for their Planning Commission to make a decision either way. They had concerns with safety issues and they felt the site plan submitted did not address these. The site plan included in the county packet has been revised since the township meeting.

Jack Udebrock, Otsego Lake Township Planning Commission chairperson stated they were invested in the tank and it could be seen from the Otsego Lake Township Hall. He felt there were unanswered questions and did not feel the site plan was adequate. He compared the site plan with that submitted from the DTE project and felt those were the standards to adhere to.

Mr. Arndt questioned exactly what he would like to see on the plan.

Mr. Udebrock stated he felt the tank itself should be fenced with a locked gate, the parking should be removed from the loading area and he would like to see the piping and safety valves.

Mr. Johnson stated the safety issues would all need to be addressed prior to the state allowing the tank to be operational. The fence would be locked at all times with coded access, the piping and valves were state regulated and because trucks would not be filling up on a regular basis, they did not feel the parking needed to be removed.

Mrs. Jarecki questioned if there was state approval for the site.

Mr. Johnson stated he did have the state's approval from the previous site plan and distributed copies. He stated the site was not the same as presented tonight because they did not realize they needed a special use permit for it. They now needed approval from the county as part of their submittal of the new site plan to the state.

Mr. Arndt questioned the distance of the tank from the parking area and the possibility of someone accidently running into the guard rail in front of the tank.

Mr. Johnson stated it would take a very large vehicle hitting the tank hard to cause any real damage.

Mr. Stults stated the safety issue may not be the tank itself but the piping going to the tank.

Mr. Johnson stated safety valves would be installed but if the piping or valves were to be damaged or broken, the internal safety valve would close automatically preventing anything from escaping.

Mr. Borton questioned the detail of the drawing submitted to the state and their requirements.

Mr. Johnson stated the drawing distributed tonight was what was approved previously and the state was fine with the submittal. It is the inspector's job to assure everything is installed to specs on site and an annual inspection is also required.

Mr. Brown questioned if the guard rail would be strong enough to stop a vehicle.

Mr. Johnson stated the guard rail would be constructed off 4" pipe, 3' in the ground, 3 or 4' high with piping every 4'; they would install the rail, the state only required the pipes.

Ms. Corfis questioned why the parking area was right in front of the proposed tank and stated it looked to accommodate larger vehicles. She also questioned if there was any curbing.

Mr. Johnson stated the existing parking was in front of the existing tanks and there wasn't any curbing.

Mr. Brown questioned if this was regulated by MDOT.

Mr. Johnson stated it was not MDOT; Herb Jenkins was the state fire inspector for the department but could not recall the department name off hand.

Mr. Arndt questioned if there was a shut off valve inside the building and if the piping could possibly be damaged by vandals.

Mr. Johnson stated there were multiple shut off valves; the emergency shut off valve needed to be at least twenty-five feet (25') away from the tank and there would be a shut off valve inside the building. All the required piping for liquid propane would be schedule 80 piping which is twice as thick as regular, making it very difficult for someone to damage.

Mr. Borton stated most of the questions seemed to be concerning safety and any safety issues would be regulated by the state.

Ms. Corfis stated the Zoning Ordinance does require the tank be fifty feet (50') from any traffic pattern on site.

Mr. Arndt stated he thought that referred more to a roadway.

Mr. Stults stated he believed the township was concerned with the semi-trucks driving through the lot when the language was drafted and also reminded the Commission that township participation was a requirement of the zoning ordinance and the case should be approved at the unit level prior to county approval.

Mr. Hilgendorf questioned Mr. Johnson if it was understood what Otsego Lake Township had needed from him at the conclusion of the township meeting as it was important he know what additional information was required to move forward with the project.

Mr. Johnson stated the Township wanted elevation drawings and also the piping and valves drawn out. He thought that was an added expense and more than what the state required, they required the brands used. The plan was revised showing the elevation of the fencing and the guard rail and also the piping to the vaporizer.

Mr. Caverson questioned how the piping and valves would be constructed, if everything was just brought on site.

Mr. Johnson stated IPS (Industrial Propane Service Inc) would do the job and it would be done on site.

Mr. Bauman stated he worked in oil and gas and the piping did not have a specific drawn out design; the materials were brought on site and then configured and welded to fit the needs of the site.

Mr. Arndt stated sometimes lines get crossed as far as safety regulations are concerned; if something is state regulated and the state felt additional safety features were required, they would need to be added.

Mr. Udebrock stated he would like an archived drawing depicting the site as documentation.

Vice-Chairperson Jarecki closed the public hearing.

Public Hearing closed: 6:42pm

Advertised Case:

Johnson Oil Company, property owner, has requested a Special Use Permit for property located in Otsego Lake Township:
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PZSU16-004-proposed use of the property is to install an eighteen thousand (18,000) gallon propane tank at their existing gas station site

There was discussion on the checklist provided and items marked.

Mr. Caverson stated he did not feel the Township had the opportunity to make an educated decision because they were not presented sufficient information and once it was approved, it was approved.

Mr. Arndt stated the permit was subject to special conditions so the County could approve the case based on those conditions. The state would approve the safety issues involved. The case did not need to be dragged out another month or so.

Ms. Corfis stated they did not want that either; they would like to hear the case again but would leave it up to the County.

After continued discussion on the approval process, it was decided Mr. Johnson would bring the additional information to the Township's April meeting and return to the County at their next scheduled meeting.

Mr. Johnson questioned exactly what the Township wanted added to the site plan and stated he wasn't sure how quickly the drawings could be completed. He would attend the next Township meeting if they were done.

Mr. Mouch suggested the footing drawing accompany the site plan as well.

A meeting would be set up with County staff to expedite the process. Mr. Udebrock volunteered to attend to ensure the items being required.

Vice Chairperson Jarecki asked for a motion to proceed.

Motion made by Ms. Corfis, Otsego Lake Township representative, requesting a revised site plan with a more complete drawing of the project area showing the elevation of the tank, fencing, guard rail and emergency shut off valve along with a new revised site plan check list; Seconded by Mr. Klee

Motion approved unanimously.

Unfinished Commission Business: None

New Business:

1. 2016 Annual Report to the Otsego County Board of Commissioners

The annual report was distributed depicting the monthly activities of the Planning Commission for 2016 to be presented to the Otsego County Board of Commissioners.

Motion made by Mr. Brown to recommend the 2016 Annual Report to the Otsego County Board of Commissioners; Seconded by Mr. Hilgendorf

Motion approved unanimously.

Reports and Commission Member's Comments:

Mr. Arndt distributed Sign Committee meeting minutes highlighting the items discussed. Language would be drafted and presented at the next Planning Commission meeting.

1. Otsego County Parks & Recreation report

Mrs. Jarecki, Otsego County Parks and Recreation Commission representative stated 4H would be holding a Spring Break Extravaganza at the Community Center; the cabins at the Otsego County Park were such a big hit, the smaller cabins have already paid for themselves; a total of $46,705 was being recommended to the Board of Commissioners for the two (2) new larger cabins and relocation of the existing cabins to include excavating, site preparation and concrete for all four (4) and a charge of $85 per night for the larger cabins was recommended as well; one of the open positions on the Commission has

been filled, Justin Wing and the second, Kelli Parker was recommended to the Board of Commissioners for appointment; and Mr. Ryan may hire a full time employee at the Groen Nature Center but is waiting on approval from the Groen Board.

Mr. Bauman stated Livingston Township was working on their Master Plan.

Mr. Brown stated Charlton Township will be holding a public hearing in May for input on their Master Plan.

Ms. Corfis stated Otsego Lake Township has approved their Master Plan and it will be distributed.

Mr. Arndt stated Bagley Township would file a memorandum stating their Master Plan would not be changed at this time; it still needed to be reviewed by their supervisor.

Mr. Borton stated a meeting was held to kick off the process for the Iron Bell Trail; construction would begin in the spring of 2018; Judge Mertz has moved into the County building and is pleased with the move.

Mr. Mouch stated Land Use was gearing up for their busy season.

Ms. Boyak-Wohlfeil attended a workshop pertaining to Act 281 of 2016 Medical Marihuana Facilities Licensing Act and explained the process for townships relying on county zoning to either approve or prohibit any of the five (5) licensing facilities within their individual units. Information was distributed to pass on to the township boards as a basis for their decision.

2. Restrictions on Zoning Authority - *MSU Ext*/Zoning Information

Vice-Chairperson Jarecki adjourned the meeting.

Adjournment: 7:30pm by Vice-Chairperson Jarecki

Ken Arndt; Secretary

Christine Boyak-Wohlfeil; Recording Secretary

PROPOSED

OTSEGO COUNTY
PLANNING COMMISSION

PZSU16-004
Special Use Permit
090-028-300-010-01

Exhibit List - Revised

Exhibit #1: Application for case PZSU16-004 submitted by Applicant/*Revised*

Exhibit #2: Otsego County Zoning Map Amended September 13, 2016

Exhibit #3: Otsego County Zoning Ordinance Amended September 13, 2016

Exhibit #4: Copy of Otsego County Equalization Department record card/Warranty Deed 0994/484

Exhibit #5: Letter of representation from Steven Johnson/Johnson Oil Co dated October 25, 2016

Exhibit #6: Site Plan submitted by Applicant/*Revised*

Exhibit #7: Public Hearing Notice

Exhibit #8: Letter to Otsego Lake Township Planning Commission dated December 22, 2016

Exhibit #9: Letters dated February 9, 2017 and April 6, 2017 from Otsego Lake Township Planning Commission/*Revised*

Exhibit #10: Map and list of parties notified

Exhibit #11: Receipt #01306858

Exhibit #12: General Finding of Fact/PZSU16-004

Exhibit #13: Specific Finding of Fact/PZSU16-004

Exhibit #14:

Attention

*Please refer to the Otsego County Zoning Ordinance particularly Section 21 and Section 23 to assure all items are addressed on the site plan and allow for a smooth presentation to the governing body.

The following items are required on all site plans before they can be submitted for review to the various approving entities:

1. The applicant's name, address and phone number in full.

   Yes X No____ NA____ if "NA" explain:_____

2. Proof of property ownership and whether there are any options on the property or any liens against it.

   Yes____ No X NA____ if "NA" explain: Deed provided

3. A signed statement that the applicant is the owner of the property or officially acting on the owner's behalf.

   Yes____ No X NA____ if "NA" explain: Letter of representation provided

4. The name and address of the owner(s) of record if the applicant is not the owner of record (or firm or corporation having a legal or equitable interest in the land) and the signature of the owner(s).

   Yes X No____ NA____ if "NA" explain:_____

5. The address and/or parcel number of the property.

   Yes X No____ NA____ if "NA" explain:_____

6. Name and address of the developer (if different from the applicant).

   Yes X No____ NA____ if "NA" explain:_____

7. Name and address of the engineer, architect and/or land surveyor.

   Yes X No____ NA____ if "NA" explain:_____

8. Project title.

   Yes X No____ NA____ if "NA" explain:_____

9. Project description, including the total number of structures, units, bedrooms, offices, square feet, total and usable floor area, parking spaces, carports or garages, employees by shift, amount of recreation and open space, type of recreation facilities to be provided and related information as pertinent or otherwise required by the ordinance.

   Yes X No____ NA____ if "NA" explain: Pertinent information

10. A vicinity map drawn at a scale of 1"=2000' with North point indicated.

    Yes____ No X NA____ if "NA" explain:_____

11. The gross and net acreage of all parcels in the project.

    Yes X No____ NA____ if "NA" explain:_____

12. Land uses, zoning classification and existing structures on the subject parcel and adjoining parcels.

    Yes X No____ NA____ if "NA" explain:_____

13. Project completion schedule/development phases.

    Yes____ No____ NA X if "NA" explain: Single phase/Waiting for state approval

14. The site plan shall consist of an accurate, reproducible drawing at a scale of 1"= 50 or fewer feet or less for sites of less than three (3) acres and 1"=100 or fewer feet or less if the site is larger than three (3) acres. The site plan shall show the site and all land within fifty (50) feet of the site. If multiple sheets are used, each shall be labeled and the preparer identified.

Yes X No____ NA____ if "NA" explain:_____

All site plans shall be sealed by a professional engineer, surveyor, architect or landscape architect and each site plan shall depict the following:

15. Location of proposed and/or existing property lines, dimensions, legal descriptions, setback lines, monument locations and shoreland and natural river district, if any.

Yes X No ____NA____ if "NA" explain:_____

16. Existing topographic elevations and proposed grades in sufficient detail to determine direction of drainage flows.

Yes X No ____NA____ if "NA" explain:_____

17. The type of existing soils at proposed storm water detention and retention basins and/or other areas of concern. Boring logs may be required if necessary to determine site suitability.

Yes ____No ____NA X if "NA" explain: None proposed

18. Location and type of significant existing vegetation.

Yes X No ____NA____ if "NA" explain:_____

19. Location and elevations of existing water courses and water bodies, including county drains and man-made surface drainage ways, flood plains and wetlands within fifty (50) feet of the parcel.

Yes____ No ____NA X if "NA" explain: None within 50'

20. Location of existing and proposed buildings and intended uses thereof, as well as the length, width and height of each building and typical elevation views of proposed structures.

Yes X No____ NA____ if "NA" explain: Existing building location

21. Proposed location of accessory structures, buildings and uses, including all flagpoles, light poles, bulkheads, docks, storage sheds, transformers, air conditioners, generators and similar equipment and the method of screening where applicable.

Yes X No ____NA____ if "NA" explain:_____

22. Location of existing public roads, right-of-ways and private easements of record and abutting streets. Notation of existing traffic counts and trip generation estimates may be required if deemed appropriate by the Zoning Administrator or Planning Commission.

Yes X No ____NA____ if "NA" explain:_____

23. Location of and dimensions of proposed streets, drives, curb cuts and access easements, as well as acceleration, deceleration and passing lanes (if any) serving the development. Details of entryway and sign locations shall be separately depicted with an elevation view.

Yes ____No ____NA X if "NA" explain: None proposed

24. Location, design and dimensions of existing and/or proposed curbing, barrier free access, carports, parking areas (including indication of all spaces and method of surfacing) and fire lanes.

Yes X No ____NA____ if "NA" explain: Existing parking

25. Location, size, and characteristics of all loading and unloading areas.

Yes X No ____NA____ if "NA" explain:_____

26. Location and design of all sidewalks, walkways, bicycle paths and areas for public use.

Yes ____No ____NA X if "NA" explain: None

27. Location of water supply lines and/or wells, including fire hydrants and shut off valves, the location and design of storm sewers, retention or detention ponds, waste water lines, clean-out locations, connection points and treatment systems, including septic systems if applicable.

Yes X No ____ NA____ if "NA" explain:_____

28. Location of all other utilities on the site including natural gas, electric, cable TV, telephone and steam.

Yes X No ____ NA____ if "NA" explain:_____

29. Proposed location, dimensions and details of common open spaces and common facilities, such as community buildings or swimming pools if applicable.

Yes ____ No ____ NA X if "NA" explain: None

30. Location, size and specifications of all signs and advertising features with elevation views from front and side.

Yes X No____ NA____ if "NA" explain: Parking signage only

31. Exterior lighting locations with area of illumination illustrated as well as the type of fixtures and shielding to be used.

Yes X No ____ NA____ if "NA" explain:_____

32. Location and specifications for all fences, walls and other screening features with elevation views from front and side.

Yes X No ____ NA____ if "NA" explain:_____

33. Location and specifications for all proposed perimeter and internal landscaping and other buffering features. For each new landscape material, the proposed size at the time of planting must be indicated. All vegetation to be retained on the site must also be indicated, as well as its typical size by general location or range of sizes as appropriate.

Yes ____ No ____ NA X if "NA" explain: Existing tree buffer/existing parking lot

34. Location, size and specifications for screening of all trash receptacles and other solid waste disposal facilities.

Yes ____ No ____ NA X if "NA" explain: No trash receptacles proposed

35. Location and specifications for any existing or proposed above or below ground storage facilities for any chemicals, salts, flammable materials or hazardous materials, as well as any containment structures or clear zones required by government authorities.

Yes X No ____ NA____ if "NA" explain:_____

36. Identification of any significant site amenities or unique natural features.

Yes ____ No ____ NA X if "NA" explain: None

37. Identification of any significant views onto or from the site to or from adjoining areas.

Yes ____ No ____ NA X if "NA" explain: None

38. North arrow, scale and date of original submittal and last revision.

Yes X No ____ NA____ if "NA" explain:_____

39. Seal of the registered engineer, architect, landscape architect, surveyor or planner who prepared the site plan.

Yes X No ____ NA____ if "NA" explain:_____

40. Paid appropriate fees to Otsego County.

Yes ____ No X NA____ if "NA" explain: Fees paid

Otsego COUNTY
ESTABLISHED 1875 MICHIGAN

Department of Land Use Services
1322 Hayes Rd • Gaylord, MI 49735
Phone: 989.731.7400 • Fax: 989.731.7419
www.otsegocountymi.gov

March 23, 2017

APPLICATION CONFERENCE

PZSU16-004

ATTENDEES: Ed Johnson, Jack Udebrock, Jim Mouch, Dave Delaney, Christine Boyak-Wohlfeil

The following is a list of requests to be depicted on an elevation drawing addendum to the site plan for the above special use case:

1. Fencing – location of roller gate
2. Panels/shut off valves
3. Loading zone – temporary parking signage

List approved as signed:

Ed Johnson

Jack Udebrock

Jim Mouch

April 6, 2017

Mr. Jim Mouch
Acting Director
Land Use Services
1322 Hayes Road
Gaylord, Mi 49735

Dear Jim,

The Otsego Lake Township recommends to Otsego County Planning Commission the approval of the special use permit #PZU16-004 for storage and distribution of propane by Johnson Oil on Marlette Road, Waters, Mi. This recommendation is subject to the following conditions:

1. The area around the 18,000 gallon propane tank, bulkhead and pump is secured by a 6 foot high chain link fence.
2. The Otsego Lake Township Planning Commission interpreted the established traffic pattern to be the normal travel lane through the parking area. The traffic pattern does not include the designated parking spaces on the site grading plan.

Thank you for the opportunity to provide input on this permit.

Sincerely,

Kara Corfis

Secretary

Cc: David Delaney

Exhibit 9

OTSEGO COUNTY
PLANNING COMMISSION

PZSU16-004
Special Use Permit
090-028-300-010-01

GENERAL FINDING OF FACT

1. This is a proposal for the installation of an eighteen thousand (18,000) gallon propane tank. *Exhibit #1*

2. The property is located in a HX/Highway Interchange Zoning District. *Exhibit #2*

3. Above-ground storage of flammable and hazardous materials is a permitted use subject to special conditions in a HX Zoning District. *Exhibit #3*

4. The proposed tank will enable the applicant a safer means of heating the existing building as well as a fill station for deliveries in the area. *Exhibit #1*

5. Applicant's property is currently and will continue to be used as a gas station. *Exhibit #1, Exhibit #6*

6. The property is currently under the ownership of Johnson Oil Company and being represented by Ed Johnson *Exhibit #4, Exhibit #5*

7. The Public Hearing Notice was published in the Herald Times on March 3, 2017 *Exhibit #7*

8. The requirements of Article 27 of the Otsego County Zoning Ordinance have been met. *Exhibit #8, Exhibit #9*

9. All property owners within three hundred (300') feet were properly notified of the public hearing. *Exhibit #10*

10. The required fees have been collected by Otsego County Land Use Services. *Exhibit #11*

11. The site plan requirements of Article 23 have been submitted by applicant and reviewed by Otsego County Land Use Services. *Exhibit #1, Exhibit 3, Exhibit #12, Exhibit #13*

12. The Planning Commission has the authority to approve a Special Land Use request after review and compliance with the Otsego County Zoning Ordinance. (Section 19.7) *Exhibit #3*

OTSEGO COUNTY
PLANNING COMMISSION

PZSU16-004
Special Use Permit
090-028-300-010-01

SPECIFIC FINDINGS OF FACT

FINDINGS UNDER ARTICLE 14

ARTICLE 14 HIGHWAY INTERCHANGE COMMERCIAL DISTRICT

INTENT:
The Highway Interchange Commercial land use category includes areas designated for commercial development, which are primarily Interstate access dependent. This district primarily serves thru traffic and tourist needs. Uses that are consistent with these areas include, but are not limited to, gasoline stations, lodging facilities, entertainment facilities, restaurant facilities and similar tourist related developments, as well as warehouses, storage buildings, wholesale facilities and other similar uses. This district is intended to serve traffic entering or leaving the Interstate. These areas may require municipal water and sewer services and/or other comparable forms of water and sewer services with approval by the municipality and District Health Department…

PERMITTED USES SUBJECT TO SPECIAL CONDITIONS in the zoning district only when access is from a service road. Access shall not be off Marlette Road in Otsego Lake Township and Mill Street in Corwith Township.

14.2.5 Retail uses over one hundred thousand (100,000) square feet

14.2.6 Offices and showrooms of plumbers, electricians, decorators or similar trades, with outdoor storage

14.2.7 Rental shops with outdoor storage

14.2.8 Nursery sales and garden supply centers with outdoor display areas

14.2.9 Lumber yards, building material suppliers, and home improvement centers, with outdoor storage

14.2.10 Rifle or pistol ranges when within a completely enclosed building as an accessory use

14.2.11 Auto repair garages or auto body shop, including wrecker service, provided that outdoor storage of vehicles under repair be confined to the rear yard and screened from view

14.2.12 Sales, rental, and service centers for mobile home, modular home, manufactured homes, or farm equipment provided:

14.2.12.1 Ingress and egress to the use shall be at least sixty (60) feet from the intersection of any two (2) streets.

14.2.12.2 The arrangement of vehicles stored in the open shall be uniform, following the patterns established for off street parking lots.

14.2.12.3 No sales or display shall occupy any public street or road right-of-way and further must be set back at least twenty (20) feet from the front property.

14.2.13 Above-ground storage of flammable or hazardous material provided:

14.2.13.1 Aggregate storage above 5000 gallons up to 20,001 gallons shall be in a single tank

14.2.13.2 Signage on the tank shall be limited to that which is statutorily required by law. Advertising signage of any type will be prohibited on the tank.

14.2.13.3 Tank location is to be a minimum of fifty (50) feet from the traffic pattern on the site

FINDINGS UNDER ARTICLE 21/SECTION 21.7

SECTION 21.7 DISCRETIONARY APPROVAL CONDITIONS

Whenever the Planning Commission, Zoning Board of Appeals, Zoning Administrator, or other official or body with authority to make a discretionary decision as provided for in the Michigan Zoning Enabling Act (PA 110 of 2006 as amended) determines that a fence, greenbelt, berm, landscaping or other buffering or screening device or land use arrangement shall be necessary, said body or official may require such condition per the requirements of the applicable section of this Ordinance. This includes the lighting requirements of Section 21.19, the outdoor speaker requirements of Section 21.41, and the fencing requirements of Section 21.10

FINDINGS UNDER ARTICLE 21/SECTION 21.10

SECTION 21.10 FENCES

21.10.1 Fences designed to enclose property in any district shall be subject to the following conditions:

21.10.1.1 Fences in R1, R2, R3 or RR Districts, or any platted subdivision, site condo or PUD shall not contain barbed wire or be electrified.

21.10.1.2 No fence shall exceed six (6) feet in height in the side or rear yard. No fence in the front yard setback shall exceed four (4) feet in height and shall be of a design and material that does not obscure the vision of drivers of vehicles at any driveway entrance or exit, street intersection or other pedestrian or vehicle property access point.

21.10.2

Specific Nonresidential Uses Requiring Fences	Minimum height for fence or wall	Function(s) Screen/protect	Obscure
Drive-in restaurants, gasoline stations and vehicle repair	6'0"	X	X
Hospital and funeral home service entrances	6'0"		X
Institutional playgrounds	6'0"	X	X
Parking lots	6'0"		X
Utility buildings and substations	6'0"	X	X
Public swimming pools	6'0"		X
Junk yards	8'0"	X	X
Open storage areas of any use	6'0"		X

Note: These uses in 21.10.2 are required to be fenced or screened in all cases regardless of the use orientation to residential zoning districts or residential uses.

21.10.3 Protective and adequate fencing shall be required around all outdoor swimming pools, and shall not be less than four (4) feet, six (6) inches above the established grade.

21.10.4 All plans for fences or walls must be approved by the Zoning Administrator for construction specifications designed to fulfill the primary function of protection and/or screening. All fences shall be maintained in a pleasing appearance.

21.10.5 The Planning Commission shall be empowered to modify fence and wall requirements as deemed necessary by conditions affecting a particular development, or to waive requirements where general welfare concerns are not served by compliance with these standards, such as the existence of permanent natural features, where there is sufficient visual or protective separation, or where there is nothing to separate. Waivers shall not be granted where such characteristics are of a temporary nature or because the adjacent area is not yet developed.

EXISTING TREE LINE SCREENING ALONG I-75/BULKHEAD & PUMP FENCED

FINDINGS UNDER ARTICLE 21/SECTION 21.18

SECTION 21.18 LANDSCAPING

21.18.1 PURPOSE

The purpose of this section is: to protect and enhance property values, economic welfare and community attractiveness; to provide beneficial climatic impacts by cleaning the air and providing shade; to protect health, safety and welfare by reducing air and water borne pollutants, flooding and noise; to mitigate adverse effects of sighting different uses near one another through buffering; to facilitate preservation of existing valuable trees and other vegetative cover; to provide wildlife habitat and environmental standards within developed areas; to protect privacy.

21.18.2 General Performance Standards:

This, Section 21.18 Landscaping, requirements shall not apply to single family residences located on individual lots. The Section shall apply to residential plats and site condominiums.

All areas not covered by buildings, parking or other structures shall be treated with landscape materials including street trees, shrubs and groundcovers consistent with these provisions. The selected combination of plant materials shall be a harmonious combination of deciduous and evergreen trees, shrubs, vines and/or ground covers so arranged to present an aesthetically pleasing whole.

21.18.2.1 Landscape Materials:

All landscape materials planted pursuant to the provisions of this section shall be healthy and compatible with the local climate, site soil characteristics, drainage, and available water supply.

Trees and shrubs should be at least, at the time of planting, the sizes as outlined in this section and shall be consistent with the current American Standard for Nursery Stock as set forth from time to time by the American Association of Nurserymen.

Deciduous trees shall be not less than one and one-half (1 ½) inches in diameter for single family residential uses and two and one-half (2 ½) inches in diameter for other uses.

Coniferous trees should be at least six (6) feet in height. Shrubs shall be of a size generally known in the nursery industry as requiring at least a five (5) gallon container.

All planting beds constructed pursuant to Sections 21.18.2, 21.18.5 and 21.18.6 shall be mulched with mulch cover at least three (3) inches deep to retain moisture around roots.

Trees shall be planted on the project sites so as to allow for their desired mature growth.

Access to or view of fire hydrants shall not be obstructed from any side.

Plantings shall be designed so as to not conflict with power lines or impede fire safety services.

21.18.2.2 Irrigation & Maintenance Performance Standards:

All uses with the exception of single family residential, which are landscaped with live plants, pursuant to this Section shall be equipped with a watering system which will provide sufficient water to maintain plants in a healthy condition.

21.18.2.2.1 Whenever the landscaped area required by Sections 21.18.3, 21.18.5 and 21.18.6 is two thousand (2,000) square feet or more of living plants whether or not the plants are contiguous, the site shall have a permanent irrigation system capable of meeting the typical watering requirements of all the plant materials on site.

21.18.2.2.2 Whenever there is less than two thousand (2,000) square feet of landscaped area required by Sections 21.18.3, 21.18.5 and 21.18.6 on a site, there should be at least one reliable water source available during the growing season. The hose bib or other water source shall be within fifty (50) feet from a border of the plants.

21.18.2.2.3 All irrigation systems shall be maintained in good working condition.

21.18.2.2.4 Irrigation requirements may be adjusted in part or in whole by the Zoning Administrator for landscape areas having established healthy plant material, or where irrigation is deemed unnecessary for plant health and survival.

All plants required by this Section shall be maintained in a live and healthy state. Dead or unsalvageable unhealthy plants shall be replaced with the size and type of plants required on the site development plan and by this Section. Plant materials including grasses and herbaceous plants uses on berms, along road sides, etc. shall be routinely maintained during growing seasons. When growing in close proximity to residential land uses, grasses and common weeds shall be maintained at a height of ten (10) inches or less.

All fences, walls and similar structures shall be maintained in good condition. Chipped paint, missing fence pieces, leaning or fallen portions of a fence or other forms of deterioration shall immediately be replaced or repaired.

Replacement of plants may be delayed whenever the Zoning Administrator determines that extenuating circumstances beyond the owner's control prevent the immediate replacement of the dead or unhealthy plants within a time established by the Zoning Administrator. In any event, the dead or salvageable plants shall be replaced within nine (9) months of the time the plants are clearly dead.

21.18.2.3 Existing Vegetation:

If there is no practical alternative in terms of sighting buildings and other development, trees and other plants may be removed.

Significant shrubs, grasses and trees are to be preserved within areas not required for development.

Healthy, younger mature plants shall be preserved which would normally succeed older plants.

Natural vegetation shall be preserved within areas below an ordinary high water mark of a lake, stream or other water body.

Existing vegetation to be preserved shall be protected during construction with barriers as required and approved by the Zoning Administrator.

The application of landscape standards within this Ordinance may be adjusted in part or in whole by the Zoning Administrator to allow credit for established healthy plant material to be retained on or adjacent to the site if such an adjustment is consistent with the intent of this Ordinance.

21.18.2.4 Berms constructed pursuant to Section 21.18.3 shall be constructed with slopes not erosion, and with a rounded surface a minimum of two (2) feet in width at the highest point of the berm, extending the length of the berm. Berm slopes shall be protected with sod, seed, shrubs or other form of natural ground cover.

21.18.3 Buffer Yards:

Buffer yards shall be constructed to mitigate problems associated with traffic, noise, vibration, odor, glare, dust, smoke, pollution, water vapor, conflicting land uses and density, height, mass, layout of adjacent uses, loss of privacy, unsightly views and other potentially negative effects of development. Buffering may be achieved using landscape, building fences and berm or a combination of the above techniques.

Buffer yards shall be located on the outer perimeter of a lot or parcel, extending to the lot or parcel boundary line. Buffer yards shall not be located on any portion of an existing or dedicated public or Private Street or right-of-way.

Tables I and II shall be used to determine buffer yard dimensions and plant materials specifications. Table I is used to determine the type of Buffer yard (A, B, C, D, E, EX, or NA) which will be required between districts or users. Once the type of Buffer yard is obtained, Table II outlines the plant material specifications for alternative widths and specifications and treatments (walls, berms, etc.) of buffer yard. Each property line should be analyzed independently to determine the appropriate buffer yard required.

The buffer yard tables are to be considered minimum standards. Increased landscaping requirements may be imposed by the Zoning Administrator or the Planning Commission if it is determined any of the following conditions exist.

The type of required buffer yard will not sufficiently mitigate noise, glare, fumes, smoke, dust or unsightly views within the site.

The scale of the project in regard to mass and height indicates the need for a buffer yard developed specifically for the project.

The proposed use is next to an existing sensitive use such as a school, church or residential area.

21.18.4 Roadside Greenbelt Buffers:

Unless as otherwise required by Section 21.18.3, required front yards shall be landscaped with a minimum of one (1) tree, not less than one and one-half (1½) inches in diameter for single family residential uses and two and one half (2½) inches in diameter of other use, for each one thousand (1000) square feet, or major portion thereof, of front yard abutting a road right-of-way. The remainder of the greenbelt shall be landscaped provided however, rock or other inorganic ground cover shall not exceed twenty (20) percent of the yard area.

Access ways from public rights-of-way through required landscaped strips shall be permitted, but such access ways shall not be subtracted from the square foot dimension used to determine the minimum number of trees required.

21.18.5 Screening of Unsightly Areas:

Unsightly areas, including but not limited to outside storage areas, utility boxes and open areas where machinery or vehicles are stored or repaired, shall be screened from public sidewalks, streets and other areas from which the property is visible. Such screening shall not be located as to interfere with required maintenance activities of utility boxes.

Whenever plants are used as a screen, they should provide an effective opaque screen within three (3) years of the time they are planted.

The materials and colors of the screen should blend with the site and the surroundings.

21.18.6 Parking Lot Screening:

Unless otherwise required by Section 21.18.3 or 21.18.4, a no-building buffer strip not less than ten (10) feet wide shall be required on the perimeter of all parking lots containing twenty-seven hundred (2,700) square feet or more of parking area where not adjacent to buildings. Said buffer strip shall be used for landscaping, screening or drainage as required herein.

Landscaping design standards:

21.18.6.1 Any required planting strip shall be a minimum of ten (10) feet in width.

21.18.6.2 One (1) street tree shall be planted adjacent to the public right-of-way for each twenty-four (24) lineal feet of frontage. (This requirement shall not duplicate the requirements of Sections 21.18.4 or 21.18.3.)

21.18.6.3 Where screens of non-living material are used, at least one (1) shrub or vine shall be planted on the right-of-way or property line side for each ten (10) lineal feet of screen or fraction thereof.

21.18.6.4 Parking lots with more than two (2) parking aisles shall require landscaped areas of at least ten (10) square feet of interior landscaping for each parking space, interior being defined as the area within the perimeter of the paved surface.

21.18.6.4.1 Landscaped areas shall be a minimum of seventy-five (75) square feet with a minimum dimension of ten (10) feet. Interior landscape areas shall be designed so as to cause minimum interference with snow removal. Each interior landscape area shall include one (1) or more canopy trees based on the provision of one (1) tree per each one hundred (100) square feet of interior landscape area.

***EXISTING TREE LINE SCREENING ALONG I-75**

***ADDITIONAL LANDSCAPING-PLANNING COMMISSION DISCRETION**

21.18 TABLE I : Planting Buffer Yard

Boundary Zoning District →		R-1	R-2	R-3		RR	FR	AR		B-1	B-2	B-3		MUZ MAIN STREET	MUZ TOWN CENTER		HX HIGHWAY INTERCHANGE	I INDUSTRIAL
Proposed Development Zoning District																		
R-1		N																
R-2		B	N															
R-3		C	B	N														
RR		C	C	B		N												
FR		C	C	B		B	N											
AR		C	C	C		C	C	N										
B-1		B	B	B		B	B	B		N								
B-2		C	C	B		C	C	C		B	N							
B-3		C	C	C		C	C	C		B	B	N						
MUZ – MAIN STREET		A	A	A		B	C	C		A	A	B		N				
MUZ – TOWN CENTER		A	A	A		B	C	C		A	A	C		A	N			
HIGHWAY INTERCHANGE		C	C	C		C	C	C		B	B	B		B	C		N	
I - INDUSTRIAL		E	E	E		E	D	D		D	C	C		E	E		C	N

Key: N= No buffer yard required /See TABLE II

Exhibit 13

FINDINGS UNDER ARTICLE 21/SECTION 21.19

SECTION 21.19 LIGHTING, OUTDOOR

Outdoor light fixtures are electrically powered illuminating devices, outdoor lighting or reflective surfaces, lamps and similar devices, permanently installed or portable, used for illumination or advertisement. Such devices shall include search, spot and flood lights for buildings and structures, recreation areas, parking lot lighting, landscape lighting, billboards and other signs (advertising or other), street lighting, product display area lighting, building overhangs and open canopies.

All outdoor lighting fixtures including pole mounted or building mounted yard lights, dock lights, and shoreline lights other than decorative residential lighting such as low level lawn lights, shall be subject to the following regulations:

21.19.1 Lighting shall be designed and constructed in such a manner:

21.19.1.1 To insure that direct or directly reflected light is confined to the area needing it and that it is not directed off the property,

21.19.1.2 That all light sources and light lenses are shielded,

21.19.1.3 That any light sources or light lenses are not directly visible from beyond the boundary of the site,

21.19.1.4 That light from any illuminated source shall be so shaded, shielded, or directed that the light intensity or brightness will not be objectionable to surrounding areas.

21.19.2 Lighting fixtures shall be a down-type having one hundred (100) percent cut off. The light rays may not be emitted by the installed fixture at angles above the horizontal plane, as may be certified by photometric test. A United States flag, Michigan flag or a flag of a veteran's organization chartered by the United States Government shall be allowed to have light illuminating them from below

21.19.3 There shall be no blinking, flashing, or fluttering lighting, including changes in light intensity, brightness or color, except that lights may be controlled by a dimmer which can be periodically adjusted for conditions and signs as allowed in 21.38.2.1. Beacon lights are not permitted except where required by law.

21.19.4 No colored lights shall be used at any location or in any manner so as to be confused with or construed as traffic control devices.

21.19.5 Decorative lights during holiday seasons shall be allowed.

21.19.6 Modification of these outdoor lighting standards may be permitted by the Zoning Board of Appeals for temporary uses of not more than ten (10) days per year, following these provisions as closely as possible.

LIGHTING REQUIREMENT MET

FINDINGS UNDER ARTICLE 21/SECTION 21.21

SECTION 21.21 LOADING AND UNLOADING (OFF-STREET)

On the same premises with every building, structure, or part thereof, involving the receipt or distribution of vehicles or materials or merchandise, there shall be provided and maintained on the lot, adequate space for standing, loading, and unloading in order to avoid undue interference with public use of dedicated rights-of-way. Such space shall be computed separately from the Off-Street Parking Requirements and shall be provided as follows:

21.21.1 Within a B1 or B2 District, loading space shall be provided in the rear yard in the ratio of at least ten (10) square feet per front foot of building.

21.21.2 Within an I District, loading spaces shall be laid out in the dimensions of at least ten by fifty (10 x 50) feet, or five hundred (500) square feet in area, with a clearance of at least fourteen (14) feet in height.

Loading dock approaches shall be provided with durable and dustless surface. All spaces in I Districts shall be provided in the following ratio of spaces to floor area:

GROSS FLOOR AREA (In square feet)	LOADING AND UNLOADING SPACE REQUIRED
0 - 1,400	None
1,401 - 20,000	One (1) space
20,001 - 100,000	One (1) space plus one (1) space each 20,000 sq. ft., in excess of 20,000 sq. ft.
100,001 - and over	Five (5) spaces

21.21.3 All loading and unloading in I Districts shall be provided only in the rear yard, interior side yard, or exterior side yards that have a common relationship with an industrial district across a public thoroughfare.

NO REQUIREMENT SPECIFIED FOR HX DISTRICT

FINDINGS UNDER ARTICLE 21/SECTION 21.28

SECTION 21.28 PERFORMANCE STANDARDS

No use otherwise allowed shall be permitted within a Use District which does not conform to the following standards of use, occupancy, and operation, which standards are hereby established as the minimum requirements to be maintained within said area:

21.28.1 Smoke, Dust, Dirt, and Fly Ash

It shall be unlawful for any person, firm or corporation to permit the emission or discharge of any smoke, dust, dirt, or fly ash in quantities sufficient to create a nuisance within the unincorporated areas of Otsego County.

21.28.2 Open Storage

The open storage of any equipment, vehicles and all materials including wastes, shall be screened from public view, from public streets, and from adjoining properties. Scrap, junk cars and other junk materials shall not be piled or stacked as open storage to a height in excess of twenty (20) feet, and must meet the requirements of Article 21.3.1 and Article 19.

21.28.3 Glare and Radioactive Materials

Glare from any process (such as or similar to arc welding or acetylene torch cutting) which emits harmful rays shall be permitted in such a manner as not to extend beyond the property line, and as not to create a public nuisance or hazard along lot lines. Radioactive materials and wastes, and including electromagnetic radiation such as x-ray machine operations, shall not be emitted to exceed quantities established as safe by the U.S. Bureau of Standards, when measured at the property line.

21.28.4 Fire and Explosive Hazards

The storage, utilization, or manufacture of materials or products ranging from combustible to moderate burning, as determined by the appropriate community fire protection authority, is permitted subject to compliance with all other yard requirements, Article 19, performance standards previously mentioned, and providing that the following conditions are met:

21.28.4.1 Said materials or products shall be stored, utilized or produced within completely enclosed buildings or structures having incombustible exterior walls.

21.28.4.2 The storage and handling of flammable liquids, liquefied petroleum, gases, and explosives shall comply with the State Rules and Regulations as established by Public Act No. 207 of 1941 as amended.

STATE REGULATED

FINDINGS UNDER ARTICLE 21/SECTION 21.38

SECTION 21.38 SIGNS AND BILLBOARDS

Any publicly displayed sign, symbol or notice on premises to indicate the name of the occupant, to advertise the business there transacted, or directing to some other locale, shall be regulated as follows, and shall require permits in accordance with the terms of the County Building Code:

21.38.1 Signs Permitted

21.38.1.1 Name Plates in All Districts Residential, business or industrial name plates which are not illuminated and do not exceed a total area of two (2) square feet, may be permitted in any district, and may be permitted in addition to any other legal sign.

21.38.1.2 Accessory Signs in R1, R2, R3, RR, FR and AR Districts One (1) sign not to exceed fifteen (15) square feet may be permitted for uses other than dwelling units, in R1, R2, R3, and RR Districts. In the FR and AR Districts, one (1) sign not to exceed thirty-two (32) square feet in area and measuring not more than four (4) feet by eight (8) feet shall be permitted.

21.38.1.3 Accessory Signs in B, HX and I Districts

A. Signs for Single Business: A single business on one (1) lot or combination of lots in the B1, B2, B3, I and/or HX District may install accessory signs in accordance with the following regulations:

1. Accessory Signs in B1, B2, B3, HX and/or I Districts may be permitted at the rate of two (2) per use, except that at least one (1) sign shall be affixed to or be within two (2) feet of and be parallel with the wall of the main building. One (1) sign may be a freestanding or pylon sign.
2. Signs mounted on and parallel with the wall of the main building shall not exceed a total area of two and one half (2½) feet times the length of the mounting wall.
3. Freestanding signs intended for local or passerby traffic shall not exceed a height of twelve (12) feet measured from the average grade at the base of the sign to the top of the sign. No freestanding sign shall exceed an area of thirty-two (32) square feet, and no such sign shall be longer than three (3) times its width.

Signs internally illuminated or if sign has a light emanating surface, all light sources and reflecting surfaces immediately adjacent to the light source shall be shielded from view. Sign luminance level, beginning one (1) hour after sunrise and continuing until one (1) hour before sunset, shall not be greater than three thousand (3,000) nits, nor greater than one hundred (100) nits at all other times.

Signs externally illuminated, the light on the proposed sign shall be mounted on the top of the sign, shall be directed downward onto the sign and shall be shielded so as to prevent rays of light from being directed into the sky or onto any portion of a street, road, highway or adjacent properties. Illumination shall be limited such that reflected luminance does not exceed one hundred (100) nits per square meter.

21.38.2 Signs Prohibited

21.38.2.1 Signs containing flashing, intermittent or moving lights. (A sign with messages or images accomplished by instantaneous re-pixilation NOT more often than one (1) time in any sixty (60) seconds shall NOT be considered flashing, intermittent or moving and shall be ALLOWED.)

21.38.2.2 Signs with moving or revolving parts.

21.38.2.3 Signs affixed to trees, rocks, shrubs or similar natural features.

21.38.2.4 Signs insecurely fixed, unclear, in need of repair, or signs which imitate official traffic signals or traffic control signs or devices.

21.38.2.5 Signs utilizing vehicles, trucks, vans, or other wheeled devices, unless such signs are used for periods of less than seven (7) consecutive days in any ninety (90) day period, or unless such signs have been approved by the Planning Commission as meeting a special purpose, need and/or as being appropriate for the particular use.

21.38.2.6 Advertising devices such as banners, balloons, flags, pennants, pinwheels, searchlights or other devices with similar characteristics, except when used temporarily for periods not to exceed seven (7) days within any ninety (90) day period.

21.38.2.7 Signs which overhang or extend into a dedicated public right-of-way, without the written consent of the government unit having jurisdiction.

21.38.3 Signs Not Requiring a Zoning Permit

21.38.3.1 Name Plates not to exceed two (2) square feet.

21.38.3.2 Existing signs may be changed or altered so long as none of the provisions of the Zoning Ordinance are violated.

21.38.3.3 Bulletin Boards that do not exceed fifteen (15) square feet for churches, public and semi-public institutions, and/or schools.

21.38.3.4 Signs that have been approved in conjunction with a valid zoning permit for any principal use of use as detailed in a plot plan or site plan.

21.38.3.5 Street name signs and other signs established by state, county, or township units of government when necessary for giving proper directions or otherwise safeguarding the public in any district.

21.38.3.6 Non-advertising signs erected by any organization, person, firm, or corporation that are needed to warn the public of dangerous conditions and unusual hazards including: caving ground, drop-offs, high voltage, fire danger, explosives, severe visibility limits, etc., in any district.

21.38.3.7 Temporary signs not exceeding ten (10) square feet advertising a premises being for rent, for lease, and/or for sale in any district. All such signs shall be removed within fourteen (14) days of the consummated lease or sale of the premises.

21.38.3.8 Accessory signs on farms advertising stock, produce, and other farm products produced on the premises, provided the area of sign does not exceed thirty-two (32) square feet.

21.38.3.9 Accessory directional signs each not to exceed two (2) square feet in area on buildings, such as but not necessarily limited to: entrance, exit, loading dock, low clearance, garage, office, warehouse, boiler room, service, and the like.

21.38.3.10 Up to two (2) accessory property directional signs each not to exceed two (2) square feet in area, identifying or directing to the following: entrance, exit, visitors parking, no parking, other traffic flow directions, and similar functional signs.

It is intended that accessory property directional signs be included on the site plan for approval as to location and number by the Planning Commission.

21.38.4 Placement of Signs and Setbacks, Signs in any zoning district must be placed at least ten (10) feet back from any right-of-way or lot-line.

21.38.5 Off Premises Directory Sign – Private, Where a business use or tourist service facility is not located directly on a major tourist route, but is dependent upon passerby traffic for support, one (1) off the premises directory sign located on a County maintained road may be permitted in business or non-business districts, on each road or link or segment of road that affords access to the use, but entails a major change in the direction of travel.

Off premises directory signs shall not exceed an area of fifteen (15) square feet. Community directional signs serving more than one (1) use may be permitted to a maximum size of thirty-two (32) square feet.

21.38.6 Sign Variances, In order to provide relief for reasons of practical difficulty and to allow greater flexibility in property and use signing, the Zoning Board of Appeals may, after a public hearing, permit signs that:

21.38.6.1 Exceed the maximum number of signs permitted when there is more than one (1) bordering street to serve the use.

21.38.6.2 Exceed the maximum sign area for reasons of unusual setback, cooperative sign use (joint use or community type advertising), large site area, and/or natural feature limitations to attaining reasonable signing of the use.

21.38.6.3 Revolve, provided it can be demonstrated that a stationary sign would not afford reasonable notice to the use.

21.38.6.4 Have intermittent lighting in order to construct a public service time and temperature sign in those instances where the applicant can demonstrate a need or show community desire for such a sign service.

21.38.6.5 Exceed the maximum height in those instances where a taller sign is necessary to overcome natural conditions (topography, vegetation, etc.).

In granting sign variances, the Zoning Board of Appeals shall consider the impact of each sign on adjoining residential districts, scenic views, out of character skyline intrusions, and obstructions to signs or uses on adjoining properties. Also the purpose of the sign and its applicability to uses that serve tourists or passerby motorists shall be considered in granting or denying a sign exception.

NO NEW BUSINESS SIGNAGE/NEW 'LIMITED PARKING' SIGNAGE TO BE INSTALLED

FINDINGS UNDER ARTICLE 19

SECTION 19.7 STANDARDS FOR SPECIAL LAND USE APPROVAL

The Planning Commission shall approve, or approve with conditions, an application for a special land use permit only upon a finding that the proposed special land use complies with all of the following standards:

19.7.1 The property subject to the application is located in a zoning district in which the proposed special land use is allowed.

HAS – HAS NOT BEEN MET

19.7.2 The proposed special land use will not involve uses, activities, processes, materials, or equipment that will create a substantially negative impact on the natural resources of the county or the natural environment as a whole.

HAS – HAS NOT BEEN MET

19.7.3 The proposed special land use will not involve uses, activities, processes, materials, or equipment that will create a substantially negative impact on other conforming properties in the area by reason of traffic, noise, smoke, fumes, glare, odors, or the accumulation of scrap material that can be seen from any public highway or seen from any adjoining land owned by another person.

HAS – HAS NOT BEEN MET

19.7.4 The proposed special land used will be designed, constructed, operated, and maintained so as not to diminish the opportunity for the surrounding properties to be used and developed as zoned.

HAS – HAS NOT BEEN MET

19.7.5 The proposed special land use will not place demands on fire, police, or other public resources in excess of current capacity.

HAS – HAS NOT BEEN MET

19.7.6 The proposed special land use will be adequately served by public or private streets, water and sewer facilities, and refuse collection and disposal services.

HAS – HAS NOT BEEN MET

19.7.7 If the proposed special land use includes more than fifteen thousand (15,000) square feet of impervious surface, then the storm water management system employed by the use shall (i) preserve the natural drainage characteristics of the site and enhance the aesthetics of the site to the extent possible, (ii) employ storm water disposal through evaporation and infiltration when reasonably possible, (iii) shall not discharge storm water directly to wetlands or surface waters unless there is no other prudent or reasonably feasible means of discharge, (iv) shall not serve to increase the quantity no rate of discharge leaving the property based on twenty-five (25) year storm criteria, (v) shall be designed using Best Management Practices identified by the DNR or its successor agency, and (vi) shall identify the party responsible for maintenance of the storm water management system.

HAS – HAS NOT BEEN MET

19.7.8 The proposed special land use complies with all specific standards required under this Ordinance applicable to it.

HAS – HAS NOT BEEN MET

SECTION 19.8 CONDITIONS

The Planning Commission may attach reasonable conditions to the approval of a special use permit. These conditions may include those necessary to insure that public services and facilities affected by a proposed special land use will be capable of accommodating increased service and facility loads caused by the special land use, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Any conditions imposed, however, shall meet all the following requirements.

19.8.1 Be designed to protect natural resources, the health, safety, and welfare and the social and economic well-being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed special land use, and the community as a whole.

19.8.2 Be related to the valid exercise of the police power, and purposes which are affected by the proposed special land use.

Proposed language for Article 23 Site Plan Review/Application:

* Change made - Highlighted area

*New text in RED

ARTICLE 23 SITE PLAN REVIEW

Site Plan Review and approval of all development proposals listed below is required by the provisions of this Article. The intent of this Article is to provide for consultation and cooperation between the land developer and the Zoning Administrator so that beneficial utilization of the land is achieved at the same time that adverse effects upon the surrounding land uses are minimized consistent with the requirements and purposes of this Ordinance. Through the application of the following provisions, the attainment of the Comprehensive Plan of Otsego County will be assured and its communities will develop in an orderly fashion.

SECTION 23.1 SITE PLAN REVIEW REQUIRED

Site plan review is required for the following uses:

23.1.1 Any use or development for which the submission of a site plan is required by any provision of this Ordinance.

23.1.2 Any development for which off-street parking areas in excess of five (5) spaces are provided as required in this Ordinance.

Any use in a B1, B2, B3 and Industrial zone.

Any Special Land Use (See Article 19).

(Note: An application for a zoning permit for a land use not requiring Site Plan Review shall contain a Plot Plan as outlined in Article 25.3.3.)

SECTION 23.2 APPLICATIONS FOR SITE PLAN REVIEW

An application for site plan review shall be obtained from the Zoning Administrator. The completed application and site plan shall be submitted to the Zoning Administrator along with fifteen (15) copies of each for distribution. The application, site plan and copies shall be submitted at least thirty (30) days prior to the next regularly scheduled meeting of the Planning Commission, in order to have the site plan review scheduled for that meeting. The applicant shall also meet requirements of Article 27 Township Participation in County Zoning. The application for site plan review and the site plan shall contain the following information:

23.2.1 The application shall, at a minimum, include the following information:

23.2.1.1 The applicant's name, address and phone number in full

23.2.1.2 Proof of property ownership and whether there are any options on the property or any liens against it

23.2.1.3 A signed statement that the applicant is the owner of the property or officially acting on the owner's behalf

23.2.1.4 The name and address of the owner(s) of record if the applicant is not the owner of record (or firm or corporation having a legal or equitable interest in the land), and the signature of the owner(s)

23.2.1.5 The address and or parcel number of the property

23.2.1.6 Name and address of the developer (if different from the applicant)

23.2.1.7 Name and address of the engineer, architect and/or land surveyor

23.2.1.8 Project title

23.2.1.9 Project description, including the total number of structures, units, bedrooms, offices, square feet, total and usable floor area, parking spaces, carports or garages, employees by shift, amount of recreation and open space, type of recreation facilities to be provided and related information as pertinent or otherwise required by the ordinance

23.2.1.10. A vicinity map drawn ~~at a~~ to scale ~~of 1" = 2000'~~ with North point indicated

23.2.1.11. The gross and net acreage of all parcels in the project

23.2.1.12. Land uses, zoning classification and existing structures on the subject parcel and adjoining parcels

23.2.1.13. Project completion schedule/development phases

23.2.2 The site plan shall consist of an accurate, reproducible drawing at a scale of 1"= 50 or fewer feet or less for sites of less than three (3) acres and 1"= 100 or fewer feet or less if the site is larger than three (3) acres. The site plan shall show the site and all land within fifty (50) feet of the site. If multiple sheets are used, each shall be labeled and the preparer identified. All site plans shall be sealed by a professional engineer, surveyor, architect or landscape architect and each site plan shall depict the following:

23.2.2.1 Location of proposed and/or existing property lines, dimensions, legal descriptions, setback lines, monument locations and shoreland and natural river district, if any

23.2.2.2 Existing topographic elevations and proposed grades in sufficient detail to determine direction of drainage flows

23.2.2.3 The type of existing soils at proposed storm water detention and retention basins and/or other areas of concern - Boring logs may be required if necessary to determine site suitability.

23.2.2.4 Location and type of significant existing vegetation

23.2.2.5 Location and elevations of existing water courses and water bodies, including county drains and man-made surface drainage ways, flood plains and wetlands within fifty (50) feet of the parcel

23.2.2.6 Location of existing and proposed buildings and intended uses thereof as well as the length, width, and height of each building and typical elevation views of proposed structures

23.2.2.7 Proposed location of accessory structures, buildings and uses, including all flagpoles, light poles, bulkheads, docks, storage sheds, transformers, air conditioners, generators and similar equipment, and the method of screening where applicable

23.2.2.8 Location of existing public roads, rights-of-way and private easements of record and abutting streets - Notation of existing traffic counts and trip generation estimates may be required if deemed appropriate by the Zoning Administrator or Planning Commission.

23.2.2.9 Location of and dimensions of proposed streets, drives, curb cuts and access easements, as well as acceleration, deceleration and passing lanes (if any) serving the development -
Details of entryway and sign locations shall be separately depicted with an elevation view.

23.2.2.10 Location, design, and dimensions of existing and/or proposed curbing, barrier free access, carports, parking areas (including indication of all spaces and method of surfacing) and fire lanes

23.2.2.11 Location, size and characteristics of all loading and unloading areas

23.2.2.12 Location and design of all sidewalks, walkways, bicycle paths and areas for public use

23.2.2.13 Location of water supply lines and/or wells, including fire hydrants and shut off valves and the location and design of storm sewers, retention or detention ponds, waste water lines, clean-out locations, connection points and treatment systems, including septic systems if applicable

23.2.2.14 Location of all other utilities on the site including natural gas, electric, cable TV, telephone and steam

23.2.2.15 Proposed location, dimensions and details of common open spaces and common facilities such as community buildings or swimming pools if applicable

23.2.2.16 Location, size and specifications of all signs and advertising features with elevation views from front and side

23.2.2.17 Exterior lighting locations with area of illumination illustrated as well as the type of fixtures and shielding to be used

23.2.2.18 Location and specifications for all fences, walls and other screening features with elevation views from front and side

23.2.2.19 Location and specifications for all proposed perimeter and internal landscaping and other buffering features - For each new landscape material, the proposed size at the time of planting must be indicated. All vegetation to be retained on the site must also be indicated, as well as its typical size by general location or range of sizes as appropriate.

23.2.2.20 Location, size of all trash receptacles and other solid waste disposal facilities

23.2.2.21 Location and specifications for any existing or proposed above or below ground storage facilities for any chemicals, salts, flammable materials or hazardous materials as well as any containment structures or clear zones required by government authorities.

23.2.2.22 Identification of any significant site amenities or unique natural features

23.2.2.23 Identification of any significant views onto or from the site to or from adjoining areas

23.2.2.24 North arrow, scale and date of original submittal and last revision

23.2.2.25 Seal of the registered engineer, architect, landscape architect, surveyor or planner who prepared the site plan

All site plans shall be sealed by a professional engineer, surveyor, architect or landscape architect. In the immediate area of the seal there shall also be the following statement, signed by the professional sealing the plans:

I do hereby certify that these plans have been prepared under my sustained review and, to the best of my professional knowledge, understanding and information; the design of this project is in compliance with the Otsego County Zoning Ordinance dated _____.

Or

I do hereby certify that these plans have been prepared under my sustained review and, to the best of my professional knowledge, understanding and information, the design of this project is in compliance with the Otsego County Zoning Ordinance dated _____, except for the following items: (list known variations from the ordinance)

23.2.3 All projects requiring a site plan shall also require that the professional in charge of the project inspect and certify that the project has been constructed in accordance with the approved plans. The following format shall be used:
FORM FOR CONSULTANT'S CERTIFICATE

Date_____

Project name_____

Section _____ T___ N/R ____W _____Township,

Otsego County, Michigan.

I hereby certify that construction of

_____

is complete and that:

1. I have personally directed the supervision or inspection of the construction.
2. To the best of my professional knowledge, understanding and information, all improvements to date have been installed in accordance with the special use permit.
3. The project meets all requirements of the Otsego County Zoning Ordinance.

(seal)

Signed_____

Registered Professional Engineer (or Surveyor, Architect or Landscape Architect)

23.2.4 The Planning Commission or Zoning Administrator may waive any site plan submittal requirement when any of the following circumstances are found to be in existence:

23.2.4.1 The data will serve no useful purpose. Circumstances have not significantly changed on the property since the last time detailed information on the site was submitted. Another reasonable circumstance or condition exists (not including the cost of complying).

23.2.5 Application fees must be paid when the application is submitted and sufficient escrow accounts may be established to cover the projected review costs.

SECTION 23.3 PRE-APPLICATION CONFERENCE

A pre-application conference is not mandatory, but it is strongly advised. During this conceptual review phase, a generalized site plan is presented by a prospective applicant for consideration of the overall idea of the development. Basic questions of use, density, integration with existing development in the area and impacts on and the availability of public infrastructure are discussed. This conference is scheduled by a prospective applicant with the Zoning Administrator and such other representatives as described in the Planning Commission bylaws. At this meeting the applicant or his/her representative is also presented with the applicable procedures required by the Ordinance for approval of the proposed development and with any special problems or steps that might have to be followed, such as requests to the Board of Appeals for a variance. There is no charge or fee to the applicant for this meeting.

SECTION 23.4 AGENCY REVIEW

The applicant shall submit a copy of required site plans and a blank comment form supplied by the Otsego County Zoning Administrator to designated Federal, State and Local agencies and departments for review as determined and requested by the Planning Commission or Zoning Administrator.

The applicant may be requested to submit site plans to one or more of the following agencies: the Otsego County Road Commission; the Michigan Department of Transportation; the Michigan

State Police, the Otsego County Sheriff; the Otsego County Conservation District; the District Health Department; the Fire Department having jurisdiction; the Michigan Department of Natural Resources; the Michigan Department of Environmental Quality; the Otsego County Airport; or any other agency or department deemed necessary. After delivery of the application, site plans and comment forms the applicant should submit proof of delivery to the Otsego County Zoning Administrator. Comments not received from reviewing agencies by the Zoning Administrator within fifteen (15) of days of delivery shall be considered approved without comment.

SECTION 23.5 APPROVAL AUTHORITY

The Zoning Administrator shall review the application and information submitted to determine if all required information was supplied. If he/she determines that all required information has not been supplied, a written notification to the applicant will be sent, citing the deficiencies. The application for site plan review cannot proceed until all requirements have been satisfied.

The Zoning Administrator shall review and act upon site plans except where a Special Use Permit is required. Site plans for Special Use Permit shall be forwarded by the Zoning Administrator to the Planning Commission for review and action. In addition, at the request of the Zoning Administrator or Planning Commission, a site plan for a Principal Permitted Use may be submitted for Planning Commission review before final action by the Zoning Administrator. The Zoning Administrator and Planning Commission have the authority to approve, deny or grant conditional approval for any site plan submitted under the provisions of this ordinance. The Zoning Administrator may hold or the Planning Commission may table a site plan, pending further information or addition, reasonably needed to complete a site plan or comply with requirements of this Ordinance.

SECTION 23.6 CONDITIONAL APPROVALS

23.6.1 The Planning Commission or Zoning Administrator may condition approval of a site plan on conformance with the standards of this ordinance.

23.6.2 The Planning Commission or Zoning Administrator may condition approval of a site plan on conformance with the standards of another local, county or state agency, including a Water and Sewer Department, County Drain Commission, County Road Commission, State Highway Commission or Natural Resources Department. They may do so when such conditions:

23.6.2.1 Would insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity;

23.6.2.2 Would protect the natural environment and conserve natural resources and energy;

23.6.2.3 Would insure compatibility with adjacent uses of land, and would promote the use of land in a socially and economically desirable manner.

23.6.3 The Planning Commission and/or Zoning Administrator may conditionally approve a site plan on conformance with fencing, screening, buffering or landscaping requirements of Article 21.10 and 21.18 of this Ordinance and may collect a performance guarantee consistent with the requirements of Article 23.8, to insure conformance. When so doing, the following finding shall be made and documented as part of the review process:

23.6.3.1 That such fencing, screening, buffering or landscaping would mitigate negative effects of noise, dust, lighting, vehicular or pedestrian traffic, loading or unloading, parking or other similar impact on adjoining parcels;

23.6.3.2 that absent such conditions, the development would adversely affect the reasonable use, enjoyment and value of adjoining lands in light of similar benefits enjoyed by other properties in the area.

SECTION 23.7 DISTRIBUTION OF APPROVED SITE PLAN

When a site plan is reviewed and approved or disapproved by the Planning Commission or Zoning Administrator, and all steps completed, two (2) copies of the site plan will be marked by the Planning Commission for the following distribution.

23.7.1.1 One (1) copy returned to the applicant signed by the Chairperson of the Planning Commission or by the Zoning Administrator including any conditions of approval.

23.7.1.2 One (1) copy forwarded to the Zoning Administrator including any conditions of approval.

SECTION 23.8 CONFORMITY TO APPROVED SITE PLAN REQUIRED

Following final approval of a site plan by the Zoning Administrator or the Planning Commission, the applicant shall construct the site plan improvements in complete conformity with the approved plan.

Failure to do so is a violation of this ordinance and subject to the sanctions provided herein.

SECTION 23.9 SITE PLAN EXPIRATION AND REVOCATION

23.9.1 Failure to initiate construction of an approved site plan within three hundred sixty-five (365) days of approval shall require the applicant to appear before the Planning Commission and demonstrate why the approval should not be revoked. After this appearance the Planning Commission may revoke a previously approved site plan for property on which no physical development activity has occurred upon making written findings that one or more of the following circumstances exist:

23.9.1.1 An error in the original approval is discovered either because of inaccurate information supplied by the applicant or administrative error by a staff member or other agency;

23.9.1.2 Zoning regulations applicable to the project have been changed and the previously approved site plan does not comply with them;

23.9.1.3 A change in state law, local charter, or other local ordinance affecting the previous approval has occurred;

23.9.1.4 Pollution, impairment or destruction of the environment or to another legally protected public interest would occur if the project were to be constructed as previously approved.

23.9.2 Thirty (30) days prior to expiration of an approved site plan, an applicant may make application for a one year extension of the site plan at no fee. The applicant shall explain in writing why the development has not proceeded, what the current time frame is and why an extension should be granted. If the original approval of the site plan was by the Planning Commission, the applicant shall present his/her case in person or by representative at the next meeting of the Planning Commission.

23.9.3 Revocation of an approved site plan shall be communicated in writing by certified mail to the property owner. The Building Inspector shall also be notified to withhold any building permit until a new site plan is approved.

23.9.4 Any subsequent re-submittal shall be processed as a new request with new fees, except for minor amendments pursuant to Subsection 23.11 below.

SECTION 23.10 PERFORMANCE GUARANTEE REQUIRED

In the interest of insuring compliance with the Zoning Ordinance provisions, protecting the natural resources and the health, safety and welfare of the residents of Otsego County and future users or inhabitants of an area for which a site plan for a proposed use has been submitted, the Planning Commission or Zoning Administrator may require the applicant to deposit a

performance guarantee as regulated by Article 25.6. The purpose of the performance guarantee is to insure completion of improvements connected with the proposed use as required by this Ordinance, including, roadways, lighting, utilities, sidewalks, drainage, fences, screens, walls, landscaping and any other required improvements.

SECTION 23.11 MINOR AMENDMENTS TO APPROVED SITE PLANS

Minor Amendments to a site plan may be approved by the Zoning Administrator provided that such changes conform to the Zoning Ordinance and the applicant agrees. No additional fees will be charged for minor amendments. Minor changes to an approved site plan may be approved by the Zoning Administrator before or after construction has begun provided no such change results in any of the following:

23.11.1.1 A change in the use or character of the development

23.11.1.2 An increase in overall coverage of structures

23.11.1.3 An increase in the intensity of use

23.11.1.4 A reduction in required open space

23.11.1.5 A reduction in required off-street parking and loading

23.11.1.6 A reduction in required pavement widths or utility pipe sizes

23.11.1.7 An increase in traffic on public streets or an increase in the burden on public utilities or services

23.11.2 The following are minor amendments:

23.11.2.1 Moving building walls within the confines of the smallest rectangle that would have enclosed each original approved building(s) - Relocation of building entrances or exits, or shortening of building canopies

23.11.2.2 The changing to a more restricted use provided there is no reduction in the amount of off-street parking as originally provided

23.11.2.3 Changing the angle of parking or aisle width provided there is no reduction in the amount of required off-street parking or a reduction of aisle width below ordinance requirements

23.11.2.4 Moving of ingress and egress drives a distance of not more than one hundred (100) feet if required by the appropriate state, county or other local road authority with jurisdiction

23.11.2.5 Substituting landscape plan species provided a nurseryman, landscape architect, engineer or architect certifies the substituted species is similar in nature and screening effects

23.11.2.6 Change type and design of lighting fixtures provided an engineer or architect certifies there will be no change in the intensity of light at the property boundary

23.11.2.7 Increase peripheral yards

23.11.2.8 Changing the location of an exterior building wall or location not more than ten (10) feet because of a natural impediment or hazard such as bedrock or muck soils, provided that in so doing no setback requirement of the Ordinance is violated and no significant reduction in safety or in the amount of open space is thereby affected

23.11.3 If a proposed amendment to an approved site plan does not qualify as a minor change, a new site plan and application and fees in accordance with the provisions of Article 23 must be submitted. This provision is not to be construed to prohibit phased development of a project, provided that each phase is developed in accordance with an approved site plan.

OTSEGO COUNTY
LAND USE SERVICES
1322 HAYES RD GAYLORD MI 49735

PHONE: 989.731.7400 * FAX: 989.731.7419

www.otsegocountymi.gov

APPLICATION FOR SITE PLAN REVIEW

APPLICANT:

Name:	Owner/Agent/Other Interest *(circle one)*
Address:	
Phone: ( ) -	Fax: ( ) -

PROPERTY OWNER: *(If different from Applicant)*

Name:	
Address:	
Phone: ( ) -	Fax: ( ) -

PROPERTY LOCATION:

Township:	Section:	T____N/R____W	Zoning District:
Site Address:			
Parcel Number: _____ - _____ - _____ - _____			
Description of Project and Proposed Use:			

Signature of Applicant:	**Date:**

***All information received by this department is subject to the Freedom of Information Act. Under this act, persons are allowed to request copies of said information. This includes but not limited to, copyrighted drawings and blueprints

Attention

*These items **must** be submitted in conjunction with this application.

- Proof of property ownership and whether there are any options on the property or any liens against it.
- A signed statement that the applicant is officially acting on the owner's behalf.
- Appropriate fees paid to Otsego County.

*Please refer to the Otsego County Zoning Ordinance particularly Section 21 and Section 23 to assure all items are addressed on the site plan and allow for a smooth presentation to the governing body.

This checklist and the following items are required on all site plans before they can be submitted for review to the various approving entities:

1. The applicant's name, address and phone number in full.

   Yes____ No____ if "No" explain:_____

2. The name and address of the owner(s) of record if the applicant is not the owner of record (or firm or corporation having a legal or equitable interest in the land) and the signature of the owner(s).

   Yes____ No____ if "No" explain:_____

3. The address and or parcel number of the property.

   Yes____ No____ "No" explain:_____

4. Name and address of the developer (if different from the applicant).

   Yes____ No____ if "No" explain:_____

5. Name and address of the engineer, architect and/or land surveyor.

   Yes____ No____ if "No" explain:_____

6. Project title.

   Yes____ No____ if "No" explain:_____

7. Project description, including the total number of structures, units, bedrooms, offices, square feet, total and usable floor area, parking spaces, carports or garages, employees by shift, amount of recreation and open space, type of recreation facilities to be provided and related information as pertinent or otherwise required by the ordinance.

   Yes____ No____ if "No" explain:_____

8. A vicinity map drawn to scale with North point indicated.

   Yes____ No____ if "No" explain:_____

9. The gross and net acreage of all parcels in the project.

   Yes____ No____ if "No" explain:_____

10. Land uses, zoning classification(s) and existing structures on the subject parcel and within ten feet (10') of property lines of adjoining parcels.

    Yes____ No____ if "No" explain:_____

11. Project completion schedule/development phases. (refer to Section 23.9)

Yes____ No____ if "No" explain:_____

12. The site plan shall consist of an accurate, reproducible drawing at a scale of 1"= 50 or fewer feet or less or sites of less than three (3) acres and 1"=100 or fewer feet or less if the site is larger than three (3) acres. The site plan shall show the site and all land within fifty (50) feet of the site. If multiple sheets are used, each shall be labeled and the preparer identified.

Yes____ No____ if "No" explain:_____

All site plans shall be sealed by a professional engineer, surveyor, architect or landscape architect. Each site plan shall depict the following:

13. Location of proposed and/or existing property lines, dimensions, legal descriptions, setback lines, monument locations and shoreland and natural river district, if any.

Yes ___No ____ if "No" explain:_____

14. Existing topographic elevations and proposed grades in sufficient detail to determine direction of drainage flows.

Yes ____No ____ if "No" explain:_____

15. The type of existing soils at proposed storm water detention and retention basins and/or other areas of concern. Boring logs may be required if necessary to determine site suitability.

Yes ____No ____ if "No" explain:_____

16. Location and type of significant existing vegetation.

Yes ____No ____ if "No" explain:_____

17. Location and elevations of existing water courses and water bodies, including county drains and man-made surface drainage ways, flood plains and wetlands within fifty (50) feet of the parcel.

Yes ____No ____ if "No" explain:_____

18. Location of existing and proposed buildings and intended uses thereof, as well as the length, width and height of each building and typical elevation views of proposed structures.

Yes____ No____ if "No" explain:_____

19. Proposed location of accessory structures, buildings and uses, including all flagpoles, light poles, bulkheads, docks, storage sheds, transformers, air conditioners, generators and similar equipment, site amenities and the method(s) of screening where applicable.

Yes ____No ____ if "No" explain:_____

20. Location of existing public roads, right-of-ways and private easements of record and abutting streets. Notation of existing traffic counts and trip generation estimates may be required if deemed appropriate by the Zoning Administrator or Planning Commission.

Yes ____No ____ if "No" explain:_____

21. Location of and dimensions of proposed streets, drives, curb cuts and access easements, as well as acceleration, deceleration and passing lanes (if any) serving the development. Details of entryway and sign locations shall be separately depicted with an elevation view.

Yes ____No ____ if "No" explain:_____

22. Location, design and dimensions of existing and/or proposed curbing, barrier free access, carports, parking areas (including indication of all spaces and method of surfacing) and fire lanes.

Yes ____No ____ if "No" explain:_____

23. Location, size, and characteristics of all loading and unloading areas.

Yes ____No ____ if "No" explain:_____

24. Location and design of all sidewalks, walkways, bicycle paths and areas for public use.

Yes ____No ____ if "No" explain:_____

25. Location of water supply lines and/or wells, including fire hydrants and shut off valves, the location and design of storm sewers, retention or detention ponds, waste water lines, clean-out locations, connection points and treatment systems, including septic systems if applicable.

Yes ____No ____ if "No" explain:_____

26. Location of all other utilities on the site including natural gas, electric, cable TV, telephone and steam.

Yes ____No ____if "No" explain:_____

27. Proposed location, dimensions and details of common open spaces and common facilities, such as community buildings or swimming pools if applicable.

Yes ____No ____if "No" explain:_____

28. Location, size and specifications of all signs and advertising features with elevation views from front and side.

Yes____ No____ if "No" explain:_____

29. Exterior lighting locations with area of illumination illustrated as well as the type of fixtures and shielding to be used.

Yes ____No ____ if "No" explain:_____

30. Location and specifications for all fences, walls and other screening features with elevation views from front and side.

Yes ____No ____if "No" explain:_____

31. Location and specifications for all proposed perimeter and internal landscaping and other buffering features. For each new landscape material, the proposed size at the time of planting must be indicated. All vegetation to be retained on the site must also be indicated, as well as its typical size by general location or range of sizes as appropriate.

Yes ____No ____if "No" explain:_____

32. Location, size and specifications for screening of all trash receptacles and other solid waste disposal facilities.

Yes ____No ____ if "No" explain:_____

33. Location and specifications for any existing or proposed above or below ground storage facilities for any chemicals, salts, flammable materials or hazardous materials, as well as any containment structures or clear zones required by government authorities.

Yes ____No ____ if "No" explain:_____

34. North arrow, scale and date of original submittal and last revision.

Yes ____No ____ if "No" explain:_____

35. Seal of the registered engineer, architect, landscape architect, surveyor or planner who prepared the site plan.

Yes ____No ____ if "No" explain:_____

Attention

All site plans shall be sealed by a professional engineer, surveyor, architect or landscape architect. In the immediate area of the seal there shall also be the following statement, signed by the professional sealing the plans:

> I do hereby certify that these plans have been prepared under my sustained review and, to the best of my professional knowledge, understanding and information; the design of this project is in compliance with the Otsego County Zoning Ordinance dated: _____

Or

> I do hereby certify that those plans have been prepared under my sustained review and, to the best of my professional knowledge, understanding and information; the design of this project is in compliance with the Otsego County Zoning Ordinance dated _____, except for the following items: (List known variations from the Ordinance)

******OFFICE USE ONLY******

Date Application Received:	Fee:	Receipt Number:
Permit No:	Soil Erosion Permit No:	
Approved:	Denied:	By:
Conditions:		
Reasons:		

Otsego COUNTY
ESTABLISHED 1875 MICHIGAN

AGENCY REVIEW FORM

Please address any issues/concerns below relating to the site plan submitted by the applicant for review by the Otsego County Planning Commission and/or Zoning Administrator per Article 23 Site Plan Review Section 23.4 Agency Review of the Otsego County Zoning Ordinance.

1322 Hayes Road
Gaylord, MI 49735
Phone: 989.731.7400 Fax: 989.731.7419
www.otsegocountymi.gov

MICHIGAN STATE UNIVERSITY EXTENSION
Bringing Knowledge to Life

Selected Planning and Zoning Decisions: 2005
May 2004-April 2005

Kurt H. Schindler, MSU Extension Land Use Team

This public policy brief summarizes the important state and federal court cases and Attorney General Opinions issued between May 1, 2004 and April 30, 2005.

In comparison to other years, this has been an average year for number of land use cases in the courts, and in terms of the significance of the cases. Most cases were not significant (did not create new law), but a couple are.

The significant court cases are *County of Wayne v. Hathcock* (471 Mich. 445: 684 N.W.2d 765: 2004 Mich.) ruling that use of eminent domain to condemn real property for economic development (private development) can not be done in Michigan.

The other significant case is *Rochon v. Chippewa Twp.* (Unpublished No. 247465) with re-states the Michigan rules for takings. The opinion states the principles very well. It does not create new law from what was established in *K & K Construction, Inc v Department of Natural Resources*, 456 Mich 570; 575 NW2d 531 (1998).

Restrictions on Zoning Authority

State Fairground exempt from local zoning

Court: Michigan Court of Appeals (262 Mich. App. 542; 686 N.W.2d 514; 2004)

Case Name: *City of Detroit v. State of Michigan*

Since the Legislature's intent in creating the Michigan Exposition and Fairgrounds Act (MEFA) was to grant the Michigan Department of Agriculture (MDA) exclusive control—exempt from local zoning ordinance—over the State Fairground and any other property acquired for the purpose of holding and conducting state fair exhibitions, the trial court erred in ruling the defendant-state is subject to the plaintiff-city's zoning ordinance. The state owns the State Fairgrounds where it holds the annual State Fair. Adjacent to the property is a parcel of land, which the state has also acquired. The state agreed to sell the adjoining parcel to State Fair Development Group, L.L.C. (SFDG). The purchase agreement provided after the sale, the property was subject to certain local ordinances and regulations, including zoning and taxation, which it had not been subject to while owned by the state. The state also agreed to lease the fairgrounds to SFDG for 30 years. The lease provided for development of a master plan, including construction of an auto racing facility and large open-air amphitheater. The city opposed construction of the racetrack because of anticipated nuisance, violation of a city ordinance, and violation of the EPA. The court analyzed the various statutes at issue and concluded the plain language of the MEFA indicated the Legislature's intent was that the jurisdiction over the fairgrounds be vested exclusively in the MDA—exempt from local ordinances. Reversed and remanded.

Full Text Opinion:
http://www.michbar.org/opinions/home.html?/opinions/appeals/2004/062204/23628.pdf

A corn maze, and a riding stable are covered by GAAMPS and thus not subject to zoning.

Court: Michigan Court of Appeals (Unpublished[1] No. 246596)

Case Name: *Village of Rothbury v. Double JJ Resort Ranch, Inc.*

[1]This is an unpublished opinion, as are others in this report. Unpublished opinions are not precedentially binding under the rules of stare decisis. They are included here because they state current law well, or as a reminder of what current law is.

The trial court erred in determining the use of the defendant's cornfield as a maze available to the public and its rental of horses for recreational riding were not protected by the Right to Farm Act (RTFA) and Generally Accepted Agricultural Practices (GAAMPs) and were subject to plaintiff's ordinance. Because the GAAMPs and RTFA specifically provide a riding stable is a farm operation and horse riding is a farm product, they are exempted from local zoning regulations by the RTFA. Since plaintiff's ordinance conflicted with the RTFA, it was unenforceable. Defendant's corn maze was also a farm product within the purview of the RTFA and exempt from plaintiff's zoning laws. A farm product is defined as 'an agriculturally produced field crop that is useful to human beings.' A corn maze is agriculturally produced. The definition of a farm product is not limited to edible agriculturally produced products. The definition also includes flowers, seeds, grasses, nursery stock, trees and tree products, and other similar products. Thus, the court concluded the corn maze was a farm product and where plaintiff conceded defendant produced the product according to GAAMPs, the maze fell within the protection of the RTFA and was also exempted from the zoning ordinance. Reversed.

Full Text Opinion:
http://www.michbar.org/opinions/appeals/2004/081704/24220.pdf

Riparian Jurisdiction: can have anti-funneling and riparian regulations

Court: Michigan Court of Appeals (Published After Release[2] 264 Mich. App. 604; 692 N.W.2d 728; 2004)
Case Name: *Township of Yankee Springs v. Fox*

Since it is the location of the riparian land, not the location of the lake abutting it, that determined the plaintiff-township's authority and jurisdiction, and the riparian lot in question was located within the township, the court rejected defendant's contention the township's riparian ordinance did not apply because Gun Lake was not wholly located within the township's borders. Defendant, owner of an undivided one-eighth interest in a riparian lot on Gun Lake, appealed from the trial court's order permanently enjoining defendant and several other lot owners from using the lot to access Gun Lake in violation of the township's anti-funneling ordinance and riparian lot use regulations. The court concluded the township had authority to regulate defendant's riparian rights because the riparian lot was located within the township's boundaries and the township was authorized by the Township Rural Zoning Act to regulate riparian rights. The court also rejected defendant's arguments the township's riparian lot use regulations were void for vagueness and the ordinance was unconstitutional because it violated substantive due process. Affirmed.

Full Text Opinion:
http://www.michbar.org/opinions/appeals/2004/122104/25604.pdf

Can use HUD standards for mobile homes

Court: Michigan Court of Appeals (Unpublished No. 249353)
Case Name: *Bunker Hill Twp. v. Allen*

The trial court did not err in granting the plaintiff-township a permanent injunction requiring defendants to remove a mobile home from a lot located in the township because it did not comply with the amendments made to federal Housing and Urban Development (HUD) construction and safety standards for mobile homes in 1994. Defendant-Bailey owned a mobile home manufactured in compliance with HUD standards in effect in 1984. The Baileys moved the home from one lot to another owned by defendant-Allen within the township. The move violated plaintiff's zoning ordinance requiring all mobile homes moved within the township to comply with current HUD standards. Since defendants failed to have the mobile home inspected and certified as meeting current HUD standards, they could not obtain building and occupancy permits as required by the ordinance. Plaintiff sought and was granted an injunction requiring defendants to remove the mobile home. The defendants argued federal and state statutes preempted the ordinance. However, the court disagreed, concluding the township's ordinance required nothing more than compliance with the minimum construction and safety standards of HUD and was not preempted. Defendants also argued the ordinance violated due process because it excluded older mobile homes from the township. The court held the ordinance had already overcome a due process challenge in Goodnoe, construction standards had improved since defendant's mobile home was built, the ordinance was rationally related

[2]This opinion was previously released as an unpublished opinion on 10/12/04.

to the plaintiff's police power, and exempted mobile homes already situated in the township. Affirmed.

Full Text Opinion:
http://www.michbar.org/opinions/appeals/2004/110904/25171.pdf

Shooting Range: jurisdiction limited on sport shooting ranges only (has jurisdiction over law enforcement practice ranges), must grandfather existing ranges

Court: Michigan Court of Appeals (Unpublished No. 251155, No. 255286)

Case Name: *Smolarz v. Colon Twp.*

The defendant-township had the authority under the Township Rural Zoning Act (TRZA) to amend its zoning ordinance to require a special land use permit for firing range use in an agricultural district, but regardless of any failure to comply with the zoning ordinance, plaintiff was allowed under the Sport Shooting Range Act (SSRA) to continue to operate his sport shooting range. The township's amendment to the zoning ordinance and its authority to enact it implicated its power to regulate land use. Further, MCL 691.1542, part of the SSRA, was inapplicable to the township's nuisance per se action against plaintiff because the claim was based on plaintiff's alleged violation of the zoning ordinance, not a noise ordinance. However, plaintiff was permitted to continue to operate his sport shooting range on his property as long as he does so in compliance with generally accepted operation practices pursuant to MCL 691.1542a(2). Nonetheless, the statute contains no language that would allow plaintiff to continue to use his land for law enforcement personnel firearms training in the face of local zoning ordinances to the contrary. A sport shooting range is statutorily defined as an area designed or operated for sport shooting, not law enforcement firearms training, which is not a protected use under the SSRA and may be regulated through local zoning ordinances without affecting the property's use as a sport shooting range. Affirmed and remanded.

Full Text Opinion:
http://www.michbar.org/opinions/appeals/2005/042105/27085.pdf

State law preemption of zoning

Court: Michigan Court of Appeals (Unpublished No. 248702)

Case Name: *Salamey v. Dexter Twp. Zoning Bd. of Appeals*

Based on the plain language of MCL 324.21109 and the ordinance, the court rejected plaintiff's argument the ordinance was preempted because it was in direct conflict with Natural Resources and Environmental Protection Act (NREPA), and the court further held NREPA did not preempt the ordinance by virtue of completely occupying the field the ordinance attempted to regulate. Plaintiff appealed from the trial court's order affirming the zoning board of appeals' (ZBA) decision denying plaintiff's request for a conditional use permit to operate a gas station in an area zoned a "General Commercial District." Plaintiff contended NREPA preempted local regulation of the installation and use of underground storage tanks (UST) systems, and the ZBA's decision was not supported by competent, material, and substantial evidence. The court concluded MCL 324.21109 neither expressly permits, nor prohibits, operation of a gas station in a general commercial district and the ordinance did not strictly regulate USTs – rather, it promulgated rules for the operation of automobile service stations. NREPA also did not preempt municipal regulation under the facts presented when the record showed various factors other than the installation of the UST system were legitimate reasons for denial of the permit. In addition, the court held the record demonstrated there was competent, material, and substantial evidence supporting the denial of the permit. Affirmed.

Quoting, on the issue of state law preemption:

> "State law preempts a municipal ordinance where "1) the statute completely occupies the field that ordinance attempts to regulate, or 2) the ordinance directly conflicts with a state statute." *Michigan Coalition for Responsible Gun Owners, supra,* 256 Mich App 408, quoting *Rental Prop Owners Ass'n of Kent Co v Grand Rapids*, 455 Mich 246, 257; 566 NW2d 514 (1997). Regarding the second method of preemption set forth above, our Supreme Court has held that "[a] direct conflict exists . . . when the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits." *People v Llewellyn (City of East Detroit v Llewellyn),* 401 Mich 314, 322 n 4; 257 NW2d 902 (1977).
>
> "According to MCL 324.21109(3) of NREPA, a local unit of government "shall not enact or enforce a provision of an ordinance that requires a permit, . . . [or] approval . . . for the installation, use, closure, or removal of an underground storage tank system." The act

further provides that a local unit of government "shall not enact or enforce a provision of an ordinance that is inconsistent with this part or rules promulgated under this part." MCL 324.21109(2). Under the township zoning ordinance at issue in the instant case, Section 13.01(D)(5), Art XIII of the Dexter Township zoning ordinance requires a special approval use permit in order for the ZBA to permit an "automobile service station" in a general commercial district.

"Plaintiff contends that, because the township zoning ordinance requires plaintiff to obtain a special approval use permit in order to operate a gas station, i.e., a facility with an underground storage tank system, NREPA preempts that section of the zoning ordinance. This argument is not persuasive in light of the plain language of MCL 324.21109 1 and the plain language of the ordinance. Clearly, MCL 324.21109 of NREPA neither expressly permits nor prohibits the operation of a gas station in a general commercial district. And, Section 13.01(D)(5), Art XIII of the Dexter Township zoning ordinance does not strictly regulate underground storage tanks, but rather promulgates rules for the operation of an automobile service station.

....

"Our Supreme Court set forth four guidelines to aid courts in determining whether a statute occupies the field of regulation:

First, where the state law expressly provides that the state's authority to regulate in a specified area of the law is to be exclusive, there is no doubt that municipal regulation is pre-empted.

Second, preemption of a field of regulation may be implied upon an examination of legislative history.

Third, the pervasiveness of the state regulatory scheme may support a finding of preemption. While the pervasiveness of the state regulatory scheme is not generally sufficient by itself to infer preemption, it is a factor which should be considered as evidence of preemption.

Fourth, the nature of the regulated subject matter may demand exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest." [*Llewellyn, supra*, 401 Mich 323-324 (citations omitted).]

Full Text Opinion:
http://www.michbar.org/opinions/appeals/2004/120204/25398.pdf

Federal Telecommunications Act

Court: U.S. Court of Appeals Sixth Circuit (398 F.3d 825; 2005 U.S. App)

Case Name: *State of Tenn. ex rel. Wireless Income Properties, LLC v. City of Chattanooga*

In an amended opinion, the court rejected the defendant-city's ripeness claim and held the city's actions constituted an informal denial of plaintiff's applications to build and manage telecommunications towers within the city and this informal decision-making process violated the mandates of the federal Telecommunications Act (TCA) requiring a written denial to be provided to the permit applicant and "supported by substantial evidence contained in a written record." After plaintiff filed its applications for permits to construct the telecommunications towers, the city called for a moratorium to consider amendments to the pertinent zoning ordinances. After the moratorium was lifted, plaintiff's applications did not comply with the newly amended zoning ordinances. The city's only communication with plaintiff regarding the now-inadequate applications was a telephone call by a city employee informing plaintiff the applications could not be approved absent a "special exceptions permit" and they were "on hold." The court held the city's actions in the nine months after the moratorium was lifted constituted a functional informal denial of plaintiff's applications. This procedure directly contravened the substantive and procedural requirements of the TCA. Also, the city provided no written support for its denial of the applications. The court held the remedy was injunctive relief compelling the city to grant the permits. The court reversed the district court's 60-day order and remanded for issuance of injunctive relief ordering the city to grant the permits, and affirmed the district court's denial of plaintiff's § 1983 claim.

Commentary:

The result of this case 'TCA requiring a written denial to be provided to the permit applicant and "supported by substantial evidence contained in a written record"' is even more so in Michigan. The Michigan 1963 Constitution requires administrative bodies (planning commission, zoning

board, appeals board, zoning administrator) to create a written record showing ". . . . the result was based upon competent material and substantial evidence on the record as a whole." (Article VI, §28 of the 1963 Michigan Constitution).

Another aspect of this case which raises an issue for Michigan is that of the moratorium. While it is clear federal courts have upheld the use of moratoriums, Michigan does **not** have any specific statutory authority granting the option for local governments to use moratoriums. I regularly hear municipal attorneys suggest local government in Michigan cannot place moratoriums on development, and other attorneys suggest to their municipal clients they can do so. Suffice it to say, the authority of moratoriums by Michigan municipalities is debatable.

Full Text Opinion:
http://www.michbar.org/opinions/us_appeals/2005/040705/26902.pdf

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Takings

A takings refresher

Court: Michigan Court of Appeals (Unpublished No. 247465)

Case Name: *Rochon v. Chippewa Twp.*

In relying on Troy Campus and concluding the relevant question was whether the zoning classification had precluded any use of the land for which it was reasonably adapted, the trial court applied an outdated and incorrect standard to determine whether the zoning ordinance at issue was a taking. The relevant case law was summarized in *K & K Construction, Inc v Department of Natural Resources*, 456 Mich 570; 575 NW2d 531 (1998) (*K&K*). Plaintiffs sought a variance for two parcels they owned totaling 2.24 acres, which were subject to a zoning ordinance requiring a minimum of 5 acres to build a house. The trial court should have examined the circumstances surrounding plaintiffs' ownership of surrounding property, totaling 12.31 acres, rather than simply the 2.24 acres at issue. In determining whether the zoning regulation as to the 2.24-acre parcels constituted a taking, plaintiffs' ownership of surrounding parcels, presently or in the past, might be relevant. Even assuming plaintiffs no longer owned the surrounding parcels, it was not clear when they were sold, particularly in relation to when the ordinance became effective. The parties' stipulated facts were insufficient to address the kind of fact question that had to be considered in deciding the taking issue in this case. The court reversed the trial court's order finding plaintiffs' property had been taken under the Fifth Amendment and remanded the case.

Opinion, in part, reads:

> "The relevant law here was recently summarized by our Supreme Court in *K & K Constr, Inc v Dep't of Natural Resources*, 456 Mich 570; 575 NW2d 531 (1998), a unanimous decision. The Court stated that a land use regulation effectuates a taking "where the regulation denies an owner economically viable use of his land." *Id.* at 576. 1 Such a denial can be either (a) "a 'categorical' taking, where the owner is deprived of 'all economically beneficial or productive use of land'" or (b) "a taking recognized on the basis of the application of the traditional 'balancing test'" wherein the reviewing court must engage in an ad hoc analysis "centering on three factors: (1) the character of the government's action, (2) the economic effect of the regulation on the property, and (3) the extent by which the regulation has interfered with distinct, investment-backed expectations." *Id.* at 576-577 (citations omitted). This recitation of the applicable law has more recently been reiterated with approval in *Adams Outdoor Advertising v East Lansing (After Remand)*, 463 Mich 17, 23-24; 614 NW2d 634 (2000).
>
> (A taking can also occur where a regulation does not substantially advance a legitimate state interest, *id.*, but plaintiffs do not argue that the regulation at issue here fails to do so. Accordingly, there is nothing to defendant's argument that the trial court improperly failed to presume the ordinance validly advanced a legitimate state interest as it would have been required to do had this been the issue raised. *Bevan v Brandon Twp*, 438 Mich 385, 398; 475 NW2d 37 (1991).)
>
> The *K & K* Court further made it clear that, for a categorical taking to exist, there must be a denial of *all* economically beneficial or productive use of the land at issue. *K & K*, *supra* at 586."

Full Text Opinion:

http://www.michbar.org/opinions/appeals/2004/090704/24399.pdf

Power of Eminent Domain

Condemnation of land through eminent domain can only be for a public use

Court: Michigan Supreme Court (471 Mich. 445; 684 N.W.2d 765; 2004 Mich.)

Case Name: *County of Wayne v. Hathcock*

Although the condemnation of defendants' properties was consistent with M.C.L. 213.23, the court held the proposed condemnations did not advance a "public use" as required by Const.1963, art. 10, § 2. Section 2 permits the exercise of the power of eminent domain only for a "public use." Wayne County attempted to use the power of eminent domain to condemn defendants' real properties for the construction of a 1,300-acre business and technology park to reinvigorate the struggling economy of southeastern Michigan. However, the court concluded Wayne County's intent to transfer the condemned properties to private parties in this manner was inconsistent with the common understanding of "public use" at the time the Michigan Constitution was ratified. The court held the *Poletown Neighborhood Council v. Detroit* (410 Mich 616; 304 NW2d 455 (1981)) analysis provided no legitimate support for these proposed condemnations, and was overruled. Further, the decision to overrule *Poletown* was given retroactive effect to apply to all pending cases in which a challenge to *Poletown* was raised and preserved. The judgment of the Court of Appeals was reversed and the case was remanded for entry of an order of summary disposition in defendants' favor.

Justice Weaver concurred with the majority's result and decision to overrule *Poletown*, but did so for her own reasons. She dissented from the majority's reliance on its recently created rule of constitutional interpretation that gives constitutional terms the meaning that those "versed" and "sophisticated in the law" would have given it at the time of the Constitution's ratification, and its application of the new rule to the facts of this case.

Justices Cavanagh and Kelly wrote separately because they believed the analysis offered by Justice Ryan in his dissent in *Poletown* offered the best rationale to explain why *Poletown* should be overruled. Further, they dissented from the majority's conclusion the decision should be applied retroactively and would have applied the decision prospectively only.

Full Text Opinion:
http://www.michbar.org/opinions/supreme/2004/073004/24048.pdf

Land Divisions & Condominiums

Parent parcel is as it existed on March 31, 1997 even if subsequently reconfigured

Court: Michigan Supreme Court (470 Mich. 95; 680 N.W.2d 381; 2004 Mich.)

Case Name: *Sotelo v. Township of Grant*

Since the division of the Sotelo's (plaintiffs') reconfigured parcel resulted in a number of divisions to the "parent" parcel exceeding the number of divisions allowed under Land Division Act §108, plaintiffs were required to comply with the Land Division Act's plating provisions and Grant Township (the defendant) was properly granted summary disposition in plaintiffs' suit to compel approval of the land divisions.

The Sotelos owned a 2.35-acre parcel adjacent to a 7.63-acre parcel owned by Filut. On July 15, 1999, Filut conveyed 3.25 acres of his parcel to the Sotelos, making their parcel 5.6 acres and the Filut parcel 4.38 acres. No division rights were transferred with the conveyance. By deeds dated the same day, the 4.38-acre Filut parcel was divided into four parcels. In deeds dated August 10, 1999, the 5.6-acre Sotelo parcel was also divided into four parcels. The reconfigured Sotelo parcel could not be divided into four parcels because it included a portion of the original Filut "parent" parcel, which had already reached its maximum potential divisions. No portion of the Filut "parent" parcel could be divided again until at least 10 years expired, without complying with the requirement to create a subdivision. The trial court properly considered the Filut and Sotelo "parent" parcels as they existed on March 31, 1997 (the effective date of the relevant statutory amendment). The Court of Appeals erred in reversing summary disposition for defendant. Reversed and the judgment of the trial court was reinstated.

Justices Cavanagh and Kelly would not have decided

the case by a per curiam opinion and would have instead granted leave to appeal.

Full Text Opinion:
http://www.michbar.org/opinions/home.html?/opinions/supreme/2004/060304/23302.pdf

Condominium development subject to local subdivision ordinance that requires compliance with a clear incorporation of zoning requirements

Court: Michigan Court of Appeals (Unpublished No. 245168)

Case Name: *Stanley Bldg. Co. v. City of St. Clair Shores*

The court upheld the judgment for defendant-city, rejecting plaintiffs' claims the trial court erred in affirming the city council's decision to deny approval of plaintiffs' condominium development project because the city lacked authority, there were no applicable ordinances, the existing ordinance was vague, and the site plan substantially conformed to any applicable standards. Giving due deference to the city council's expertise, the court declined to disturb the city's conclusion an increase in housing density constitutes a change in use triggering site plan review. The city planning consultant's report, stating site plan approval was required because the increased housing density on the two existing lots constituted a change in the nature or character of use, was competent, material, and substantial, and supported the city council's decision. Both Ahearn and Osius, on which plaintiffs relied, were distinguishable. The court could not read into the MCA's plain language a prohibition against the application of subdivision ordinances to condominium subdivisions. The court also concluded the zoning ordinance, as incorporated by the subdivision regulations, was not vague, and did not lack reasonable and objective standards. Affirmed.

Full Text Opinion:
http://www.michbar.org/opinions/appeals/2004/072704/23992.pdf

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Due Process, Equal Protection

Must grant permit when requirements of laws in effect on the application date (not subsequent laws) are met

Court: U.S. District Court Eastern District of Michigan (328 F. Supp. 2d 725; 2004 U.S. Dist.)

Case Name: *Lamar Adver. Co. v. Township of Elmira*

Since plaintiff satisfied all the requirements of the applicable laws in place when it applied for permission to erect the billboard at issue, defendant-township's refusal to permit plaintiff to go forward with construction of the billboard along a state highway on the basis of the township's subsequently enacted ordinance constituted an unlawful prior restraint of commercial speech. Plaintiff, as part of its outdoor advertising business, builds billboards on locations it leases or owns and then charges advertisers a fee for displaying commercial and noncommercial messages on its billboards. When plaintiff applied for permits to construct the billboard, only the Michigan Department of Transportation had jurisdiction to regulate the area where the billboard was to be located – the township had not yet enacted an ordinance under the Michigan Highway Advertising Act (MHAA). The court concluded it was plain from the undisputed facts plaintiff's application should have been granted under the rules in effect as of its application date and the township deprived plaintiff of its First Amendment rights by denying plaintiff a permit based on an improper interpretation of the zoning ordinance. The law in effect when plaintiff filed its applications did not disallow construction of a billboard at the location in question. Plaintiff was granted summary judgment.

Full Text Opinion:
http://www.michbar.org/opinions/district/2004/072604/24114.pdf

Without adopted rules/guidelines, can not enforce

Court: Michigan Supreme Court (471 Mich. 904; 688 N.W.2d 77; 2004 Mich.)

Case Name: *Castle Inv. Co. v. City of Detroit*

The court concluded[3] an examination of the ordinance in question led inescapably to the conclusion the certificate-of-approval provisions of ordinance 124-H, as amended, could not lawfully be enforced because the city council never approved the inspection guidelines. Therefore, there were no guidelines and without those guidelines, the defendant-city was unable to issue a certificate of approval. Consequently, the trial court erred in not enjoining enforcement of the certificate-of-approval provisions of the ordinance. While the trial court and the Court of Appeals

[3]In an order, the court granted reconsideration of its prior June 11, 2004 order in this case, reversed the judgment of the Court of Appeals (see e-Journal # 14345 in the 3/25/02 edition), and remanded the case to the Court of Appeals for further proceedings.

concluded defendant was entitled to summary disposition on the basis of laches, the court rejected this analysis, finding defendant did not meet the standard for summary disposition on this ground.

Full text opinion:
http://www.michbar.org/opinions/supreme/2004/102804/25058.pdf. (Overturned Appeals court opinion: http://www.michbar.org/opinions/appeals/2002/031902/14345.pdf).

Must exhaust administrative remedies before going to court

Court: Michigan Court of Appeals (Published After Release: 262 Mich. App. 379; 686 N.W.2d 16; 2004 Mich. App.)

Case Name: *Conlin v. Scio Twp.*

The trial court properly granted defendant's motion for summary disposition, holding plaintiffs' "as applied" challenge was **not ripe for judicial review because plaintiffs failed to exhaust their administrative remedies**. Plaintiffs commenced the action alleging the township's zoning ordinances, particularly the density restrictions, were unreasonable and arbitrary, contrary to the intent of the Land Division Act, and effectively resulted in condominiums being prohibited in the A-1 district in violation of the Condominium Act. Although plaintiffs apparently participated in an informal preapplication conference, as required of all major projects, it was undisputed a formal site plan was never submitted for preliminary or final approval. Plaintiffs also never applied for conditional land use approval of a Rural Open Space Development, or for a dimensional variance from the challenged density requirements, or for rezoning of their land to a classification that would allow developments at the density they desired. While the trial court erred in dismissing plaintiffs' facial challenge and the claim the ordinance was ultra vires on the basis of the finality requirement, since it was apparent these claims could not succeed, defendant was entitled to summary disposition. Affirmed.

Full Text Opinion:
http://www.michbar.org/opinions/home.html?/opinions/appeals/2004/061004/23403.pdf

Must exhaust administrative remedies before going to court II

Court: Michigan Court of Appeals (Unpublished No. 247228)

Case Name: *Wolters Realty, Ltd. v. Saugatuck Twp.*

The trial court erred in holding defendant-township's ordinance, as applied to plaintiff's parcel, was unreasonable and the trial court's order enjoining defendants from interfering with the development of a travel plaza plaintiff planned to build on property it owned within the township was reversed. Plaintiff failed to establish that a final decision was made regarding the rezoning of the particular parcel, and as such, the issue was not ripe for adjudication. Defendants argued the trial court did not have subject matter jurisdiction to hear plaintiff's "as applied" challenge to the township's zoning ordinance, and in addition to appealing the denial of the special use application, plaintiff was also required to seek a variance from the township zoning board of appeals (ZBA) to satisfy the requirements of finality. It was undisputed plaintiff never sought a variance from defendants. Further, plaintiff's appeal of the planning commission's decision to the ZBA related only to the planning commission's decision to deny the special use application regarding the gas station/convenience store proposed use. Reversed.

Full Text Opinion:
http://www.michbar.org/opinions/appeals/2004/080304/24063.pdf

Due process and equal protection claims can go to court before all administrative remedies are exhausted

Court: U.S. District Court Eastern District of Michigan (356 F. Supp. 2d 770; 2005 U.S. Dist.)

Case Name: *Neuenfeldt v. Williams Twp.*

The court denied the defendant-township's motion to dismiss and ordered plaintiff to amend his complaint, concluding plaintiff's claims were not for regulatory taking and unripe, but arose under the Due Process and Equal Protection Clauses and were ripe for adjudication. Plaintiff alleged the defendant's officials treated him unfairly when they rejected his proposed plat plan for a subdivision development and instead required the inclusion of two "stub streets" as a condition of approval. He contended defendant's requirements for his proposed development were more exacting than those for other, similarly situated developers, including the township engineer and a planning

commission member's brother. Not all claims against local governments relating to land use are treated as takings claims. Some claims become ripe upon the occurrence of the offending event without the requirement the injured landowner seek redress in state administrative or judicial proceedings. The essence of plaintiff's claim was he was subjected to unequal treatment when defendant advanced the commercial interests of other, private individuals at his expense. He sought a variance, received "half-a-loaf," and sued for damages because he believed he was the victim of unequal treatment and arbitrary application of the stub street ordinance.

Full Text Opinion:
http://www.michbar.org/opinions/district/2005/020905/26178.pdf

Any person affected by a zoning ordinance may appeal to court, not just a person affected by a zoning board of appeal decision

Court: Michigan Court of Appeals (265 Mich. App. 88; 693 N.W.2d 170; 2005 Mich. App.)
Case Name: *Polkton Charter Twp. v. Pellegrom*

Holding the judicial appeal provision of the Township Zoning Act (TZA) allows for circuit court appeal from a zoning board of appeals (ZBA) denial of a special land use permit, the court upheld the circuit court order reversing the decision by the plaintiff-township's ZBA and requiring the ZBA to issue defendant a special land use permit to create an outdoor pond. The township argued the ZBA's decision was not reviewable under M.C.L. 125.293a because it was not derived from an appeal or a variance request as described in "section 23," M.C.L. 125.293. The township contended since M.C.L. 125.293a specifically referenced M.C.L. 125.293 and M.C.L. 125.293 only governs appeals to a ZBA and decisions on variances, M.C.L. 125.293a only confers a right of appeal to the circuit court from decisions by a ZBA on appeal or on certain variance applications. The court disagreed, concluding plaintiff's argument was contrary to the statute's plain language. The use of the word "however" in the second sentence of M.C.L. 125.293a supported that "in spite of" the limiting language of the first sentence, a person affected by a zoning ordinance may appeal a ZBA decision to the circuit court, not just a person affected by a decision made by a ZBA pursuant to section 23. The circuit court had jurisdiction under MCL 125.293a to review defendant's appeal from the adverse ZBA decision because he had an interest affected by the zoning ordinance. Affirmed.

Full Text Opinion:
http://www.michbar.org/opinions/appeals/2005/020305/26042.pdf

Doctrine of claim preclusion

Court: U.S. District Court Eastern District of Michigan (Case Number 03-CV-10047-BC; 2004 U.S. Dist.)
Case Name: *Hendrix v. Roscommon Twp.*

The court found plaintiffs' action was barred by the doctrine of claim preclusion, and granted defendants' motion for summary judgment. Plaintiffs filed suit in federal court pursuant to § 1983 alleging defendants' actions in seeking to enforce a local ordinance to ban the operation of their automobile salvage yard violated their rights under the Equal Protection and Due Process Clauses. Defendants previously sued plaintiffs in state court contending they were operating a business in violation of an ordinance regulating the operation of junk and automobile salvage yards. Plaintiffs filed a counterclaim in state court and obtained permission to add the theories they raised here, but they failed to file an amended pleading after the state court granted them leave. The state court action proceeded to judgment, which defendants now contend operates as a bar in this case. Plaintiffs' claims in this court were nearly identical to those they sought to bring in their state court second-amended answer, counterclaims, and cross-claims. Defendants asserted MCR 2.203 applied because plaintiffs' motion to amend their counterclaim to state their federal constitutional claims were not denied – they failed to comply with state procedure by timely amending their pleadings The court held claim preclusion and the operation of the state court judgment applied here barring plaintiffs' claims.

Full Text Opinion:
http://www.michbar.org/opinions/home.html?/opinions/district/2004/051804/23292.pdf

Cannot have zoning referendum on zoning change resulting from a consent judgement

Court: Michigan Court of Appeals (Unpublished No. 246641, No. 248203, No. 248801)
Case Name: *Petoskey Inv. Group, LLC v. Bear Creek Twp.*

The trial court erred by denying the motion to enforce the consent judgment and allowing a referendum to proceed

regarding the zoning of the parcel addressed in the consent judgment. These consolidated cases arose from a dispute between the terms of a consent judgment altering the zoning of a parcel of property to allow for mixed-use development, and citizen action to preclude any change in zoning. The *Green Oak Twp v Munzel* (255 Mich. App. 235; 661 N.W.2d 243 (2003)) court concluded MCL 125.282 provides for a right of referendum as applied to a zoning ordinance, and a consent judgment does not comport with the requirements of a zoning ordinance or amendment as contemplated by the statute. A new zoning ordinance was not at issue. The court noted the consent judgment provided (1) the agreement was approved in accordance with applicable law, (2) the PUD development was deemed approved, (3) the terms and limitations on the type of development authorized, and (4) where there was any conflict in zoning, it would be resolved in favor of the consent judgment. Consequently, the attempt to distinguish the case from *Green Oak* was without merit. Additionally, the court agreed with the *Green Oak* panel the terms of the consent judgment could readily be construed as a variance. Reversed.

Full text of opinion:
http://www.michbar.org/opinions/appeals/2004/120204/25395.pdf

AND

Court: Michigan Court of Appeals (Unpublished No. 248311)

Case Name: *LJS P'ship v. Fenton Charter Twp.*

The trial court erred by granting intervening defendant-FTRA's motion to set aside the consent judgment between defendant-Fenton Township and plaintiff. Plaintiff requested the township rezone property owned by plaintiff from AG (agricultural) to RMH (residential manufactured housing). After plaintiff's rezoning request and request for a use variance were denied, plaintiff challenged the constitutionality of the AG zoning classification as applied to its property. The parties ultimately reached an agreement on the terms of a consent judgment, which was subsequently entered. The township later approved petitions for referendum seeking a vote as to whether the township should proceed with the consent judgment or continue with the litigation. Plaintiff filed a motion to enforce the consent judgment and to enjoin the referendum, asserting *Green Oak Twp v Munzel* (255 Mich. App. 235; 661 N.W.2d 243 (2003)) held a consent judgment in a zoning dispute is not subject to a referendum under M.C.L. 125.282. The facts in *Green Oak* were similar to those in this case. The holding in *Green Oak* was not premised on the presence or absence of any particular language in the consent judgment, but rather on the fact a consent judgment does not meet the particularized definition of, and requirements for, a zoning ordinance as provided by the Legislature in the Township Rural Zoning Act (TRZA). The trial court erred in finding the consent judgment constituted a rezoning of the parcel under the TRZA and thereby invoked the right of referendum, and by setting aside the consent judgment. Reversed.

Full Text Opinion:
http://www.michbar.org/opinions/appeals/2004/122804/25655.pdf

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Conflict of Interest, Incompatable Office, Ethics

Membership, at the same time, on a township and county planning commission is okay

Attorney General Opinion #7161 (canceling out A.G. #6837 (February 23, 1995))

A September 25, 2004 Michigan Attorney General opinion has now canceled out former opinions and now says that a member of a county planning commission and a township planning commission can be a member of both at the same time, without violating the Incomparable Offices Act.

The change is a result of the coordinated planning amendments to the three planning enabling acts which (1) changed the county planning review of township plans from "approval required" to "advisory" and coordination and

Parts of the A.G. opinion reads:

> "Because the county planning commission now has only an advisory role in reviewing township plans, there is no longer a supervisory/subordinate relationship present."

For a copy of the opinion:
http://www.ag.state.mi.us/opinion/datafiles/2000s/op10237.htm.

Signs: Billboards, Freedom of Speech

Two sign limit on political signs not likely a valid regulation of time, place, or manner; rather it is a content-based regulation

Court: U.S. District Court Eastern District of Michigan (341 F. Supp. 2d 727; 2004 U.S. Dist.)

Case Name: *Fehribach v. City of Troy*

Concluding the defendant-city's political yard sign ordinance limiting the number of such signs to two was not a valid time, place, or manner restriction, the court granted plaintiff a preliminary injunction enjoining defendant, its officers, agents, etc. from enforcing the ordinance until further notice. The court determined plaintiff had a strong likelihood of success on the merits because the two-sign ordinance did not meet the requirements of a valid time, place, or manner restriction. Plaintiff was likely to succeed in establishing the ordinance was content-based since it applied only to political signs. Whether plaintiff could display a third sign depended on whether the content of the third sign was political. While the ordinance was viewpoint-neutral, it was not content-neutral. It was also likely the court would find the ordinance did not leave open alternative means for communicating the desired message. Further, it was unlikely the ordinance would pass strict scrutiny and held to be a valid content-based speech restriction. The court also held plaintiff would suffer irreparable injury without the preliminary injunction, the preliminary injunction would not cause substantial harm to others, and the public interest would be served by issuing the preliminary injunction.

Full text opinion:
http://www.michbar.org/opinions/district/2004/101804/24928.pdf

Sign size regulations are valid; and may not need justify the size regulation

Court: U.S. Court of Appeals Sixth Circuit (398 F.3d 814; 2005 U.S. App.)

Case Name: *Prime Media, Inc. v. City of Brentwood*

Concluding the defendant-city's ordinance restricting the height and size of billboards was a content-neutral restriction on the time, place, and manner of speech and the city had satisfied the intermediate scrutiny applicable to such regulations, the court reversed the district court's ruling invalidating the ordinance. The court found the city's height and size restrictions satisfied the tailoring requirements for a content-neutral regulation of time, place, and manner of speech and the fit between the city's means and ends was a reasonable one. The question was not whether a municipality can "explain" why a 120-square-foot limitation detracts more from the city's aesthetics than signs with smaller sign faces – it is whether the regulation is substantially broader than necessary to protect the city's interest in eliminating visual clutter and advancing traffic safety. The city satisfied this test. To ask a city to justify a size restriction of 120-square feet over, for example, 200-square feet or 300-square feet would impose great costs on local governments and do little to improve the court's ability to review the law. Reversed and remanded.

Full Text Opinion:
http://www.michbar.org/opinions/us_appeals/2005/022405/26363.pdf

Sign size limitations are valid, even if different for multi-tenant buildings

Court: Michigan Court of Appeals (263 Mich. App. 194; 687 N.W.2d 861; 2004 Mich. App.)

Case Name: *Norman Corp. v. City of E. Tawas*

The trial court erred by reversing the East Tawas Zoning Board of Appeals' (ZBA) decision denying plaintiffs a sign variance, holding defendant's sign ordinance unconstitutional and authorizing plaintiffs to erect the sign for which the variance was requested. The court held the defendant-city's ordinance was constitutional and its sign-size limitation was valid. Defendant's planning commission denied plaintiffs' sign-permit request because it found the proposed signs would exceed the number and size permitted under the city's sign ordinance. The ZBA denied the variance, holding plaintiffs' problem was self-created. The court further held Art Van to be an incorrect statement of law and reversed its holding in lieu of Muskegon Area Rental Ass'n. Like Art Van, this case presented a legislative maximum sign limitation that effectively distinguished between single- and multi-tenant buildings and the businesses they house. The fact plaintiffs were treated differently then other businesses was not a predicate for finding the ordinance unconstitutional. This was a legitimate government interest. Limiting the size of signs to dissipate visual clutter was reasonably related to protecting the general welfare because visual clutter

detracts from the community's aesthetic value and may create dangerous distractions to passers-by. Reversed in part and affirmed in part.

Full Text Opinion:
http://www.michbar.org/opinions/appeals/2004/080304/24055.pdf

Context-based sign regulation not upheld

Court: Michigan Court of Appeals (262 Mich. App. 716; 686 N.W.2d 815; 2004 Mich. App.)

Case Name: *Outdoor Sys., Inc. v. City of Clawson*

Because it advanced no government interest, City of Clawson's ordinance's prohibition of readily changeable signs violated plaintiff's First Amendment right to free speech. Plaintiff argued defendant's prohibition of billboards, meaning readily changeable signs unrelated to the principal use of the premises where they are located, was an unconstitutional violation of plaintiff's freedom of speech. Plaintiff, who engages in outdoor advertising, sought a preliminary injunction, alleging defendant's total prohibition of the billboards violated free speech. The court held to the extent the ordinance otherwise allows large outdoor signs, within certain size and height limitations, billboard advertisers like plaintiff must be allowed to procure, build, and lease locations even though their signage is readily changeable. Summary disposition for defendant was reversed and the case was remanded.

Full Text Opinion:
http://www.michbar.org/opinions/home.html?/opinions/appeals/2004/070604/23803.pdf

Adult book store regulation: cannot severely limit sites to locate, broadly define

Court: U.S. Court of Appeals Sixth Circuit (391 F.3d 783; 2004 U.S. App.)

Case Name: *Executive Arts Studio, Inc. v. City of Grand Rapids*

Concluding the Younger abstention doctrine, the Rooker-Feldman doctrine, and claim preclusion did not prevent the district court from taking jurisdiction over the case, the court held the district court properly granted summary judgment to plaintiff, an adult bookshop, because defendant-city's ordinances 77-31 and 01-07 failed to narrowly tailor the definition of adult bookstore, leading to the unconstitutional restriction of plaintiff to disseminate its First Amendment protected material. Plaintiff applied for a variance from the city's zoning ordinance regulating adult businesses. City Ordinance 77-31 added section 5.284(2) defining what constituted an adult bookstore. These stores, and other regulated businesses such as pool halls and pawn shops, were prohibited from establishing themselves within 1,000 feet of any two other regulated uses or within 500 feet of any area zoned for residential use. Subsequently, the city adopted Ordinance 01-07, which amended the definition of adult bookstore to include the sale, rental, trade, exchange or display of books, magazines, video tapes, video discs, and other more recent additions to the adult entertainment industry's stock in trade. The city's ZBA denied plaintiff's variance request. The court held Ordinance 77-31 was not narrowly tailored when its language swept up mainstream bookstores such as Walden's and Borders, and it was evident the ordinance controlled the dissemination of objectionable reading material, rather than the effects on a neighborhood from businesses disseminating and specializing in such material. Further, the court held the ordinance was fatally flawed and did not pass constitutional scrutiny when applied where it severely limited the number of sites where plaintiff could carry on its First Amendment protected activities in the city. Affirmed.

Full Text Opinion:
http://www.michbar.org/opinions/us_appeals/2004/121004/25458.pdf

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Immunity

Building inspector

Court: Michigan Supreme Court (SC: 126901, March 7, 2005; _ Mich. _; _ N.W.2d _; 2005 Mich)

Case Name: *Van Nguyen v. Professional Code Inspections of Mich., Inc.*

In an order in lieu of granting leave to appeal, the court reversed the portion of the Court of Appeals opinion remanding the matter for trial as to defendant-Johnson. The court held no reasonable juror could conclude Johnson's conduct amounted to reckless conduct showing a substantial lack of concern whether damage or injury would result and thus, plaintiff failed to demonstrate Johnson's conduct constituted gross negligence under M.C.L. 691.1407(2)(c). The court concluded Johnson's actions in issuing a stop work order were based on his duty as an

assistant city manager to enforce a presumptively valid city ordinance and an approved variance to the ordinance. The fact it was subsequently determined the language of the approved minutes of the Zoning Board of Appeals meeting at which the variance was approved was erroneous did not strip Johnson of immunity. Further, his conduct did not meet the test of being the proximate cause for plaintiff's alleged damages. In all other respects, leave to appeal was denied.

The entire opinion:

> "On order of the Court, the application for leave to appeal the July 15, 2004 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REVERSE that portion of the Court of Appeals opinion remanding this matter for trial as to defendant Dan Johnson. No reasonable juror could conclude that defendant's conduct amounted to reckless conduct showing a substantial lack of concern whether damage or injury would result. *Stanton v City of Battle Creek*, 466 Mich 611, 620-621 (2002); *Jackson v Saginaw Co*, 458 Mich 141, 146 (1998). Thus, plaintiff has failed to demonstrate that defendant's conduct constitutes gross negligence under MCL 691.1407(2)(c). Defendant's actions in issuing a stop work order were based on his duty as an assistant city manager to enforce a presumptively valid city ordinance and an approved variance to that ordinance. That it was later determined that the language of the approved minutes of the Zoning Board of Appeals meeting at which the variance was approved was erroneous does not strip defendant of immunity. Moreover defendant's conduct does not meet the test of being the proximate cause for plaintiff's alleged damages. See *Robinson v Detroit*, 462 Mich 439 (2000). In all other respects, leave to appeal is DENIED."

Full Text Opinion:
http://www.michbar.org/opinions/supreme/2005/040705/26931.pdf

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Intergovernmental Cooperation

Can financially help neighboring government in a lawsuit
Court: Michigan Court of Appeals (No. 248974, March 31, 2005; _ Mich. App. _; _ N.W.2d _; 2005 Mich. App.)
Case Name: *Hess v. Cannon Twp.*

The trial court did not err in granting the defendants-townships' motion for summary disposition because the money Cannon Township gave to Grattan Township was lawful based on MCL 41.2(1)(b) as a contract necessary and convenient for the exercise of Cannon Township's corporate powers. The case concerned whether Cannon Township may disperse or contribute funds to help defray or otherwise share the legal costs incurred by Grattan Township, a neighboring township, in a land use controversy over a manufactured housing community both townships opposed. The plaintiffs-taxpayers residing in Cannon Township claimed the expenditure of township funds was unlawful. Cannon Township's board adopted formal resolutions regarding the adverse impacts the mobile home park would have on both townships and the townships executed an agreement providing for Cannon Township to contribute $90,000 to Grattan Township to assist with legal fees incurred in defending the mobile home park developer's lawsuits. The court concluded the liberally construed, implied powers provided to the townships by the Michigan Constitution and the statutory authority of townships "to make contracts necessary and convenient for the exercise of their corporate powers" validated the agreement between the townships. Cannon Township's determination to help defray legal expenses incurred by Grattan Township caused by the land use issue on their township border opposed by both units of government was a proper disbursement of township funds by Cannon Township. Further, the registered electors of Cannon Township did not have the right to vote on the disbursement. Affirmed.

To quote from the court's decision:

> "In essence, plaintiffs argue that the powers of a township are sparse, able to fit in a snacksize Ziploc bag. Plaintiffs are incorrect. "Townships generally have the power to buy, hold, and sell property; to levy and collect taxes; to borrow money; to make contracts; to exercise police power; to condemn private property for public

purposes; to receive gifts of real and personal property for public purposes; to use funds from government grants to promote local business; and to sue and be sued." Michigan Civil Jurisprudence, Townships, § 84, pp 355-356. Townships are granted the power to adopt ordinances and regulations under MCL 41.181 regarding the public health, safety, and general welfare of its persons and property. Further, MCL 41.806 gives townships broad powers to establish and maintain police and fire departments, including the power to contract with the legislative bodies of neighboring municipalities to give or receive police and fire services."

Full Text Opinion:
http://www.michbar.org/opinions/appeals/2005/033105/26854.pdf

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Other Unpublished Cases

(generally unpublished means there was not any new case law established, but presented here as reminders of some legal principles)

If ordinance is not enforced in the past

Court: Michigan Court of Appeals (Unpublished: No. 244858, No. 244960; 2004 Mich. App.)

Case Name: *Sanilac County Parks Comm'n v. Lexington Twp.*

The trial court erred by barring defendant from enforcing a zoning ordinance on the grounds of laches and equitable estoppel. Plaintiff did not establish the requisite elements for equitable estoppel or show extraordinary circumstances justified preventing defendant from enforcing its zoning ordinances. Plaintiff claimed that because defendant failed to enforce its ordinance in the past, specifically, when plaintiff unlawfully established camping at the park since at least 1993, plaintiff was justified in assuming camping was permissible. However, when a plaintiff engages in acts that are unauthorized and in express contravention of ordinance provisions, the plaintiff acquires no vested right to use property for a purpose forbidden by law. The evidence showed defendant's ordinances have always prohibited the operation of a campground in Lexington Park. As to plaintiff's laches argument, defendant's delay in enforcing its ordinance inured to the benefit of plaintiff. Reversed and remanded.

Full Text Opinion:
http://www.michbar.org/opinions/home.html?/opinions/appeals/2004/062904/23737.pdf

Importance of fact-finding

Court: Michigan Court of Appeals (Unpublished No. 248702)

Case Name: *Salamey v. Dexter Twp. Zoning Bd. of Appeals*

Based on the plain language of M.C.L. 324.21109 and the ordinance, the court rejected plaintiff's argument the ordinance was preempted because it was in direct conflict with Natural Resources and Environmental Protection Act (NREPA), and the court further held NREPA did not preempt the ordinance by virtue of completely occupying the field the ordinance attempted to regulate. Plaintiff appealed from the trial court's order affirming the zoning board of appeals' (ZBA) decision denying plaintiff's request for a conditional use permit to operate a gas station in an area zoned a "General Commercial District." Plaintiff contended NREPA preempted local regulation of the installation and use of underground storage tanks (UST) systems, and the ZBA's decision was not supported by competent, material, and substantial evidence. The court concluded M.C.L. 324.21109 neither expressly permits nor prohibits operation of a gas station in a general commercial district and the ordinance did not strictly regulate USTs – rather, it promulgated rules for the operation of automobile service stations. NREPA also did not preempt municipal regulation under the facts presented when the record showed various factors other than the installation of the UST system were legitimate reasons for denial of the permit. In addition, the court held the record demonstrated there was competent, material, and substantial evidence supporting the denial of the permit. Affirmed.

Quoting; on issue of sufficient finding of facts to support a decision:

"However, the decision of a zoning board of appeals should be affirmed unless it is contrary to law, based on improper procedure, not supported by competent, material and substantial evidence on the record, or an abuse of discretion. *Reenders v Parker*, 217 Mich App 373, 378; 551 NW2d 474 (1996).

"Our careful review of the record reveals

that there was competent, material and substantial evidence presented that supports defendant's decision to deny the permit. Plaintiff's environmental consultant, Strata Environmental Services, as well as an environmental consulting firm that the planning commission hired, J & L Consulting, issued reports explaining the fragile environment, its permeable soil, its character as a groundwater recharge area close to the Huron River and wetlands, all resulted in a risk that fuel spills and leaks could contaminate the groundwater It is also undisputed that several local residents obtain their drinking water from the groundwater through private wells Gary Dannemiller, a certified storage tank professional, a certified stormwater manager, and a geologist, explained to the planning commission that, if there is a release at the proposed site, the impacted groundwater migrates directly to the Hudson River or it could enter a number of wells in the area. There was also evidence presented regarding the possibility of MTBE, a highly soluble fuel additive known for causing groundwater contamination, entering the fuel supply system and contaminating the soil and groundwater.

"There was also a great deal of evidence presented regarding the inefficacy of the proposed Bentomat liner that is contrary to plaintiff's assertion on appeal that it is undisputed that a fuel spill or leak would remain contained for a period of two years. Further, there is evidence in the record regarding concerns about the effectiveness of monitors used to detect contamination. In sum, there were a number of questions regarding costs, containment of potential spills and leaks, and the effectiveness of the Bentomat liner under a gas station that all contributed to the decision to deny the permit.

"Further, a traffic impact study that plaintiff obtained showed that the project would increase noise and road congestion. It also showed that the automobile service center would create nuisance vehicle headlight glare on abutting residential properties during both morning and evening hours.

"Under section 6.05(O)(1) of the township zoning ordinance requires the applicant to demonstrate that:

'[R]easonable precautions will be made to prevent hazardous materials from entering the environment including:

'1. Sites at which hazardous substances are stored, used or generated shall be designed to prevent spills and discharges to the air, the surface of the ground, ground water, lakes, streams, rivers or wetlands.' [Dexter Township Zoning Ordinance, section 6.05(O)(1).]

"According to defendant, plaintiff did not submit "clear evidence that waste . . . will be confined, purified, and treated . . . to prevent pollution of air, water and soil resources." Thus, plaintiff did not provide the necessary reassurance to convince the ZBA that spills would be contained, as required under the ordinance. Because defendant's decision to deny the conditional use permit was based on competent, material and substantial evidence on the record, we must affirm the ZBA's decision."

Full Text Opinion:

http://www.michbar.org/opinions/appeals/2004/120204/25398.pdf

<u>Deadline to file appeal is 21 days from when minutes that report the decision are approved</u>

Court: Michigan Court of Appeals (Unpublished No 247284)

Case Name: *Eckler v. Howard Twp. Bd. of Trustees*

The trial court erred in finding plaintiffs did not file their appeal of right within the 21-day filing period set forth in MCR 7.101(B)(1). The trial court held plaintiffs did not file their appeal within 21 days of the zoning administrator's reduction to writing of defendant township board's approval of the conditional use permit and therefore, it lacked jurisdiction. The trial court distinguished this case from Davenport on the basis there was no other writing that could constitute an order in that case, and here the zoning administrator's notification letter to defendant-Moose Lake LLC served as the entry of an order. However, the trial court's interpretation was not supported by law. Notice of a successful outcome to an applicant and the entry of the township board's decision into the public record are two different events, and it is the latter that triggers the appeal period. The court held the date of the township board's certified meeting minutes constituted the date of entry of the order and plaintiffs' claim of appeal was timely. Reversed

and remanded.

Full Text Opinion:
http://www.michbar.org/opinions/home.html?/opinions/appeals/2004/071504/23878.pdf

Do what the court tells you to do

Court: Michigan Court of Appeals (Unpublished No. 246393)

Case Name: *Elmwood Citizens For Sensible Growth v. Charter Twp. of Elmwood*

The trial court properly granted plaintiffs $16,701.77 in sanctions to be paid by defendant-Charter Township of Elmwood in connection with lawsuits filed against the township, its Board of Trustees, and its Zoning Board of Trustees over application of the township's zoning ordinance. Defendants argued because the trial court declined to hold defendants in contempt, plaintiffs were not the prevailing party "on the entire record" as required by MCL 600.2591. Furthermore, defendants contended because they never filed an answer or argued plaintiffs' first claim, the trial court could not have found their defense frivolous as also required by MCL 600.2591. While the trial court awarded the sanctions pursuant to MCL 600.2591, it also invoked the doctrine of inherent power as an alternative basis for the award. The court held it did not need to address whether plaintiffs were the "prevailing party on the entire record" or the merits of defendants' legal position, since it was clear from the record defendant willfully disregarded the court's order to apply the zoning ordinance as written or undertake the statutory amendment process. The court found no abuse of discretion in the trial court's exercise of its inherent power here. Affirmed.

Full Text Opinion:
http://www.michbar.org/opinions/appeals/2004/091604/24507.pdf

Home Occupations, what is an "employee"

Court: Michigan Court of Appeals (Unpublished No. 249688)

Case Name: *Windsor Charter Twp. v. Remsing*

The court affirmed in part and reversed in part the trial court's grant of summary disposition in favor of plaintiff. The trial court found defendant violated plaintiff's zoning ordinance by allowing nonoccupant sales agents to work from his home-based real estate company. Defendant argued the real estate agents were not employees, they were independent contractors, and the wording of the ordinance showed the township recognized this distinction. The ordinance permitted employees as long as they also occupy the dwelling. For purposes of enforcing the township's ordinance, the court concluded the only reasonable way to interpret and apply the term "employee" was to deem any person who was a non-occupant working out of a home in the area as a "employee" within the meaning of the ordinance regardless of his "legally" defined position of employee or independent contractor. That defendant employed a non-occupant of his dwelling who worked in his dwelling was all the township needed to prove, and the worker fell into that category.

Full Text Opinion:
http://www.michbar.org/opinions/appeals/2004/102804/25041.pdf

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