

**OTSEGO COUNTY  
PLANNING COMMISSION**

**December 19, 2016**

**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 November 21, 2016 meeting
5. CONSENT AGENDA
6. OTHER: Wolverine Power Cooperative report on the Alpine Power Plant
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 HEARING
9. ADVERTISED CASE
10. UNFINISHED COMMISSION BUSINESS:
  1. 2017 Objective List
11. NEW BUSINESS:
  1. 2017 Meeting Dates
  2. Tall Structure Permit/7730 Allen Rd –Verizon Tower
12. REPORTS AND COMMISSION MEMBER’S COMMENTS:
  1. Otsego County Parks & Recreation report/Judy Jarecki
  2. Signage - Michigan Billboard Cases/Zoning Information
13. ADJOURNMENT

# Otsego County Planning Commission

Proposed Minutes for November 21, 2016

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

Pledge of Allegiance

**Roll Call:**

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

Absent: Chairperson Hartmann

Staff Present: Ms. Boyak-Wohlfeil

Public Present: Mike & Diane Skowronski, Snowbelt owners, Ken Bradstreet, Wolverine Power representative, Joe Hughes, Wolverine Power representative, Steve Johnson, Tim Maylone, Cherry Capital Connection representative, Gloria Torello, John Arevalo, Randy Stults

**Approval of minutes from:** October 17, 2016

Motion made to approve minutes as presented by Mr. Hilgendorf; Seconded by Mr. Klee.

Motion approved unanimously.

**Consent Agenda:** None

**Other:**

Ken Bradstreet, Wolverine Power representative, distributed pictures and discussed the updates being made to the Alpine Power Plant. He stated even though they were within the sound levels required for the special use permit, Wolverine Power continued to make improvements. They were in the process of constructing a large building enclosing the gas intake to reduce the noise produced upon starting and stopping. He invited any questions; there was no public comment.

**Public participation for items not on the agenda:** None

**Public Hearing:**

*Snowbelt Motors/Mike Skowronski, owner has requested a Special Use Permit/Site Plan Review for property located in Livingston Township:*

*68 Meecher Rd*

*Gaylord, MI 49735*

*081-210-000-079-02*

*Property located in a B2/General Business Zoning District*

*PZSU16-003-proposed use of the property is to operate a detailing/small engine repair garage w/outside sales display*

Vice-Chairperson Jarecki stated the case before them and opened the public hearing.

*Public Hearing open: 6:10pm*

Mike Skowronski, Snowbelt Motors owner, stated his business consisted of detailing vehicles and repairing if necessary for retail sale. Vehicles would be on display along the Winifred Rd.

Ms. Corfis questioned what type of vehicles would be worked on and what type of repairs would be done.

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Mr. Skowronski stated they detailed used automobiles, snowmobiles, motorcycles, ATVs and repairs would only be done to the vehicles being detailed for resale; they were not a repair shop.

Mr. Arndt questioned if anything other than vehicles would be stored outside.

Mr. Skowronski stated only the vehicles for resale would be stored.

Mr. Brown questioned if other items would be sold.

Mr. Skowronski stated they would retail other items such as outdoor toys, tools, helmets, clothing things of that nature inside the shop.

Ms. Corfis questioned the outdoor storage.

Mr. Skowronski depicted on the site plan where the vehicles would be stored pointing out the display area along Winifred Rd and in the back along the fence.

Vice-Chairperson Jarecki requested other public comments; hearing none, the public hearing was closed.

*Public Hearing closed:* 6:14pm

## **Advertised Case:**

*Snowbelt Motors/Mike Skowronski, owner has requested a Special Use Permit/Site Plan Review for property located in Livingston Township:*

*68 Meecher Rd*

*Gaylord, MI 49735*

*081-210-000-079-02*

*Property located in a B2/General Business Zoning District*

*PZSU16-003-proposed use of the property is to operate a detailing/small engine repair garage w/outside sales display*

Ms. Corfis read Section 11.2 and questioned the location of stored vehicles, the screening of that area and the twenty foot (20') front setback of the display areas.

Mr. Arndt questioned which was considered the front of the building in determining the front setback as the building faced two (2) streets.

Ms. Boyak-Wohlfeil stated both were considered fronts and had to abide by the front setback requirement; he could decide which would be considered the rear yard.

Mr. Skowronski stated there would not be outside storage, only display areas. The only outside storage would be for Meekhof Tire, the business located in the east side of the building. They had a fenced area for their storage.

Ms. Corfis questioned the depiction of an existing outdoor storage area on the site plan.

Mr. Skowronski stated they did not have any outdoor storage; the area along Winifred Rd. was for display area only.

Ms. Boyak-Wohlfeil stated display areas did not need to be screened.

Ms. Corfis stated her concern was the twenty foot (20') setback with the clarification of the front setbacks.

Vice-Chairperson Jarecki stated there was enough room for a twenty foot (20') setback from Winifred Rd. so the Ordinance requirement could be met.

Ms. Boyak-Wohlfeil concurred there was enough room for display with the twenty foot (20') setback.

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It was requested of the applicant to revise the site plan to eliminate the outdoor storage area depicted and to reflect the twenty foot (20') front setback for the display area along Winifred Rd.

Vice-Chairperson Jarecki requested a motion for the General Finding of Fact for case PZSU16-003 parcel number 081-210-000-079-02.

Motion made by Mr. Arndt to accept the twelve (12) General Finding of Fact; Seconded by Mr. Brown.

Motion approved unanimously. (SEE ATTACHMENT #2)

Vice-Chairperson Jarecki requested a motion for the Exhibit List for case PZSU16-003 parcel number 081-210-000-079-02.

Motion made by Mr. Hilgendorf to accept the Exhibit List with the fourteen (14) exhibits to include the addition of the Change of Address Letter; Seconded by Mr. Arndt.

Motion approved unanimously. (SEE ATTACHMENT #1)

Vice-Chairperson Jarecki requested a motion for the Specific Finding of Fact for case PZSU16-003 parcel number 081-210-000-079-02.

Motion made by Mr. Caverson to accept the Specific Finding of Fact with revisions made to the site plan eliminating the outdoor storage area and depicting the twenty foot (20') setback area from the road right of way for sales display; Seconded by Mr. Brown.

Motion approved unanimously. (SEE ATTACHMENT #3)

Vice-Chairperson Jarecki read Section 19.1-19.8 Permitted Uses Subject to Special Conditions; all findings met.

Vice-Chairperson Jarecki requested a motion for case PZSU16-003 parcel number 081-210-000-079-02.

Motion made by Mr. Hilgendorf to approve Special Use Permit PZSU16-03; Seconded by Mr. Klee.

Motion approved unanimously.

Mr. Skowronski thanked the Planning Commission. He was told to have the site plan revised as requested and submit to the Land Use office.

## Unfinished Commission Business:

*Cherry Capital Connection LLC, representing Fleming Shaff Acres, owner has requested a Special Use Permit/Site Plan Review for property located in Elmira Township:*

*4264 Martindale Rd*

*Elmira, MI 49730*

*060-002-400-010-00*

*Property located in an AR/Agricultural Resource Zoning District*

*PZSU16-002-proposed use of the property is to locate a one hundred twenty-eight foot (128') internet communications tower*

Vice-Chairperson Jarecki stated case PZSU16-002 had been postponed from October's meeting and requested comments on the revised site plan submitted.

Tim Maylone, Cherry Capital representative, stated a revised site plan had been resubmitted showing the eighty (80) acre parcel with a scale of one to two hundred ratio (1"=200') and another of the tower site itself scaled at a one to fifty ratio (1"=50') detailing the relationship with structures. He stated there was

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concern over setting precedence but the whole process was setting precedence as it is the first personal wireless tower in the County. He stated they had also submitted a revised narrative and an aerial view of the site; he hoped it was acceptable. He asked for questions.

It was suggested that the revised documents have exhibit numbers listed on them for reference purposes.

Ms. Corfis stated she appreciated the additional information but felt the site plan submitted was not an acceptable level of drawing; she found the script very difficult to read and did not feel it met the definition of a site plan in the Ordinance.

Mr. Arndt stated the question was could this submittal be used; he suggested a more drafted drawing although he was able to read it and determine the location of the structures and such.

Ms. Corfis stated the Ordinance required an architectural or engineered drawing and felt with all the time and effort spent revising the Zoning Ordinance the Planning Commission should not have to decipher what was being submitted or request a second drawing. The need for further revisions of the section could be reviewed but a certain level should be expected from the applicant.

Mr. Hilgendorf stated a professional looking site plan should have been submitted as this is the first of many and will be referenced; at this point, there is no reference.

Mr. Maylone stated they had just purchased drafting software; Otsego County was the first county to require a more detailed drawing. He apologized for the misunderstanding; he did not realize a more mechanical type of drawing was being requested.

Mr. Hilgendorf stated he thought the point Ms. Corfis was making was that the first drawing should have been a good one. He stated moving forward a better drawing was needed or approval was questionable.

Ms. Corfis stated the Planning Commission should have something that is very readable and easy to understand.

Mr. Maylone assured them it would be with the new software.

Mr. Caverson stated he felt it was necessary to note who prepared the drawing and who was taking responsibility for it, especially since it was not stamped; accountability was needed for the accuracy of it.

Mr. Maylone stated he was the owner and would take responsibility for it; he would sign an affidavit to the effect.

Mr. Arndt agreed with Mr. Hilgendorf that the Planning Commission would expect a more professional drawing for any future tower requests.

Vice-Chairperson Jarecki requested a motion for the Exhibit List for case PZSU16-002 parcel number 060-002-400-010-00.

Motion made by Mr. Hilgendorf to accept the Exhibit List for PZSU16-002 with eighteen (18) exhibits to include revised exhibits #5, #6 and #7; Seconded by Mr. Klee.

Motion approved unanimously. *(SEE ATTACHMENT #4)*

Vice-Chairperson Jarecki requested a motion for the General Finding of Fact for case PZSU16-002 parcel number 060-002-400-010-00.

Motion made by Mr. Hilgendorf to accept the fourteen (14) General Finding of Fact for PZSU16-002; Seconded by Mr. Bauman.

Motions approved unanimously. *(SEE ATTACHMENT #5)*

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Vice-Chairperson Jarecki requested a motion for the Specific Finding of Fact for case PZSU16-002 parcel number 060-002-400-010-00.

Ms. Corfis stated the performance guarantee needed to be added.

Ms. Boyak-Wohlfeil stated the performance guarantee was \$1,000.

Mr. Caverson stated the site plan needed to be resubmitted with the preparer's information and the responsible party included.

Mr. Maylone stated he would sign an affidavit.

Mr. Caverson stated the information needed to be on the site plan in lieu of a sealed document; a signed affidavit could also be included.

Motion made by Mr. Caverson to accept the Specific Finding of Fact for PZSU16-002 with the inclusion of a \$1,000 restoration guarantee and the name, address and signature of the preparer on the revised site plan; Seconded by Mr. Hilgendorf.

Motion approved unanimously. *(SEE ATTACHMENT #6)*

Vice-Chairperson Jarecki read Section 19.1-19.8 Permitted Uses Subject to Special Conditions; all findings met.

Vice-Chairperson Jarecki requested a motion for case PZSU16-002 parcel number 060-002-400-010-00.

Motion made by Mr. Hilgendorf to approve Special Use Permit PZSU16-02; Seconded by Mr. Arndt.

Motion approved unanimously.

Mr. Maylone thanked the Planning Commission and stated Cherry Capital would submit more professional looking drawings as requested with their next tower application.

**New Business:** None

## **Reports and Commission Member's Comments:**

1. Otsego County Parks & Recreation report

Mrs. Jarecki, Otsego County Parks and Recreation Committee representative, stated the Community Center is very busy with Bear Basketball and Co-ed Volleyball Leagues and a new part-time employee has been hired; the reimbursement check from the State of Michigan for the 'Building a Healthy Community Grant' should be received soon; cabin rentals at the County Park were a success but the foundations around the current cabins need to be addressed to eliminate rodent accessibility, purchasing larger cabins to be put in their place and moving the current cabins to a new location is being researched; the Otsego County Recreation Plan was adopted by the Parks and Recreation Committee and approved by the Board of Commissioners on November 8, 2016.

Mr. Bauman stated Livingston Township continued to work on their recreation plan.

Mr. Brown stated Charlton Township would be holding a public hearing for their Master Plan sometime after the first of the year; he also stated the ZBA had met concerning a request for a comparable use for storage buildings in a R1 Zoning District. It was not received well by the public or the ZBA and the request was denied.

Ms. Corfis stated Otsego Lake Township was holding a public hearing December 8<sup>th</sup> for input on their Master Plan; hopefully approval would be in January 2017.

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Mr. Hilgendorf stated the Board of Commissioners had approved the University Center agreement with Kirkland and the University Board would be dissolved in December; there were also some issues with the Farmers Market being located in the Sportsplex.

Mr. Arndt stated Bagley Township was in a transitional period and their Master Plan had been put on hold for review. He also distributed copies of Section 21.38 concerning signs and asked members to jot down any input or revisions for the committee in charge of revising the section but to keep in mind the Ordinance only applied to the County and not the City of Gaylord.

Mr. Borton stated the budget for 2017 was balanced and a meeting was being held tomorrow Tuesday, November 22nd at 9:30am for input. Bill Kerr, Equalization Director, would be there to answer questions or concerns.

Ms. Boyak-Wohlfeil stated a meeting had been scheduled for Monday, December 12<sup>th</sup> at 9:00am for discussion on prioritizing the objective list for 2017. It would be held in the Land Use meeting room. All members were invited for input.

2. MSU Restrictions on Zoning Authority 12-2011/Zoning Information

Vice-Chairperson Jarecki adjourned the meeting.

**Adjournment:** 7:47pm by Vice-Chairperson Jarecki

Ken Arndt; Secretary

Christine Boyak-Wohlfeil; Recording Secretary

# Otsego County Planning Commission

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## *ATTACHMENT #1:*

*(Revised)*

### OTSEGO COUNTY PLANNING COMMISSION

PZSU16-003  
Special Use Permit  
081-210-000-079-02

#### ***Exhibit List***

- Exhibit #1:* Applications for case PZSU16-003 submitted by Applicant
- Exhibit #2:* Otsego County Zoning Map Effective Date March 20, 2010/Amended June 2015
- Exhibit #3:* Otsego County Zoning Ordinance Effective March 20, 2010/Amended September 2016
- Exhibit #4:* Copy of Otsego County Equalization Department record card/Warranty Deed 1306/375
- Exhibit #5:* Site Plan for case PZSU16-003 submitted by Applicant
- Exhibit #6:* Authorization letter for Mike Skowronski/Snowbelt Motors to represent B&R Real Estate, property owner
- Exhibit #7:* Public Hearing Notice
- Exhibit #8:* Letter to Livingston Township Planning Commission dated September 9, 2016
- Exhibit #9:* Email response dated October 11, 2016 from Livingston Township Planning Commission
- Exhibit #10:* Map and list of parties notified
- Exhibit #11:* Receipt #01310568
- Exhibit #12:* General Finding of Fact/PZSU16-003
- Exhibit #13:* Specific Finding of Fact/PZSU16-003
- Exhibit #14:* Change of Address Letter

\*\*\* Motion made by Mr. Hilgendorf to accept the Exhibit List for PZSU16-003 with the fourteen (14) exhibits to include the addition of the Change of Address Letter; Seconded by Mr. Arndt.

Motion approved unanimously.

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**ATTACHMENT #2:**

*(Revised)*

## OTSEGO COUNTY PLANNING COMMISSION

PZSU16-003  
Special Use Permit  
081-210-000-079-02

### GENERAL FINDINGS OF FACT

1. This is a proposal for a detailing/small engine repair garage with outside sales display. *Exhibit #1, Exhibit #5*
2. The property is located in a B2/General Business Zoning District. *Exhibit #2*
3. The proposed use is a permitted use subject to special conditions in a B2/General Business Zoning District. *Exhibit #3*
4. The property is currently under the ownership of the B&R Real Estate. *Exhibit #4*
5. Snowbelt Motors/Mike Skowronski is representing B&R Real Estate, property owners. *Exhibit #6*
6. The Public Hearing Notice was published in the Herald Times on November 4, 2016 *Exhibit #7*
7. The requirements of Article 27 of the Otsego County Zoning Ordinance have been met. *Exhibit #8, Exhibit #9*
8. All property owners within three hundred (300') feet were properly notified of the public hearing. *Exhibit #10*
9. A change of address has been issued for a second business on the above parcel by the Otsego County Equalization Department. *Exhibit #14*
10. 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*
11. The required fees have been collected by Otsego County Land Use Services. *Exhibit #11*
12. The site plan requirements of Article 23 have been reviewed by Otsego County Land Use and all requirements pertaining to the proposed development have been addressed by the Applicant. *Exhibit #5, Exhibit #12, Exhibit #13*

\*\*\* Motion made by Mr. Arndt to accept the twelve (12) General Finding of Fact for PZSU16-003;  
Seconded by Mr. Brown.

Motion approved unanimously.

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**ATTACHMENT #3:**

*(Revised)*

## OTSEGO COUNTY PLANNING COMMISSION

PZSU16-003  
Special Use Permit  
081-210-000-079-02

### SPECIFIC FINDINGS OF FACT

#### FINDINGS UNDER ARTICLE 11

#### ARTICLE 11 B2 GENERAL BUSINESS DISTRICT

##### INTENT

The B2 General Business District is designed to provide sites for more diversified business types than the B1 Local Business District and often located so as to serve passer-by-traffic. Tourist services are included as being in character with the District.

##### SECTION 11.2 PERMITTED USES SUBJECT TO SPECIAL CONDITIONS

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

11.2.1 All uses subject to special conditions in the [B1](#) Local Business District

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

11.2.3 Rifle or pistol ranges when within a completely enclosed building

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

11.2.5 Car wash

11.2.6 Sales, rental, and service centers for vehicles, watercraft, and/or mobile homes, including new or used automobiles, motor bikes, bicycles, boats, ATV's, campers, snowmobiles, trailers, and motor, mobile, modular, manufactured homes, or farm equipment, provided:

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

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

11.2.6.3 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 line

11.2.6.4 The use of a display model for a business office is permissible provided it is connected to sanitary and water facilities and approved by the County Health Department...

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## FINDINGS UNDER ARTICLE 21/SECTION

### 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 FENCE BETWEEN PARCEL AND CITY ZONING/PROPERTY SURROUNDING REMAINING SIDES ZONED SAME AS PARCEL**

### 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.

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## 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.

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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 to exceed one to three (1:3) gradient with side slopes designed and planted to prevent 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.

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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.

**\*NO BUFFER YARD REQUIRED – SEE TABLE I/EXISTING TREE BUFFER ALONG WINIFRED RD – REMOVAL W/ROAD WORK/LANDSCAPING AT DISCRETION OF PLANNING COMMISSION**

Boundary Zoning District ↑	R-1	R-2	R-3	RR	FR	AR	B-1	B-2	B-3	MUZ M A I N S T R E E T	MUZ T O W N C E N T E R	HX H I G H W A Y I N T E R C H A N G E	I I N D U S T R I A L
	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 I

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## 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.

**\*EXISTING LIGHT AT ENTRANCE/DOWN LIGHT**

## SECTION 21.27 PARKING

There shall be provided in all districts at the time of erection or enlargement of any main building or structure or use, automobile off-street parking space with adequate access to all spaces.

21.27.1 Off-street parking for other than residential uses shall be either on the same lot or within four hundred (400) feet of the building it is intended to serve, measured from the nearest point of the building to the nearest point of the off-street parking lot.

21.27.2 Any area once designated as required off-street parking shall not be changed to any other use unless and until equal facilities are provided elsewhere.

21.27.3 In the instance of dual function of off-street parking spaces where operating hours of uses do not overlap, the Zoning Board of Appeals may grant an exception by reducing the total number of spaces required.

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- 21.27.4 The storage of merchandise, motor vehicles for sale, trucks, or the repair of vehicles is prohibited on required off-street parking lots.
- 21.27.5 Residential off-street parking spaces shall consist of a driveway, parking strip, parking bay, garage, carport, or combination thereof.
- 21.27.6 The parking or storage of any commercial motor vehicle shall be prohibited in any [R1](#), [R2](#) or [RR](#) District, or in any residential area with lots of twenty thousand (20,000) square feet or less. (See definition of [COMMERCIAL MOTOR VEHICLE](#).)
- 21.27.7 For the purpose of computing the number of parking spaces required, the definition of [FLOOR AREA, USABLE](#) shall govern.
- 21.27.8 For those uses not specifically mentioned in the Off-street Parking Schedule, requirements for off-street parking facilities shall be in accord with a use which the Board of Appeals considers as being similar in type.
- 21.27.9 Entrance drives to the property and off-street parking area shall be no less than twenty-five (25) feet from a street intersection (measured from the road right-of-way) or from the boundary of a different Zoning District. A greater distance may be required by the Planning Commission if the lesser would cause a traffic issue.

## 21.27.10 Off-street Parking Schedule

The minimum number of off-street parking spaces required by use shall be in accordance with the following schedule:

### MINIMUM PARKING SPACES REQUIRED

#### LAND USE

#### PER UNIT OF MEASURE

...

Motels, Hotels, Motor Inns, Cabin Courts, Bed & Breakfast Facilities and Tourist Lodging Facilities	1 per 150 sq. ft. of usable floor area, the Planning Commission may reduce up to half if they reserve land for open space
Vehicle Sales	1 per 200 sq. ft. of showroom usable floor area
Retail Groceries	1 per 150 sq. ft. of usable floor area
Other Retail Stores	1 per 150 sq. ft. of usable floor area...

#### NOTES

- Sq. ft. refers to square feet of usable floor area unless otherwise noted.
- 1 unit per measure shall be interpreted to mean 1 per each unit, as 1 per "each" three (3) persons.
- Space requirements are cumulative; hence, a country club may require parking for the golf use as well as restaurant or bar use.
- Employees, refers to all permanent staff and part time equivalents in the largest working shift. Maximum capacity is the maximum occupancy permitted by applicable building, fire, or health codes.

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## 21.27.11 Parking Area Design Standards

The layout of off street parking facilities shall be in accord with the following minimum requirements:

<u>Parking Pattern</u>	<u>Maneuvering Lane width</u>	<u>Parking Space width</u>	<u>Parking Space length</u>
Parallel	12ft	8ft	23ft
30-53° 12ft	9ft	20ft	
54-74° 15ft	9ft	20ft	
75-90° 20ft	9ft	20ft	

All spaces shall be provided access by maneuvering lanes. Backing directly onto a street shall be prohibited. Adequate ingress and egress to a parking lot by means of clearly defined drives shall be provided for all vehicles. Ingress and egress to a parking lot lying in an area zoned for other than residential use shall not be across land zoned for residential use.

Each entrance and exit to and from any off street parking lot located in an area zoned for other than residential use shall be at least twenty-five (25) feet from adjacent property located in any residential district.

Buffer yards shall be required per standards set by [Section 21.18](#). A buffer yard without buildings shall be required not less than ten (10) feet wide on the perimeter of all parking lots. Said buffer yard shall be used for landscaping, screening and/or drainage as required by this ordinance.

All parking areas containing twenty-seven hundred (2700) square feet or more shall provide snow storage area. Snow storage shall be provided on the ratio of ten (10) square feet per one hundred (100) square feet of parking area.

Parking area is calculated at two hundred seventy (270) square feet per parking space. Snow storage areas shall be located in such a manner that they do not interfere with the clear visibility of traffic on adjacent streets and driveways.

One (1) street tree shall be planted adjacent to the public right-of-way for each twenty-four (24) lineal feet of frontage.

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.

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.

21.27.12 Federal and State requirements regarding handicapped parking and access shall apply.

21.27.13 Where the property owner can demonstrate that the required amount of parking is excessive, the Planning Commission may approve a smaller parking area, provided that the area of sufficient size to meet parking space requirements of this article is retained as open space and the owner agrees to construct the additional parking at the direction of the Planning Commission.

21.27.14 Parking lot cross-connections shall be used in addition to frontage roads or shared driveways, when in the opinion of the Planning Commission, cross-connections do not hinder traffic.

21.27.15 All parking in the Highway Interchange Commercial District shall be in the rear or side yard.

**\*PARKING REQUIREMENTS MET**

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## 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.

**\*STORAGE IS FOR DISPLAY/SALE PURPOSES**

## 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.

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## 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 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.
4. Pylon signs, designed and intended to attract traffic from a major expressway or highway, are approved but shall not exceed a height of thirty-five (35) feet and must be constructed and mounted by approval methods set forth in the State Construction Code provided they meet the Airport Zoning Ordinance standards.

B. Signs for Shopping Centers, Shopping Centers Commercial Developments or [two \(2\) or more stores](#), offices, research or manufacturing facilities, or retail developments with multiple stores or Commercial PUDs or retail stores with an area over one hundred thousand (100,000) square feet or other Commercial Developments requiring Special Use Approval which have common off street Parking and/or entrance, may install accessory signs in accordance with the following regulations:

1. Signs which direct traffic movement within a property, and which do not exceed four (4) square feet in area for each sign are permitted.

[2. One \(1\) free-standing identification sign for each street that the development faces.](#)

- a. The free standing sign shall state only the name of the Shopping Center or multiple use development and Tenants located therein.
  - b. No freestanding sign face shall exceed an area of one hundred (100) square feet.
  - c. Freestanding signs shall not exceed a height of twenty five (25) feet measured from the average grade at the base of the sign to the top of the sign face. The structure supporting the sign shall not exceed a height of thirty (30) feet measured from the average grade at the base of the structure. d. Tenants of the shopping center or the owner of outlots included within the development plan or PUD shall not be permitted individual free standing signs, except gas stations as noted below.
3. Businesses within the development or PUD shall be permitted exterior wall signs; the total area of the exterior wall signs shall not exceed twenty percent (20%) of the area of the largest wall.
  4. All businesses may display window signs in ground level windows in addition to any wall signs. Window signs shall not cover more than twenty percent (20%) of the total window area.
  5. An automobile service station located on an outlot or on an individual lot within the development or PUD may have one (1) free standing sign in addition to the free standing sign utilized for the development. The free standing sign shall be for the purpose of advertising gasoline prices and other services provided on the premises. The service station sign shall comply with the regulations for a single business on its own lot as noted in [Section 21.38.1.3\(A\)](#) above.

## 21.38.1.4 Non Accessory Signs and Billboards

Billboards, poster boards, and non-accessory signs may be permitted in B2, B3, & I Districts provided the area of the sign does not exceed an area of two hundred (200) square feet in B2 & B3 Districts and three

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hundred (300) square feet in I Districts. A non-accessory sign or billboard shall not measure longer than three (3) times its width.

Signs that come under the jurisdiction of P.A. 106 of 1972 are under the jurisdiction of the Township, if the Township has adopted a sign ordinance.

## 21.38.1.5 Sign Lighting (also see [SECTION 21.19 LIGHTING, OUTDOOR](#))

**Signs internally illuminated or with a light emanating surface are allowed only in the RR, FR, AR, B1, B2, B3, I, HX, MUZ-Main Street and MUZ-Town Center Districts provided they meet the other requirements of this ordinance and are setback a minimum of ten (10) feet from all road right-of-ways and seventy-five (75) feet from any other property line.**

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 or use as detailed in a plot plan or site plan.

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- 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.).

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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

## **\*EXISTING SIGNAGE**

### **SECTION 21.42 TRASH RECEPTACLES/DUMPSTERS**

21.42.1 Residential Trash Receptacles shall be placed at curbside no earlier than twenty-four (24) hours from the scheduled pick-up day. Any trash receptacle placed at curb side shall be removed from curb side no later than twenty-four (24) hours after the scheduled pick-up day.

21.42.2 Commercial Trash Receptacles / Dumpsters may be placed upon a parcel of land in such a manner to facilitate loading and unloading. They may be placed no closer than ten (10) feet to any adjoining property. All Trash Receptacles shall be properly maintained with working lids and the lids shall be maintained in a closed position.

**21.42.2.1 During the site plan review process the Planning Commission or Zoning Administrator may require Commercial Businesses abutting land zoned Residential (R1, R2, R3, RR) or existing residential development in other zoning districts (HX) to maintain a greater setback than ten (10) feet but in no case shall the required setback be greater than twenty five (25) feet.**

21.42.3 Temporary Commercial Construction Dumpsters are exempt from these regulations.

21.42.4 Trash Receptacles / Dumpsters meeting the requirements of [Sections 21.42.1, 21.42.2 & 21.42.3](#) shall not be considered unsightly areas as covered in [Section 21.18.5](#).

## **\*DUMPSTER REQUIREMENT MET**

**\*\*\*SITE PLAN TO BE REVISED WITH TWENTY FOOT (20') FRONT SETBACK DEPICTED ALONG WINIFRED DR – ALSO OUTDOOR STORAGE AREA TO BE REMOVED -- PER PLANNING COMMISSION NOVEMBER 21, 2016\*\*\***

**\*\*\***Motion made by Mr. Caverson to accept the Specific Finding of Fact for PZSU16-003 with revisions made to the site plan removing the outdoor storage area and depicting the twenty foot (20') setback area from the road right of way for vehicle display; Seconded by Mr. Brown.

Motion approved unanimously.

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## FINDINGS UNDER ARTICLE 19:

- 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 use 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 or rate of discharge leaving the property based on 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**

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## 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.
- 19.8.3 Be necessary to meet the intent and purpose of the zoning ordinance, be rated to the standards established in the ordinance for the special land use under consideration, and be necessary to insure compliance with those standards.

\*\*\* Motion made by Mr. Hilgendorf to approve PZSU16-03; Seconded by Mr. Klee.

Motion approved unanimously.

# Otsego County Planning Commission

Proposed Minutes for November 21, 2016

*ATTACHMENT #4:*

*(Revised)*

## OTSEGO COUNTY PLANNING COMMISSION

PZSU16-002  
Special Use Permit  
060-002-400-010-00

### **Exhibit List**

- Exhibit #1:* Applications for case PZSU16-002 submitted by Applicant
- Exhibit #2:* Otsego County Zoning Map Effective Date March 20, 2010/Amended June 2015
- Exhibit #3:* Otsego County Zoning Ordinance Effective March 20, 2010/Amended September 2016
- Exhibit #4:* Copy of Otsego County Equalization Department record card/Warranty Deed 0106/592
- Exhibit #5:* Cherry Capital SUP Narrative w/*Revision*
- Exhibit #6:* *Revised* Site Plan for case PZSU16-002 submitted by Applicant
- Exhibit #7:* Martindale Tower Aerial View w/*Revision*
- Exhibit #8:* Review letter CTM Engineering LLC/Drawings w/specs
- Exhibit #9:* Authorization letter for Cherry Capital Connection LLC to represent Fleming Shaff Acres
- Exhibit #10:* Public Hearing Notice
- Exhibit #11:* Letter to Elmira Township Planning Commission dated August 26, 2016
- Exhibit #12:* Elmira Township Planning Commission September 27, 2016 meeting minutes
- Exhibit #13:* Map and list of parties notified
- Exhibit #14:* Receipt #01310406
- Exhibit #15:* General Finding of Fact/PZSU16-002
- Exhibit #16:* Specific Finding of Fact/PZSU16-002
- Exhibit #17:* Letter from MDOT dated July 26, 2016
- Exhibit #18:* Street Address Application

\*\*\*Motion made by Mr. Hilgendorf to accept the Exhibit List for PZSU16-002 with eighteen (18) exhibits to include revised exhibits #5, #6 and #7; Seconded by Mr. Klee.

Motion approved unanimously.

# Otsego County Planning Commission

Proposed Minutes for November 21, 2016

*ATTACHMENT #5:*

## OTSEGO COUNTY PLANNING COMMISSION

PZSU16-002  
Special Use Permit  
060-002-400-010-00

### GENERAL FINDINGS OF FACT

1. This is a proposal for an internet communications tower. *Exhibit #1, Exhibit #5, Exhibit #6, Exhibit #7*
2. The property is located in an AR/Agricultural Resource Zoning District. *Exhibit #2*
3. The proposed use is a permitted use subject to special conditions in an AR/Agricultural Resource Zoning District. *Exhibit #3*
4. The property is currently under the ownership of Fleming-Shaff Acres. *Exhibit #4*
5. Cherry Capital Connections LLC/Bruce Vaughn is representing Fleming-Shaff Acres, property owners. *Exhibit #9*
6. The Public Hearing Notice was published in the Herald Times on September 30, 2016. *Exhibit #10*
7. The requirements of Article 27 of the Otsego County Zoning Ordinance have been met. *Exhibit #11, Exhibit #12*
8. All property owners within three hundred (300') feet were properly notified of the public hearing. *Exhibit #13*
9. The required fees have been collected by Otsego County Land Use Services. *Exhibit #14*
10. A letter from MDOT determines no permits are required of them. *Exhibit #17*
11. A street address has been issued for the wireless tower. *Exhibit #18*
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*
13. Cherry Capital Connections LLC is requesting a waiver of a stamped engineered site plan and security bond. *Exhibit #5, Exhibit #3*
14. The site plan requirements of Article 23 have been reviewed by Otsego County Land Use and most requirements pertaining to the proposed development have been addressed by the Applicant. *Exhibit #5, Exhibit #6, Exhibit #8, Exhibit #15, Exhibit #16*

\*\*\*Motion made by Mr. Hilgendorf to accept the fourteen (14) General Finding of Fact for PZSU16-002; Seconded by Mr. Bauman.

Motions approved unanimously.

*Exhibit 15*

# Otsego County Planning Commission

Proposed Minutes for November 21, 2016

**ATTACHMENT #6:**

*(Revised)*

## OTSEGO COUNTY PLANNING COMMISSION

PZSU16-002  
Special Use Permit  
060-002-400-010-00

### SPECIFIC FINDINGS OF FACT

#### FINDINGS UNDER ARTICLE 9

##### ARTICLE 9 AN AGRICULTURAL RESOURCE DISTRICT

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

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

...

9.2.21 Wireless Telecommunications Towers and Facilities over one hundred ninety (190) feet in height, or with lights [See [Article 21.46](#)]

9.2.22 WTG Large

9.2.23 Anemometer Tower [See [Article 21.47](#)]

9.2.24 Unlisted property uses if authorized under [Article 21.44](#).

**9.2.25 Personal Wireless Services** Telecommunications Towers and Facilities one hundred fifty (150) feet or less in height, self-supporting (lattice) or guyed [Permit criteria includes [Article 21.46](#)]

#### FINDINGS UNDER ARTICLE 21/SECTION 21.46

##### SECTION 21.46 WIRELESS COMMUNICATIONS:

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

- (1) Protect residential zoning districts from potential adverse impacts of towers and antennas;
- (2) Encourage the location of towers in non-residential areas;
- (3) Minimize the total number of towers throughout the county;

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

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

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

## **SECTION 21.46.1 DEFINITIONS:**

As used in this section, the following terms shall have the meanings set forth below:

1. Antenna means any exterior transmitting or receiving device mounted on a tower, building structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.
2. Height means, when referring to a tower or other structure, the distance measured from the finished grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.
3. Tower means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting (lattice) towers, guyed towers, or monopole towers (including telephone poles). The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.
4. Co-location shall mean the location by two (2) or more communication providers of wireless communication facilities on a common structure, tower or building, with the view toward reducing the overall number of structures required to support wireless communication antennas within the County.

## **SECTION 21.46.2 WIRELESS COMMUNICATIONS TOWERS OF ONE HUNDRED NINETY (190) FEET OR LESS AND RELATED FACILITIES:**

Construction of Wireless Telecommunication Antenna Towers of one hundred ninety (190) feet or less and Equipment Shelter Buildings are allowed in Otsego County subject to the following provisions:

- 21.46.2.1 Prior to approval of any new tower to be located within one (1) mile of an existing tower or other structure of equal or greater height than the proposed tower, applicant shall contact owner(s) of

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all said towers or structures and request permission to locate or co-locate in lieu of construction of a new tower. No new tower request shall be granted until proof of contact(s) has been provided to the zoning administrator.

21.46.2.1.1 As an alternative to contacting owners of all towers or structures, as described in the above paragraph, location or co-location on existing towers or structures shall be approved by the Zoning Administrator under applicable provisions, including 21.46.2.7.1.

An accessory equipment shelter building shall meet all normal requirements of accessory buildings. Any location or co-location shall not result in a height of more than twice the height of the existing structure.

21.46.2.2 Wireless Telecommunication Antenna Towers and Equipment Shelter Buildings shall not be placed in any road right-of-way or in any easement for road purposes.

21.46.2.3 Such towers and facilities shall be placed on parcels (whether the land is owned or leased by the tower owner) that have an area no less than the minimum parcel size for the district, as listed in Article 17. No variances shall be granted to reduce this size limit.

21.46.2.4 All setbacks for the zoning district shall be met and in addition, no tower shall be placed closer than one hundred percent (100%) of the tower's height from any property line or any residence.

21.46.2.5 A tower proposal of more than thirty-five (35) feet shall be submitted to the Otsego County Airport Manager and FAA for review and approval prior to issuance of a zoning permit.

21.46.2.6 The tower itself must be of monopole design. Guyed and self-supporting towers may be considered by the Planning Commission and require a special use permit. (Section 19.7)

21.46.2.6.1 Maximum height of guyed and self-supporting towers to be one hundred fifty feet (150').

21.46.2.6.2 Guyed towers must have a clear area radius of one hundred twenty percent (120%) of their height to protect surrounding properties/structures should a tower collapse.

21.46.2.6.3 Eight (8) foot climbing barriers are required on guyed towers.

21.46.2.7 All such tower location proposals shall be submitted with a site plan (Section 23.2).

21.46.2.7.1 The following conditions are required for approval of an application.

Antennas may or may not be mounted on existing structures. The tower and antenna are painted or screened as to blend into the background.

The service building shall be constructed of material such as wood, brick, or stucco, and shall be designed to blend into the natural setting and surrounding buildings. In no case will metal exteriors be allowed for service buildings.

Unless technically impossible, all connecting wires from towers to accessory buildings shall be underground.

Unless technically impossible, all electrical and other service wires to the facility shall be underground.

The service building shall be no larger than necessary to house the equipment and shall meet all setback requirements of this Ordinance.

21.46.2.8 Lighting shall be designed in accordance with Section 21.19 in addition to the following:

Lights shall not be permitted on the tower or antennae unless FAA regulations require them.

Light poles and fixtures shall be located as low as practical; a greater number of low "area" lights are favored over higher lights. Incandescent lights are favored over sodium or mercury-type street lighting.

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21.46.2.9 The tower and its accessory buildings shall be fenced with no less than a six-foot (6') safety fence with a locked gate. For towers with guy wires, anchor points must have individual six foot (6') fencing or yellow guy protection "sleeves" for high visibility. The Planning Commission will determine which of the two (2) will be required based upon the site chosen for the tower. Signage must be installed on the six foot (6') fence with locked gate stating the owner's name and contact information, including an emergency telephone number.

\*21.46.2.10 The application shall include a description of security. Security shall be posted at the time of receiving a building permit to ensure removal of the facility when it has been abandoned for more than twelve (12) months or is no longer needed. In this regard, the security shall, at the selection of the applicant, be in the form of cash or letter of credit to remove the tower in a timely manner as required under [Section 21.46.4](#), with the further provision that the applicant and owner shall be responsible for the payment of any costs and attorneys' fees incurred by the county in securing removal. The amount of the security bond or letter of credit is to be determined by the Planning Commission. ([Section 25.6](#))

\*21.46.2.11 Professional sealed documents are required for all Wireless Communications Towers ([Section 23.2.2](#))

21.46.2.12 For projects involving less than twenty (20) square feet of soil disruption, soil samples and water flow analysis will not be required.

## **SECTION 21.46.3 WIRELESS TELECOMMUNICATION ANTENNA TOWERS OVER ONE HUNDRED NINETY (190) FEET AND RELATED FACILITIES:**

Construction of Wireless Communications Towers over one hundred ninety (190) feet and Equipment Shelter Buildings are a Permitted Uses Subject to Special Conditions under [Article 19](#). Requirements include all those in [Section 21.46.2](#), plus the following:

21.46.3.1 In order to maximize the efficiency of the provision of telecommunication services, while also minimizing the impact of such facilities on Otsego County, location, co-location, or the provision of more than one (1) antenna on a single tower may be allowed by the Zoning Administrator and/or required by the Planning Commission.

21.46.3.1.1 As an alternative to the provisions of [21.46.3.1.2](#) below, location or co-location on existing towers or structures shall be approved as a Principal Use Permitted by the Zoning Administrator under applicable provisions, including [21.46.2.7.1](#). An accessory equipment shelter building shall meet all normal requirements of accessory buildings.

If not locating or co-locating on existing towers or structures, the applicant shall be required to provide information regarding the feasibility of location or co-location as part of the Special Land Use application.

Factors to be considered in determining feasibility or co-sharing include available space on existing structures, towers, the tower owner's ability to lease space, the tower's structural capacity, radio frequency interference, geographic service area requirements, mechanical or electrical incompatibilities, the comparative costs of co-location and new construction, and any FCC limitations on tower sharing.

21.46.3.1.2 The applicant shall be required to send a certified mail announcement to all other tower owners in the area, stating their sighting needs and/or sharing capabilities in an effort to encourage tower sharing. The applicant shall not be denied space on a tower unless mechanical, structural, or regulatory factors prevent sharing.

21.46.3.1.3 Further the applicant may be required to provide a letter of intent to lease excess space on a facility and commit to: Responding to any requests for information from another potential shared use applicant. Negotiating in good faith and allow for leased shared

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use if an applicant demonstrates that it is technically practicable; and making no more than a reasonable charge for a share use lease.

21.46.3.2 Tower heights shall be no more than required according to engineering requirements for a specific site or the technical capabilities of the antennas being mounted. The applicant shall provide funds to the county determined by the Planning Commission to be sufficient to acquire an independent technical and engineering evaluation of the need for any tower in excess of one hundred ninety (190) feet. Where the independent evaluation shows that service can be provided by a one hundred ninety (190) foot or lower tower no tower in excess of one hundred ninety (190) feet shall be allowed. The Zoning Board of Appeals shall not grant a variance from this requirement.

## SECTION 21.46.4 REMOVAL OF WIRELESS COMMUNICATION TOWERS:

21.46.4.1 A condition of every approval of a wireless communication tower shall be adequate provision for removal of all or part of the facility by users and owners when the tower has not been used for a period of twelve (12) months. For purposes of this section, the removal of antennas or other equipment from the facility or the cessation of operations shall be considered as the beginning of a period of nonuse.

21.46.4.2 At such time that removal is required, the property owner or persons who had used the facility shall immediately apply or secure the application that require demolition or removal and immediately proceed with and complete the demolition/removal, restoring the premises to an acceptable condition as reasonably determined by the Zoning Administrator.

21.46.4.3 If the required removal of a facility or a portion thereof has not been lawfully completed within sixty (60) days of the applicable deadline, and after at least thirty (30) days written notice, the County may remove or secure the removal of the facility or required portions thereof, with its actual cost and reasonable administrative charge to be drawn or collected and /or enforced from or under the security posted at the time application was made for establishing the facility.

## SECTION 21.46.5

All towers in [Section 21.45](#) must comply with FCC and FAA regulations.

## FINDINGS UNDER SECTION 23.2

### SECTION 23.2 APPLICATIONS FOR SITE PLAN REVIEW

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).

**\* Items to be determined by the Planning Commission**

**\*\*\*SITE PLAN REVISED TO INCLUDE NAME, ADDRESS AND SIGNATURE OF PREPARER AND RESPONSIBLE PARTY -- PER PLANNING COMMISSION NOVEMBER 21, 2016\*\*\***

\*\*\*Motion made by Mr. Caverson to accept the Specific Finding of Fact for PZSU16-002 with the inclusion of a \$1,000 restoration guarantee and the name, address and signature of the preparer on the revised site plan; Seconded by Mr. Hilgendorf.

Motion approved unanimously.

# Otsego County Planning Commission

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## FINDINGS UNDER ARTICLE 19:

- 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 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**

# Otsego County Planning Commission

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## 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.
- 19.8.3 Be necessary to meet the intent and purpose of the zoning ordinance, be rated to the standards established in the ordinance for the special land use under consideration, and be necessary to insure compliance with those standards.

\*\*\*Motion made by Mr. Hilgendorf to approve PZSU16-02; Seconded by Mr. Arndt.

Motion approved unanimously.

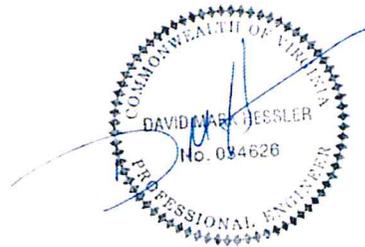


## TECHNICAL MEMORANDUM

**Title:** Acoustical Performance Test

**Project:** Alpine Power Plant  
**Location:** Elmira, MI  
**Prepared For:** Wolverine Power Cooperative  
**Prepared By:** David M. Hessler, P.E., INCE  
**Revision:** A  
**Issue Date:** December 9, 2016  
**Reference No:** TM-2000-120816-A

**Attachment:** Instrument Calibration Certificate



### 1.0 Introduction

A field survey was carried out at the Wolverine Alpine Power Plant in Elmira, Michigan on December 6, 2016 to evaluate the far field sound emissions from the overall facility relative to the noise limits stipulated by the Otsego County Planning Commission in the project's special use permit. The plant consists of two GE 7FA.05 simple cycle combustion turbine generators and peripherals. In general, the test results indicate unequivocal compliance with the County noise conditions.

### 2.0 Applicable Noise Limits

The special use permit (SUP) issued to the project by the Otsego County Planning Commission on 12/19/14 limits the sound emissions from the plant to the following levels:

- 59 dBA and 76 dBC at 400 feet (average of 8 positions per ANSI B133.8-2011<sup>1</sup>)
- 47 dBA and 65 dBC at 1500 feet due east of the northern turbine

<sup>1</sup> American Society of Mechanical Engineers, ASME/ANSI B133.8-2011, *Gas Turbine Installation Sound Emissions*, New York, 2012.



The A-weighted limits may be thought of as the audible sound emissions from the facility while the C-weighted limits effectively place a restriction on the amount of low frequency sound that may be emitted from the turbine exhaust stacks.

## **3.0 Test Methodology**

### **3.1 General Approach**

The testing was carried out in accordance with the procedures contained in ANSI B133.8-2011 *Gas Turbine Installation Sound Emissions*, which was specifically developed for the specification and testing of simple cycle combustion turbine facilities like the Alpine plant. In brief, the test methodology involves measuring the operational sound emissions from the facility at a standardized distance of 400 feet from the “source envelope”, which is “the smallest rectangle that just encloses the gas turbine manufacturer’s scope of supply equipment”. Eight measurement positions around the plant at 45 degree intervals are specified. The arithmetic average of the measured levels at all 8 positions, after potential correction for interfering background noise, constitutes the performance of the facility. Thus, the specified noise limits and the quantities sought from the field test are the plant-only sound levels, exclusive of any off-site or unrelated background noise – and not the total, as-measured sound level, which may be significantly influenced by background noise.

### **3.2 Test Positions**

Both the 400 and 1500 ft. test positions are shown graphically in Figure 3.2.1 on the following page. For convenience they have been labeled by direction and distance (in feet) from the source envelope. The specific test points were precisely located ahead of time by a surveyor and marked with stakes. All measurements were taken at a height of about 5 ft. above local grade.



**Figure 3.2.1**  
Sound Test Locations

It is important to note that a metal building is currently in the process of being built over the fuel gas control valves in the southeast corner of the site for noise abatement and weather protection purposes. These valves produce a significant amount of noise but once the building is completed it is highly likely that they will be largely inaudible outside the enclosure and will no longer contribute in any significant way to the far field sound emissions from the facility. At the time of the sound test this building was only about half completed (see Fig. 3.2.2) and valve noise was still quite prominent at test positions SE400 and E400.



**Figure 3.2.2**

Gas Yard Building at the Time of the Facility Sound Test  
Looking ENE

When the building is completed significantly lower sound levels will exist at those locations. As it is, the test results at these positions are elevated by what is, in effect, local, soon-to-be-eliminated, contamination.

### 3.3 Measurement Equipment and Technique

A Norsonic N-140, ANSI S1.4-1983 (R2006) Type 1 precision, 1/3 octave band analyzer was used for the survey. The instrument was field calibrated at the beginning and end of the survey with a Brüel & Kjær Type 4230 calibrator and exhibited no drift. A laboratory calibration certificate for the meter is attached for reference.

ANSI B133.8-2011 states that “Multiple measurements of equivalent sound level,  $L_{eq}$ , shall be obtained with an integrating-averaging sound level meter over quiet intervals in the absence of sporadic interfering ambient sound” and indicates a 20 second integration period for each measurement. Because of obvious interference from nearly incessant traffic noise on Rt. 32 immediately south of the plant, particularly at the southern 400 ft. positions and at the 1500 ft. position, it was necessary to reduce the averaging time to 5 seconds in order to best capture the underlying, constant sound level from the facility during very short-lived lulls in traffic activity. A number of samples were taken at each position in an effort to get relatively uncontaminated, and therefore, meaningful results. Samples with observed background interference were discarded and the average of all measurements with minimal contamination was taken as the final result for each



test location. Because the background level was highly variable with time, it was not possible to quantify it and subsequently make a mathematical correction to the total measured. Consequently, all of the results obtained in the survey are the total measured sound level without any adjustment for background contamination. This makes the test results conservative in the sense that many of the measurements are most likely elevated to some extent by the presence of background noise.

### 3.4 Weather Conditions

The general weather conditions during the sound test between 1 and 3 p.m. on December 6 were mostly cloudy with a temperature of 37 deg. F and a relative humidity of 76%. There were patchy traces of snow on the ground, no more than an inch deep, in shaded areas but most of the site area was clear.

The average wind speed, as reported by weatherunderground.com for Gaylord, was between 11.5 and 12.7 mph from the SE during the test period. However, at the site itself the wind was intermittent in nature and not continuously present. For example, it would be essentially calm for a brief period and then blow for a few seconds followed by a return to calm. All measurements were generally taken during these calm periods when it is fair to say that the wind speed was below the recommended limit of 7 mph in ANSI B133.8-2011. If any of the readings were affected by wind it would have elevated them by causing wind-induced self-noise (wind blowing over the mic) and also by creating wind-induced background noise from trees blowing. Consequently, if anything, the test results are again conservative, since the wind conditions could only artificially elevate the measured sound levels.

### 3.5 Plant Description

The Alpine facility consists of two outdoor GE 7FA.05 simple cycle combustion turbine generator packages. Each unit has a high performance exhaust silencing system specifically designed to heavily attenuate the low frequency sound emissions that are inherent with simple cycle turbines. The exhaust ductwork is also improved with non-standard, 1" thick steel plate to minimize break-out noise, or noise radiation from the ductwork. The exhaust diffuser duct is enclosed with full height noise barriers on either side. A special low noise option of a large noise barrier wall around the inlet plenum, load compartment and generator was purchased from GE to minimize the mid-frequency sound emissions from each unit. A noise containment skirt is also present around the bottom of the inlet plenum inside the barrier enclosure. Ten foot high noise barrier walls have also been added on the roof of each CT enclosure to reduce noise from the frame blower motors. As discussed above, a building is currently being erected over the gas yard to contain noise from the fuel gas regulating valves.

### 3.6 Plant Operating Conditions



The facility was operating normally at base load with both units on throughout the test period.

## 4.0 Survey Results

### 4.1 400 Feet

The test results at each of the eight 400 ft. positions are tabulated below along with the overall averages. The values for each location are the average of the most valid measurements at those positions; i.e. the readings with the least apparent contamination from off-site sources. Although many, if not most, of the results contain some background noise, no adjustments of any kind have been made to account for or exclude this interference.

**Table 4.1.1**  
Average Measured Levels at 400 ft. from Equipment Perimeter  
Relative to SUP Limits

Position	Average Measured Level, dBA	Average Measured Level, dBC	Comments
S400	55.6	72.1	
SE400	58.6	68.9	A-wtd Level Elevated by Gas Yard Noise
E400	59.5	73.5	A-wtd Level Elevated by Gas Yard Noise
NE400	58.1	73.1	
N400	58.4	72.2	
NW400	55.9	71.6	
W400	55.4	72.6	
SW400	55.7	72.3	
<b>Average</b>	<b>57.2</b>	<b>72.2</b>	<b>OK</b>
SUP Limits	59	76	

The overall averages of 57.2 dBA and 72.2 dBC indicate that the facility is meeting the SUP 400 ft. noise conditions with margins of about 2 dBA and 4 dBC. It is important to reiterate in this context that the above results are conservative in that the measured levels at SE400 and E400 are



undoubtedly elevated by soon-to-be-eliminated gas valve noise and that the reported sound levels at the most of the other positions likely contain some contaminating background noise from traffic on Rt. 32 and/or from wind-induced noise. All the levels are the as-measured total sound levels without correction for background noise.

## 4.2 1500 Feet

The total measured levels at the special far field test point 1500 east of the plant (E1500) were 45.0 dBA and 61.5 dBC. These levels were observed during a short period when no traffic noise was momentarily audible from Rt. 32 and when the wind was temporarily light at the test position. The facility was faintly audible. This result indicates that the plant is meeting the SUP 1500 ft. noise conditions with margins of about 2 dBA and 4 dBC, which are consistent with the 400 ft. results.

## 6.0 Conclusions

Field sound testing at the Wolverine Alpine Power Plant during normal base load operation indicates that the facility is in full compliance with the special use permit conditions on noise stipulated by the Otsego County Planning Commission. The final overall results are tabulated below.

**Table 6.0.1**  
Measured Average Sound Levels at 400 and 1500 ft. Relative SUP Noise Limits

Distance	Average Measured Level, dBA	Average Measured Level, dBC	Comments
400 ft.	57.2	72.2	OK
SUP Limits at 400 ft.	59	76	
1500 ft.	45.0	61.5	OK
SUP Limits at 1500 ft.	47	65	

END OF REPORT TEXT

**Scantek, Inc.**

CALIBRATION LABORATORY

ISO 17025: 2005, ANSI/NCSL Z540:1994 Part 1  
ACCREDITED by NVLAP (an ILAC MRA signatory)

**NVLAP**<sup>®</sup>

NVLAP Lab Code: 200625-0

## Calibration Certificate No.36303

**Instrument:** Sound Level Meter  
**Model:** 140  
**Manufacturer:** Norsonic  
**Serial number:** 1402798  
**Tested with:** Microphone 1225 s/n 149383  
Preamplifier 1209 s/n 14065  
**Type (class):** 1  
**Customer:** Hessler Associates, Inc.  
**Tel/Fax:** 703-753-2291 /

**Date Calibrated:** 5/23/2016 **Cal Due:**  
**Status:**

Received	Sent
X	X

  
**In tolerance:**

X	X
---	---

  
**Out of tolerance:**

--	--

  
**See comments:**  
**Contains non-accredited tests:**  Yes  No  
**Calibration service:**  Basic  Standard  
**Address:** 3862 Clifton Manor Place,  
Haymarket, VA 20169

Tested in accordance with the following procedures and standards:  
Calibration of Sound Level Meters, Scantek Inc., Rev. 6/26/2015  
SLM & Dosimeters – Acoustical Tests, Scantek Inc., Rev. 7/6/2011

**Instrumentation used for calibration:** Nor-1504 Norsonic Test System:

Instrument - Manufacturer	Description	S/N	Cal. Date	Traceability evidence	Cal. Due
				Cal. Lab / Accreditation	
483B-Norsonic	SME Cal Unit	31052	Oct 23, 2015	Scantek, Inc./ NVLAP	Oct 23, 2016
DS-360-SRS	Function Generator	33584	Oct 20, 2015	ACR Env./ A2LA	Oct 20, 2017
34401A-Agilent Technologies	Digital Voltmeter	US36120731	Oct 6, 2015	ACR Env. / A2LA	Oct 6, 2016
HM30-Thommen	Meteo Station	1040170/39633	Oct 23, 2015	ACR Env./ A2LA	Oct 23, 2016
PC Program 1019 Norsonic	Calibration software	v.6.1T	Validated Nov 2014	Scantek, Inc.	-
1251-Norsonic	Calibrator	30878	Nov 10, 2015	Scantek, Inc./ NVLAP	Nov 10, 2016

Instrumentation and test results are traceable to SI (International System of Units) through standards maintained by NIST (USA) and NPL (UK).

**Environmental conditions:**

Temperature (°C)	Barometric pressure (kPa)	Relative Humidity (%)
21.7	99.72	47.4

Calibrated by:	Lydon Dawkins,	Authorized signatory:	Valentin Buzduga
Signature	<i>Lydon Dawkins</i>	Signature	<i>Valentin Buzduga</i>
Date	5/23/2016	Date	5/24/2016

Calibration Certificates or Test Reports shall not be reproduced, except in full, without written approval of the laboratory.  
This Calibration Certificate or Test Reports shall not be used to claim product certification, approval or endorsement by NVLAP, NIST,  
or any agency of the federal government.

Document stored Z:\Calibration Lab\SLM 2016\Nor140\_1402798\_M1.doc

Page 1 of 2

## 2017 OBJECTIVE LIST

OBJECTIVE	INTENT	COMMENTS	COMPLETED
1. Site Plan Review/ Article 23	To review/amend section to coincide w/other Ordinance sections	Committee formed/Volunteers:	
2. Private Roads/ Emergency Vehicle Access	Develop very basic requirements for private roads within Otsego County to insure access is available to all emergency vehicles	To be discussed w/legal counsel / Ken Arndt to provide file from previous work	
3. Non-Conforming Structures/Section 21.26	Act of God language developed to insure property owners the ability to reconstruct their residence in the event of a natural disaster/Setbacks/Time limit	Committee formed/Volunteers: Mr. Arndt, Mr. Hartmann, Mr. Hilgendorf, Mr. Klee	
4. Sign Ordinance/ Section 21.38	Review of current sign language, temporary placement of banners and special events	Committee formed/Volunteers: Mr. Arndt, Ms. Corfis, Mr. Hartmann / Ken Arndt to provide file from previous work	
5. Large Tract Forestry Zoning District	The developing of Ordinance language to protect large parcels from being split up into small parcels, protecting the "up north nature" of Otsego County.	Paul Hartmann sent info from Gloria Torello/To be discussed w/legal counsel for language	
6. Overlay District Pigeon River	A recommended action in the 2009 Otsego County Master Plan/Developing special conditions to ensure the protection of the unique characteristics of the Pigeon River Country Area.	To be discussed w/legal counsel for language	



## PLANNING COMMISSION 2017 MEETING DATES

Meetings are held in the conference room at the  
Otsego County Land Use Services / Building Department facility, \*1322 Hayes Road\*, Gaylord, Michigan

**ALL MEETINGS BEGIN AT 6:00 PM  
THIRD MONDAY OF EACH MONTH**

### MONDAY EVENINGS

**JANUARY 16, 2017**

**FEBRUARY NO MEETING SCHEDULED/PRESIDENT'S DAY**

**MARCH 20, 2017**

**APRIL 17, 2017**

**MAY 15, 2017**

**JUNE 19, 2017**

**JULY 17, 2017**

**AUGUST 21, 2017**

**SEPTEMBER 18, 2017**

**OCTOBER 16, 2017**

**NOVEMBER 20, 2017**

**DECEMBER 18, 2017**

ANY CHANGES TO THE MEETING DATES, TIMES OR LOCATIONS SHALL BE MADE PUBLIC  
AT LEAST EIGHTEEN (18) HOURS PRIOR TO THE MEETING IN QUESTION.

Visit the County Website Events Calendar for any updates to meeting postings: <http://www.otsegocountymi.gov/events-calendar-9/>

*In compliance with the Americans Disabilities Act, persons with physical limitation that may tend to restrict access to or participation in this meeting should contact the Land Use Services office (989-731-7420) at least twelve (12) hours prior to the scheduled start of the meeting.*

**AERONAUTICS COMMISSION**

Roger Salo, Chairperson  
Rick Fiddler, Vice Chair  
Pete Kamarainen  
J. David VanderVeen  
Russell A. Kavalhuna  
Capt. Mike Caldwell  
Brigadier General Len Isabelle  
Laura Mester  
Kevin Jacobs  
Mike Trout, Director

**STATE OF MICHIGAN**



Rick Snyder, Governor

**Michigan Department of Transportation**

2700 Port Lansing Rd Lansing, MI 48906  
Phone: 335-9949 Fax: 886-9836  
Mike Trout, Director - MAC

**Tall Structure Permit**

November 14, 2015

Michigan's Tall Structure Act (Act 259, P.S. 1959, as amended by Act 296 P.A. 1986), places authority for review of construction proposals which may affect Michigan airspace with the Michigan Aeronautics Commission (MAC). The Michigan Aeronautics Commission has delegated its authority for airspace reviews and approvals to the Michigan Department of Transportation's Office of Aeronautics.

The Office of Aeronautics has conducted a review of the following proposal:

FAA Airspace Case Number:	2015-AGL-13339-OE
Structure Type:	Antenna Tower
Height Above Ground:	315'
Top Elevation:	1562'
Associated Airport:	Gaylord Rgnl
Geographic Coordinates:	44° 55' 3.12" N / 84 ° 33' 32.63" W

Please note that:

1. This permit expires on Monday, November 14, 2016.
2. Obstruction marking and lighting is required as described by FAA Advisory Circular AC 70/7460-1K.
3. Changes to this proposal which increase its top elevation or location will INVALIDATE this PERMIT. Please advise the Office of Aeronautics of any modifications immediately.
4. If a Notice of Actual Construction (Form 7460-2) is sent to the FAA, please send a copy to the Office of Aeronautics.
5. This permit, issued in accordance with the Michigan Tall Structure Act (Act 259 of 1959), concerns the effect of this proposal on air navigation and does not relieve the proponent of any compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Under the authority of the Tall Structures Act, this PERMIT is issued to:

PI Telecom Infrastructure V, LLC - AS  
Attn: Alejandra Stinson  
4601 Touchton Road, Bldg 300, Suite 3200  
Jacksonville, FL 32246

I can be contacted at telephone number (517) 335-9949 or email address smithl50@michigan.gov if you have any questions or comments.

Mr. Linn P. Smith  
Aviation Planning and Zoning Specialist  
Office of Aeronautics



Mail Processing Center  
 Federal Aviation Administration  
 Southwest Regional Office  
 Obstruction Evaluation Group  
 10101 Hillwood Parkway  
 Fort Worth, TX 76177

Aeronautical Study No.  
 2015-AGL-13339-OE

Issued Date: 11/09/2015

Alejandra Stinson  
 PI Telecom Infrastructure V, LLC - AS  
 4601 Touchton Road  
 Bldg 300, Suite 3200  
 Jacksonville, FL 32246

**\*\* DETERMINATION OF NO HAZARD TO AIR NAVIGATION \*\***

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:           Antenna Tower 6783 Chandler  
 Location:           Gaylord, MI  
 Latitude:           44-55-03.12N NAD 83  
 Longitude:          84-33-32.63W  
 Heights:            1247 feet site elevation (SE)  
                           315 feet above ground level (AGL)  
                           1562 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

As a condition to this Determination, the structure is marked/lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, a med-dual system - Chapters 4,8(M-Dual),&12.

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- At least 10 days prior to start of construction (7460-2, Part 1)
- Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

This determination expires on 05/09/2017 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates , heights, frequency(ies) and power . Any changes in coordinates , heights, and frequencies or use of greater power will void this determination. Any future construction or alteration , including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (817) 222-5932. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2015-AGL-13339-OE.

**Signature Control No: 265401831-271667497**

( DNE )

Joan Tengowski  
Technician

Attachment(s)  
Frequency Data  
Map(s)

cc: FCC

Frequency Data for ASN 2015-AGL-13339-OE

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
698	806	MHz	1000	W
806	824	MHz	500	W
824	849	MHz	500	W
851	866	MHz	500	W
869	894	MHz	500	W
896	901	MHz	500	W
901	902	MHz	7	W
930	931	MHz	3500	W
931	932	MHz	3500	W
932	932.5	MHz	17	dBW
935	940	MHz	1000	W
940	941	MHz	3500	W
1850	1910	MHz	1640	W
1930	1990	MHz	1640	W
2305	2310	MHz	2000	W
2345	2360	MHz	2000	W



# TWO NEW MICHIGAN BILLBOARD CASES

By Mark A. Wyckoff, FAICP, Editor

As the significant impact of the **Reed v. Gilbert** U.S. Supreme Court decision in June of 2015 has started to sink in and communities are beginning the process of reforming their sign provisions to be content-neutral (see **PZN** July 2015 and the **Michigan Sign Guidebook** – <http://scenimichigan.org/sign-regulation-guide-book/>), two new unpublished Michigan Court of Appeals billboard decisions have recently been released. Both involve International Outdoor, Inc. By billboard company standards, this is a very small company serving Southeast Michigan. According to their website, they were founded in 1997, and operate over 77 billboard faces in Wayne, Oakland and Macomb counties, and will soon be expanding into digital displays. The defendant in the first case was the City of Harper Woods, while in the second case it was the City of Livonia. Each of the cases is summarized below.

## MICHIGAN COURT OF APPEALS

### Billboards/Record of BZA Decision

The Court upheld a constitutional challenge to city billboard standards, but remanded the BZA decision to prepare a complete record of its decision and rationale. **International Outdoor, Inc. v City of Harper Woods**. No 325469. Decided April 26, 2016. Unpublished.

Plaintiffs alleged that the sign regulations of the City of Harper Woods were unconstitutional and that the record of the Board of Zoning Appeals (BZA) in support of denial of a special permit were inadequate. The facts are reproduced from the Opinion below. Please, note the size of the signs permitted in the Harper Woods ordinance compared to that requested by plaintiff International Outdoor, Inc. – which were over three times larger. A special permit procedure involving the BZA was followed to consider a larger size.

*“Plaintiff is in the business of building billboards and selling advertising on those billboards. Plaintiff wanted to erect billboards in Harper Woods. Before building, plaintiff sought permission from defendant’s building inspector to obtain permits for construction. The building inspector denied the permit requests to build the signs, finding that plaintiff’s proposed billboards violated § 21-6 of defendant’s sign ordinance, which provides size, height, and setback requirements for signs. Harper Woods Ordinances, § 21-6. Specifically, § 21-6 requires that a ground pole or free-*

*standing sign, a category that includes billboards, have a maximum area of 200 square feet, maximum height of 22 feet, and minimum setback of 25 feet. Id. Plaintiff’s proposed billboards were 672 square feet in area, 70 feet tall, and had no setback.*

*The sign ordinance contains a provision permitting individuals to seek a ‘special permit’ to build a sign that does not comply with the sign ordinance. Harper Woods Ordinances, § 2115. Plaintiff submitted applications for special permits pursuant to § 21-15(d) of defendant’s sign ordinance. The applications submitted by plaintiff included a document expressing why plaintiff believed the special permits should be granted, citing, among other reasons, similar signs in the area. Pursuant to § 21-15, the special permit requests were considered by the BZA.*

*The record of the BZA reveals that the BZA received input from a community planner, McKenna Associates, as well as defendant’s fire marshal. The fire marshal was also the building inspector who initially denied the sign permit requests. Both McKenna Associates and the fire marshal recommended that the BZA deny the special permits. The leasing agent for a local apartment complex and the property manager for a local condominium complex submitted letters opposing the special permits for the billboards. McKenna Associates and the citizens asserted that the billboards would not be appropriate, while the fire marshal stated that defendant’s fire department was not equipped to handle a fire on the billboards.*

*Representatives from plaintiff attended the BZA meeting pertaining to plaintiff’s requests for special permits. The only official record of that meeting is the meeting minutes. The meeting minutes reveal that plaintiff was present, that several citizens were present to oppose the billboards, and that two letters were submitted. The minutes do not reflect what evidence was presented or what arguments were made. Nor do the minutes provide any factual findings or any reasoning on behalf of the BZA. Rather, the meeting minutes simply announce that the requests for special permits were denied.*

*Plaintiff appealed that decision as of right to the circuit court, alleging that the BZA failed to provide reasoning and factual findings on the record, and arguing that defendant’s sign ordinance was unconstitutional. After hearing arguments from the parties, the circuit court determined that defendant’s sign*

*ordinance was constitutional and that the BZA’s failure to state findings of fact and reasoning on the record was not error requiring reversal where the record provided by the BZA fully supported the reasoning behind the BZA’s decision. Subsequently, this Court granted leave to appeal.” [Footnotes omitted.]*

The plaintiff argued that the Harper Woods sign ordinance was an unconstitutional prior restraint on free speech. The Court of Appeals disagreed. In its analysis the Court noted the extensive public purposes for the ordinance, and that the signs as proposed failed to comply with the ordinance requirements. The Court also quoted the four standards which must be met in order for the BZA to grant a special permit. Note that each of the four standards is discretionary.

*“(1) The particular sign will be in harmony with the general purpose and intent of this chapter; (2) The sign will not be injurious to the immediate neighborhood or adjacent land use; (3) The sign is sufficiently compatible with the architectural and design character of the immediate neighborhood; (4) The sign will not be hazardous to passing traffic or otherwise detrimental to the public safety and welfare.”*

The Court also noted that even if a sign conforms with the four standards, that the decision to approve or deny rests with the BZA because of the way the empowering language in the ordinance was written. The Court reviewed previous U.S. Supreme Court decisions and disagreed with plaintiff’s assessment that the ordinance was “a licensing scheme that amounts to a prior restraint on speech and does not have sufficiently objective standards to avoid the dangers of censorship.” Instead the Court of Appeals relied heavily on the U.S. Supreme Court decision in **Thomas v Chicago Park District**, 534 US 316 (2002), and said that

*“it is clear that defendant’s sign ordinance permits signs, including billboards, that comply with the area, height, and setback requirements found in § 21-6, and that this section is a constitutional time, place, and manner restriction on signs. Section 21-15(d) merely permits the BZA to waive those requirements and grant a special permit for the reasons stated within that section. Defendant’s sign ordinance does not bar billboards entirely and then only permit them once a special permit is obtained.”*

With regard to plaintiff’s due process

challenge, the Court of Appeals agreed that the BZA had failed to make a proper record. The Court reviewed case law and statutory requirements for a proper record, especially as documented in **Reenders v Parker**, 217 Mich App 373 (1996) and concluded:

*"The present case reveals an even more egregious lack of factual findings than that in Reenders. Here, defendant's BZA did not make a single factual finding on the record, nor did it provide any reasoning for why plaintiff's special permits were denied. The BZA simply announced its position that the special permits were denied. Pursuant to the binding decision in Reenders, that action by the BZA is not permitted. As this Court stated in Reenders, 217 Mich App at 381, 'we cannot affirm a decision where the record is as devoid of factual or logical support as is the case here.'"*

The Court of Appeals reversed in part, affirmed in part, and remanded "in order for the BZA to develop the record related to its factual findings and reasoning for its decision." In an attached Order, the Court gave the BZA 56 days from the Clerk's certification of this order to prepare the supplementary record.

## Billboards/Exclusionary Zoning/ Equal Protection

*Allegations of exclusionary zoning under common law or statutory law were rejected as were claims of equal protection violations. International Outdoor, Inc. v City of Livonia.* No 325243. Decided June 14, 2016. Unpublished.

The plaintiff, International Outdoor, Inc. alleged that the City of Livonia engaged in exclusionary zoning and violated plaintiff's right to equal protection under the law. The facts and procedural history as laid out by the Court of Appeals follows:

*"Since 1952, defendant's zoning ordinance has prohibited the installation of any off-premises billboard within the city. Billboards that existed when the ordinance was enacted were allowed to remain, but the last of those billboards was eliminated in 1986.*

*In particular, § 18.16 of the zoning ordinance provides: The erection and maintenance of billboards and outdoor advertising signs on any parcel of land within the City of Livonia, or the use of any such parcel for said purpose, are hereby prohibited; provided, however, that this section shall not apply to billboards or outdoor advertising signs lawfully in existence at the time this ordinance becomes effective, nor to those specific signs which are expressly allowed by the district regulations contained in this ordinance.*

*Section 18.50C, the provision specifically challenged by plaintiff, states:*

*Section 18.50C Prohibited Signs. . . . A sign not expressly permitted in a zoning district is prohibited. The following signs as defined in Section 18.50A of this ordinance shall not be permitted and are expressly prohibited in any zoning district: \* \* \* 2. 'Billboards'*

*Section 18.50A of defendant's zoning ordinance defines a 'billboard' as '[a] ground sign advertising a product, event, person, business or subject not related to the premises on which the sign is located.' Thus, a 'billboard' is an 'off-premises' sign—one that advertises a product not available at the location on which the sign is located. 'On-premises' signs are permitted so long as they meet certain site requirements.*

*Additionally, defendant's sign ordinances generally permit two types of signs outside of buildings: (1) wall signs, the maximum area of which are determined by the building's frontage on the adjoining street, and (2) grounds signs, which are generally limited to a height of no more than six feet, measured from the ground, and 30 square feet in area.*

*In December 2013, plaintiff filed a permit application to erect a billboard on leased property adjacent to the I-96 expressway. The application was denied because defendant did not allow billboards within its boundaries and the desired sign was too large to be permitted as a freestanding sign under the zoning ordinance. The zoning board of appeals denied plaintiff's subsequent request for a variance.*

*In July 2014, plaintiff filed a complaint in the circuit court, alleging that defendant's ordinance completely excluded an otherwise permissible use of land, was contrary to plaintiff's right to equal protection under the state and federal constitutions, and amounted to impermissible exclusionary zoning in violation of MCL 125.3207 and the common law. Defendant moved for summary disposition, arguing, inter alia, that (1) the ordinance was properly enacted to promote aesthetic qualities and traffic safety and, therefore, was reasonably related to the health, safety, or general welfare of the community; (2) as a city-wide ban on all new billboards, the ordinance did not treat plaintiff differently than any other similarly situated person or entity; and (3) plaintiff failed to establish a demonstrated need for billboards within defendant's boundaries.*

*The trial court granted defendant's motion, concluding that plaintiff failed to demonstrate a need for billboards within defendant's city limits because of the 'umpteenth billboards that surround this area,' and that plaintiff's constitutional challenges lacked merit because defendant's concerns for traffic safety and aesthetics were reasonably related to the ordinance's purpose."*

The Court of Appeals rejected plaintiff's allegations regarding exclusionary zoning and equal protection by first examining common law and its relationship to the equal protection clause of the Michigan Constitution, and then examining statutory law regarding exclusionary zoning. The Court noted without deciding, that common law claims concerning exclusionary zoning may no longer be viable in light of the statutory language on exclusionary zoning in the Michigan Zoning Enabling Act (citing **Hendee v Putnam Twp.** 486 Mich 556, 2010).

Plaintiff's claim was simple, based on prior court decisions that "a community cannot effectively zone out legal businesses." The Highway Advertising Act of 1972 (HAA, MCL 252.301 et seq) provides that billboards are a legal business. Ergo, a Michigan municipality cannot "declare itself a billboard free community."

However, section 4 of the HAA "recognizes that ordinances that were already in existence in 1972 are not invalidated by the Legislature's adoption of the HAA." The Court said that the plaintiff failed to show amendments to Livonia's 1952 prohibition of billboards that were made in 1978 did not conflict with state law. After reviewing a number of cases, and in particular the Michigan Supreme Court opinion in **Adams Outdoor Advertising, Inc. v City of Holland** 463 Mich 675, (2001), the Court of Appeals ruled that Livonia's ordinance "does not constitute a total prohibition on billboards on its face." (emphasis by Court). Because the prohibition does "not apply to billboards or outdoor advertising signs lawfully in existence at the time this ordinance becomes effective, nor to those specific signs which are expressly allowed by the district regulations contained in this ordinance."

With regard to the equal protection challenge, the Court reviewed the intent section of Livonia's sign restrictions and concluded:

*"It is clear that the primary rationales for the billboard restrictions in defendant's zoning ordinance were promoting aesthetic features, including the prevention of visual blight, and reducing traffic hazards for motorists. Each of these factors constitutes a legitimate governmental interest in regulating billboards. See **Metromedia, Inc v City of San Diego**, 453 US 490 (1981)."*

With regard to violation of the statutory prohibition against exclusionary zoning in section 207 of the MZEA (MCL 125.3207), the Court of Appeals acknowledged that:

*"Defendant's ordinance has the effect of totally banning billboards in the city since there no longer are any billboards in existence that preceded the adoption of the billboard ban in 1952, and because § 18.50C prohibits the erection any new billboards. Even so, plaintiff has failed to show a demonstrated need*

for billboards in Livonia or in the surrounding area.”

The Court of Appeals went on to say:

“The trial court concluded that there was no demonstrated need for billboards within defendant’s city limits because the billboards permitted by other surrounding communities adequately addressed any such need. We agree that the trial court’s grant of summary disposition on this claim was proper because plaintiff demonstrated, at most, that there is a demand for billboards as a means of communication and they can be useful to communities. However, plaintiff has failed to demonstrate that there is a public need for billboards within defendant’s boundaries.” [emphasis by Court].

With its response to defendant’s mo-

tion for summary disposition, plaintiff provided many examples of the ways in which billboards are used to communicate with the public. It also identified numerous individuals as well as public and private entities that routinely use billboards to communicate with the public. However, these examples do not demonstrate that billboards are needed in order to communicate with the public in Livonia, particularly when, as the trial court observed, there are many billboards within the surrounding communities, well within two miles of defendant’s boundaries. Instead, these examples merely reflect that there is a demand for billboards among individuals and organizations that utilize billboards as a means of advertising and sharing information. But plaintiff provided no evidence to this Court, the trial court, or

the zoning board that reflected any individual or corporate need for billboards in Livonia, and thus failed to satisfy its burden to oppose defendant’s motion for summary disposition.

Likewise, it is apparent that plaintiff has a desire to erect the billboard instigating the instant suit because it derives income, in light of this demand, from selling space on its billboards wherever they are erected. We have previously explained, however, that a ‘desire’ for a specific land use is not the same as a ‘demonstrated need’ for that use.” (citing nearly identical ordinance language reviewed by the court in **Outdoor Sys, Inc. v City of Clawson**, 262 Mich App 716, 2004).

The Court of Appeals affirmed the trial court’s decision. □