

**OTSEGO COUNTY  
PLANNING COMMISSION**

**AGENDA  
January 21, 2013  
6:00 PM**

**MEETING WILL BE IN THE PLANNING AND ZONING MEETING ROOM LOCATED AT 1068 CROSS STREET.**

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF MINUTES: From December 17, 2012 meeting.
5. CONSENT AGENDA: None
6. PUBLIC PARTICIPATION FOR ITEMS NOT ON THE AGENDA:  
(Please identify yourself for the record. All comments will be limited to two (2) minutes)
7. PUBLIC HEARINGS: Proposed changes to the Otsego County Zoning Ordinance:
  1. Section 9.2.4 Livestock Auctions
  2. Section 18.1 Accessory Buildings
  3. Section 18.25 Mining
8. ADVERTISED CASES: Proposed changes to the Otsego County Zoning Ordinance (See above)
9. UNFINISHED COMMISSION BUSINESS:
  1. Discussion and recommendation to the Board of Commissioners on Otsego County Zoning Ordinance changes.
  - 2.
10. NEW BUSINESS:
  1. Article 24 Township Participation/Time limit response concerning Wireless Communications /Zoning Enabling Act change, May 2012.
  - 2.
11. REPORTS AND COMMISSION MEMBER'S COMMENTS
  1. Lighting issue/Sklarczyk greenhouse-Resolution report/Vern Schlaud
  - 2.
12. ADJOURNMENT

# Otsego County Planning Commission

PROPOSED Minutes for December 17, 2012/Regular Meeting

**Call to Order:** 6:00 pm

Pledge of Allegiance

**Roll Call:**

Present: Chairperson Stults, Vice Chairperson Arndt, Secretary Borton, Mr. Hilgendorf, Mr. Brown, Ms. Nowak, Mrs. Jarecki, Mr. Klee, Mr. Hendershot, Mr. Hilgendorf, Mr. Mang  
Absent: Mr. Hartmann

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

Others Present: John Burt, Otsego County Administrator

Public Present: Bonnie Mitchell, Terry Jans

Mr. Burt commented on the resignation of Joe Ferrigan and stated Vern Schlaud was the interim director until the position could be filled.

**Approval of minutes from November 19, 2012:**

Motion made to approve minutes as is by Mr. Hendershot; Seconded by Mr. Brown.

Motion approved unanimously.

**Consent Agenda:** None

**Public participation for items not on the agenda:**

Bonnie Mitchell handed out and read aloud a written complaint concerning a lighting problem with Sklarczyk Farms' greenhouse. She stated the lighting system was intense and was very intrusive. It lit up the nighttime sky and detracted from the up north feel. She had approached the owner about covering the house at night but he refused. She stated the issue violated Otsego County Zoning Ordinance *18.19 LIGHTING, OUTDOOR*, particularly 18.19.1.1 through 18.19.1.4.

Chairperson Stults stated the Planning Commission did not deal with enforcements and asked Mr. Schlaud to follow through as the enforcement officer.

Mr. Schlaud stated he would drive by the property after the meeting to check on the issue and would get back with Ms. Mitchell.

**Public Hearing:** None

**Advertised Cases:** None

**Unfinished Commission Business:**

- a. Article 14 Schedule of Dimensions, 14.1 Table 1, AR/Agricultural Resource, FR/Forest Recreation setback requirements.

# Otsego County Planning Commission

PROPOSED Minutes for December 17, 2012/Regular Meeting

Mr. Brown stated the Charlton Township Planning Commission had recommended setbacks in the AR/FR districts be the same as surrounding districts because they felt land owners were being penalized for having larger pieces of property in those zoning districts.

He read aloud the following motion he had submitted to the Land Use Department; Seconded by Mr. Hilgendorf:

I move that the minimum front setback for FR/Forest Recreation and AR/Agricultural Resource zoning districts of fifty (50) feet be changed to twenty-five (25) feet, minimum side setback of twenty (20) feet be changed to ten (10) feet and minimum rear setback of forty (40) feet be changed to thirty (30) feet as stated in Article 14/Schedule of Dimensions. This motion is made to have the setbacks be the same as in the R1/Residential, R2/General Residential, R3/Residential Estates and RR/Recreation Residential zoning districts.

Mrs. Jarecki stated according to the Master Plan, she thought the reasoning behind the greater setbacks might have been to maintain the rural character of those zoning areas by keeping the green space in front of the houses.

Chairperson Stults stated he did not believe it was an oversight on the part of the previous Planning Commission and that there are many reasons why the setbacks were greater in the AR/FR zoning districts such as size of equipment used, equipment storage, odors, etc.

Chairperson Stults suggested a modification of the previous motion to include, '*Note h: Section 18.1 allows a rear setback of ten (10) feet for accessory buildings*', stating it also applied.

Chairperson Stults read the following motion to replace the previous motion on the floor; Seconded by Mr. Brown:

Motion to follow Article 24 Township Participation in county Zoning for the proposed change that Section 14.1 Table 1 be revised as follows:

1. Minimum Front setback for the FR and AR Zoning Districts is reduced from fifty (50) feet to twenty-five (25) feet.
2. Minimum Side setback for the FR and AR Zoning Districts is reduced from twenty (20) feet to ten (10) feet.
3. Minimum Rear setback for the FR and AR Zoning Districts is reduced from forty (40) feet to thirty (30) feet with note (h) applying to this minimum rear setback.

This purpose of the proposed change is to have the setbacks in the AR and FR Zoning Districts the same as the setbacks in the R1, R2, R3 and RR Zoning Districts.

Further, once the time period for Township Participation in County Zoning has passed the proposed changes are placed before the Planning Commission for consideration to recommend to the Board of Commissioners adoption of the proposed changes.

Motion to replace previous motion approved unanimously.

Motion on the content and being sent to Townships approved; Ten (10) *yes* votes, one (1) *no* vote.

# Otsego County Planning Commission

PROPOSED Minutes for December 17, 2012/Regular Meeting

**\*Chairperson Stults requested suspending the rules to allow a report from the Executive Committee.\***

He stated the Executive Committee met December 5, 2012 to discuss the Objective List for 2013 and only a couple of items had been eliminated due to the Planning Commission's lack of control over them. Members were presented with the proposed minutes before the meeting.

## **New Business:**

- a. Prioritized Planning Commission 2013 Objective List

Mr. Mang questioned *Number 14. Fences/Game Farms* and its addition to the list.

Mrs. Jarecki stated she had submitted the item because no mention of game farms/fencing issues was in the zoning ordinance.

Chairperson Stults asked Mr. Schlaud if game farms fell under the Right to Farm Act and he stated he believed they did. He then stated, by law, the Planning Commission had to follow that Act.

Chairperson Stults read the following motion to approve the Objective List for 2013; Seconded by Mrs. Jarecki:

Motion to approve the 2013 Planning Commission Objectives and Priorities as recommended by the Executive Committee.

Motion approved unanimously.

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

Vice Chairperson Arndt suggested putting notes and thoughts in writing when working at the Township level and submitting input so nothing was overlooked when information was returned to the Planning Commission for consideration and recommendation.

Chairperson Stults stated written notice was needed seven (7) days prior to any meeting to be included on the agenda and that he thought any motions to be considered should be put down in writing, previously to any meeting.

Mr. Mang stated in the past, meetings had been paused so a motion could be written out and then read for consideration.

**Adjournment:** 6:45 pm

Christine Boyak-Wohlfeil, Recording Secretary

Ken Borton, Planning Commission Secretary

OBJECTIVE	INTENT	COMMENTS
1. Upgrade Wireless Communication Equipment	A necessity to bring the Zoning Ordinance into compliance with a revision made to the Zoning Enabling Act.	
2. Mining Revisions/18.25	This item has been sent to the Townships for their final review and should be back to the Planning Commission in January 2013.	
3. Michaywe' Boundary/Underlying Zoning	Completion of work started by the Planning Commission in 2007 to clearly define the border of the Michaywe' PUD and the surrounding parcels.	
4. Joint Session With the ZBA	A joint meeting between the two bodies for general discussion as to what each body should expect from the other.	
5. Minimum Size of Dwelling/Article 14, Table 1	Develop Zoning Ordinance language that is consistent with the State of Michigan residential building code. Joe will provide building code language.	
6. Agricultural Equipment Auctions	Add specific language to Article 18 concerning AG equipment auctions.	
7. Lots Near Water	The intent is to more clearly define the set-backs on properties that border water within Otsego County; protecting our waters while still allowing property owners the ability to use their property.	
8. Clean-up Ordinance / Continuance	A project Land Use is currently and continuing to work on. Information will be provided as necessary when public hearings or recommendations to the Board of Commissioners is required.	
9. Highway Interchange	Completing the review of the remaining language for this proposed additional zoning district and send to Townships for their review and written comments.	
10. B2, B3 Zoning District/B1(?)	Jeff Ratcliff and Joe Ferrigan will provide a study on the available B2 & B3 properties and whether or not any changes in zoning designation are necessary.	
11. Recreational Equipment	Review the storage of recreational equipment/Review the issuance of camping permits for temporary living in recreational equipment	
12. Private Roads/Emergency Vehicle Access	Develop very basic requirements for private roads within Otsego County to insure access is available to all emergency vehicles.	
13. Sign Ordinance/18.38	Review of current sign language, temporary placement of banners and other types of signage.	
14. Fences/18.10/Game Farms	Review of the placement of fences in relation to road right-of-ways, vehicles backing or pulling onto a roadway.	
15. Multi-Use Zoning District	Paul Hartmann is making contact with Elmira Township to see what action the County Planning Commission needs to take in 2013. (Also recommended in the 2009 Otsego County Master Plan)	

16. Overlay District Pigeon River	This is a recommended action of the 2009 Otsego County Master Plan. The idea is to develop special development conditions to ensure the protection of the unique characteristics of the Pigeon River Country Area.	
17. Non-Conforming Structures/Revise 18.26	Commissioner, Bruce Brown, would like language developed that will insure property owners the ability to reconstruct their residence in the event of a natural disaster without requiring board approval.	
18. Purchase and Transfer of Development Rights	This was a recommended action in the 2009 Otsego County Master Plan, designed for the protection of forestlands and open space.	
19. Large Tract Forestry Zoning District	This was presented with the idea of developing Ordinance language that would protect large parcels from being split up into small parcels, protecting the "up north nature" of Otsego County.	
20. Rental Homes/Short term/Add Conditions to Article 18	Review current Ordinance language and possibly develop new language regarding the short term renting of homes within the county (properties being rented as lake front retreats...).	
21. Outdoor Wood-fired Boilers	Review EPA sample ordinance and other community's ordinance to see if language can be developed that will work within Otsego County.	
22. Add Graphics to Zoning Ordinance	Land Use would like to add some graphics to the hyperlinked Ordinance so an individual can actually "see" what the Ordinance intends. (ie... yard setbacks)	
23. Enforcement Procedures	An on-going process; Land Use will be asking for your guidance as necessary throughout 2013.	
24. Assisted Living Facilities	Will be brought forward by Randy Stuitts and Ken Arndt in 2013	

**From:** M. Mang [<mailto:mangsmi1@gmail.com>]  
**Sent:** Wednesday, December 12, 2012 1:40 PM  
**To:** Joseph Ferrigan  
**Subject:** Livingston Township Response to Your Memo of 10/29/12

Mr. Ferrigan:

Regarding the subject memo to the townships concerning proposed changes to the Zoning Ordinance, Livingston Planning Commission reviewed the proposals and supports the changes, with three exceptions which are only typographical in nature.

The retired English teacher on our PC called our attention to two sentence fragments. Articles 18.25.1.1 and 18.25.5.4 should not have periods after "maps". There should be commas after "maps" and the words "the" following the commas should begin with a lower case "t". The third change we recommend is in the last line of 18.1.3.1 which should read, "...up to a maximum of four thousand (4,000) square feet."

Thank you for the opportunity to review these proposed changes to the Zoning Ordinance.

Michael Mang  
Chair, Livingston Twp PC

## Proposed Zoning Ordinance review – R. Stults 12-2012

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Mr. Ferrigan,

I have the following comments regarding proposed Zoning Ordinance revisions.

1. Section 18.25 the second sentence of this section should have the Public Act number added after Michigan Zoning Enabling Act, "Act 110 of 2006".
2. Section 18.25 1.1 the fourth paragraph of this section:

On any site that is adjacent to lakes, rivers, streams or flowages of water that appear on the most Geological Survey Quadrangle maps. The Otsego County Planning Commission reserves the right to increase the minimum set-back to a distance greater than fifty (50) feet to insure the maintenance of safe healthy conditions on the shorelands within Otsego County.

The period at the end of the first sentence should be corrected to a comma. This needs to include the point where the Fifty (50) feet is measured from. I am guessing this would be the ordinary high water mark. I think the word "insure" is not correct and it should be "ensure" as below:

On any site that is adjacent to lakes, rivers, streams or flowages of water that appear on the most Geological Survey Quadrangle maps, the Otsego County Planning Commission reserves the right to increase the minimum set-back from the ordinary high water mark, to a distance greater than fifty (50) feet to insure ensure the maintenance of safe healthy conditions on the shorelands within Otsego County.

3. The same revisions as above should also be made in 18.25.5.4, in the last paragraph of subsection a.
4. Section 18.25.5.4 subsection a. should be revised as follows: The "proposed" mining area: This will following the use of the word proposed in subsection e of this section.
5. In section 18.25.10 Performance Guarantees: the "or" in the second line of the first paragraph appears to be wrong and should be the word "of".
6. 8.2.16 the description of the use should have "see Article 18.25 for criteria" at the end of it.
7. 9.2.17 the description of the use should have "see Article 18.25 for criteria" at the end of it.
8. 13.2.7 The description of the use should have "see Article 18.25 for criteria" at the end of it.
9. 18.1.3.1 The proposed corrected language should indicate that it is four thousand (4,000) *square* feet, rather than four thousand (4,000) feet.

## Proposed Zoning Ordinance review – R. Stults 12-2012

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10.18.25.14.1 A space is needed after this number.

11.18.25.15.1 A space is needed after this number.

12.18.25.16.1 A space is needed after this number.

Randy Stults  
Chairperson  
Otsego County Planning Commission

CHESTER TOWNSHIP  
1737 Big Lake Road  
Gaylord, Michigan 49735  
989-732-5886

1/8/13

Otsego County Dept. of Land Use Services  
1068 Cross St.  
Gaylord, Mich. 49735

Attn: Mr. Vern Schlaud, Interim Director

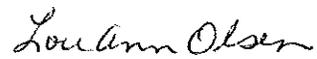
Dear Vern,

The Chester Township board held our meeting tonight and received the recommendations from our township planning commission on the proposed changes to the Otsego County Zoning Ordinance that were sent to us by your department on October 29, 2012 and December 18, 2012.

I am attaching the recommendations made by our township planning commission from the Jan. 3, 2013 meeting that they held and also the motion that the our township board made tonight approving those recommendations. Our planning commission suggested that when you send the proposed changes to us that you also include information as to why you are recommending the changes to the ordinance. It would really help them in their decision process.

Please do not hesitate to call me if you have any questions.

Sincerely,

  
Lou Ann Olsen  
Chester Township Supervisor  
989-732-1484

Cc: Twp. Board Members & Twp. Planning Commission



Lee Olsen <lolsen989@gmail.com>

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## reccomendations

1 message

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Wanda Basinski <wjbas@hotmail.com>

Thu, Jan 3, 2013 at 10:35 PM

To: LouAnn Olsen <lolsen989@gmail.com>, rjordan@glenergy.com, larrystempky@yahoo.com, susancaswellwitzman@gmail.com

check these over and see if I got them right. Thanks Wanda

The Chester Township Planning Commission has reviewed the proposed changes to the Otsego County Zoning Ordinance at our meeting on January 3, 2013.

Section 18.25.1.1 We are comfortable with the minimum of 10 acres and the fact that the OCPC reserves the right to increase the set-back distance, because we feel that fifty feet is not enough in most cases.

Section 18.25.5.4 Good

Section 18.25.8.1 Okay

Section 18.25.10 We feel that the Irrevocable letter of credit should be removed from the paragraph. The feeling being that this gives no money down and a LLC company could disband and the letter would not be of any use. We do agree with the other methods of payment. Also in c. the irrevocable letter of credit should be dropped. The other parts of this section are agreeable.

Section 18.20.2 We feel that 40 acres is excessive and we feel that a minimum of fifteen (15) acres would be more agreeable.

Section 18.1.3.1 It was felt that the Maximum of 4000 sq. ft. should be dropped and no maximum put in.

As for the *schedule of dimensions*; Article 14. the changes are agreeable.

CHESTER TOWNSHIP MOTION

DATE 1-8-13

MOTION BY: Olsen

MOTION That the Chester Twp. Board approve the Chester Twp. planning commission recommendations to the proposed changes to the Otsego County zoning ordinance from the Jan. 3, 2013 meeting.

SECONDED BY: Lewandowski

DISCUSSION OF MOTION OR AMENDED \_\_\_\_\_

ROLL CALL VOTE: BASINSKI \_\_\_\_\_ LEWANDOWSKI \_\_\_\_\_ NOWICKI \_\_\_\_\_  
SZYMANSKI \_\_\_\_\_ OLSEN \_\_\_\_\_

ALL IN FAVOR ✓ ✓ ✓ ✓ \_\_\_\_\_  
THOSE OPPOSED \_\_\_\_\_

RESULT: MOTION PASSED ✓ FAILED \_\_\_\_\_



*Otsego*  
**COUNTY**  
M I C H I G A N

*Department of  
Land Use Services*

1068 Cross St • Gaylord, MI 49735  
Phone (989)731.7420 • Fax (989)731.7429  
[www.otsegocountymi.gov](http://www.otsegocountymi.gov)

10-29-2012

To: Township Clerk

Re: Otsego County Zoning Ordinance

Pursuant to Article 24 of the Otsego County Zoning Ordinance, Otsego County Land Use Services is forwarding the following proposed amendments to the Otsego County Zoning Ordinance.

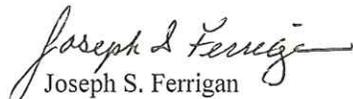
The Otsego County Planning Commission has taken into consideration past input from all Townships and input received at a public hearing, incorporated those recommendations into their final document. The Planning Commission is requesting that each Township review the proposed new Section 18.25 language for a final time before recommending adoption to the Otsego County Board of Commissioners.

Also included are a proposed change to Section 9.2.4 Livestock Auction Yard and a clarification for Section 18.1 Accessory Buildings.

The changes that have been made are highlighted in yellow to assist you in the review.

The Planning Commission is requesting that all written responses be submitted no later than January 15, 2013

Thank you for your participation in County wide zoning

  
Joseph S. Ferrigan

Director Otsego County Land Use

## SECTION 18.25 MINING, GRAVEL, SAND, CLAY, TOP SOIL, MARL

Allowed as a use Subject to Special Conditions in the (AR), (FR) and (I) zoning districts:

The Michigan Zoning Enabling Act may allow this Use in other Zoning Districts:

### 18.25.1 Site Development Requirements/Restrictions:

The following Site Development Requirements shall be followed:

#### 18.25.1.1 The site size shall be a minimum of Ten (10) acres.

Setback Area: Setbacks in which no part of the mining operation may take place excepting ingress and egress shall be as follows:

Excavation below the existing grade of adjacent roads or property lines shall not take place within fifty (50) feet from any adjacent property line or road right-of-way line. This shall include any sloping during the reclamation of the site.

No machinery shall be erected or maintained within one hundred (100) feet of any property or road right-of-way line.

On any site that is adjacent to lakes, rivers, streams or flowages of water that appear on most Geological Survey Quadrangle maps. The Otsego County Planning Commission reserves the right to increase the minimum set-back to a distance greater than fifty (50) feet to insure the maintenance of safe healthy conditions on the shorelands within Otsego County.

- 18.25.1.2 The area permitted for mining shall be marked with stakes or other markers as approved by the zoning administrator at all corners before the operation commences, and shall be maintained until the reclamation is approved in writing by the zoning administrator.
- 18.25.1.3 Sufficient native topsoil shall be left on the site as a ready resource to be used in reclamation work following excavation/extraction activity, unless an alternative or replacement plan is approved by the Planning Commission.
- 18.25.1.4 Physical isolation from residential properties shall be considered in locating development facilities. Topography, vegetation, screening devices and earth stockpiles may be used to accomplish this.
- 18.25.1.5 If necessary to protect the welfare of surrounding properties the access routes serving the site may be specified by the Planning Commission with input from the Otsego County Road Commission.
- 18.25.1.6 All structures, equipment and machinery shall be considered temporary and shall be removed upon completion of the mining, excavation, extraction or filling. Items not related to the operation shall not be stored at the site.
- 18.25.1.7 Interior access roads, parking lots, haul road loading and unloading areas shall be maintained so as to limit the nuisance caused by windblown dust.
- 18.25.1.8 The operation of mechanical equipment of any kind may be limited by the day(s) and/or hours by the Planning Commission.
- 18.25.1.9 Processing may be limited to only the materials extracted from the site. If the Operator intends to bring in off-site materials, Planning Commission approval is required.
- 18.25.1.10 Air pollution, noise and vibration factors shall be controlled within the limits governed by State and/or Federal regulations applicable to the facility.

- 18.25.1.11 All required Soil Erosion permit(s) shall be secured prior to the commencement of any operation. The Soil Erosion permit shall be issued for the same period of time as the permit for the operation and reclamation.

**18.25.2 Reclamation:**

**Intent: To prevent negative impacts to soil, water and air resources in and near mined areas. To restore the quality of the soils to their pre-mining level and to maintain or improve landscape visual and functional quality. All reclamation plans shall comply with all applicable Federal, State, Local and Tribal laws related to mining and mined land reclamation.**

- 18.25.2.1 Develop a reclamation plan that is consistent with the site capability, the planned land use and the landowner's conservation objectives. Include the practices necessary to reclaim and stabilize the mined areas to prevent further degradation of soil, water, air, plant and animal resources.
- 18.25.2.2 Dust control. Control the generation of particulate matter and fugitive dust during removal and replacement of soil and other materials. Detail the practices and activities necessary for dust control in the plans and specifications.
- 18.25.2.3 Properly identify areas for preservation including those containing trees, vegetation, historic structures, stream corridors, natural springs or other important features.
- 18.25.2.4 Remove trees, logs, brush, rubbish and other debris from disturbed areas that will interfere with reconstruction and reclamation operations. Dispose of these undesirable materials so they will not create a resource problem or interfere with reclamation activities and the planned land use.
- 18.25.2.5 Shape the land surface to provide adequate surface drainage and to blend into the surrounding topography. Use erosion control practices to reduce slope lengths where sheet and rill erosion will exceed acceptable levels.
- 18.25.2.6 Use sediment trapping practices such as filter strips, riparian forest buffers, contour buffer strips, sediment basins or similar practices to trap sediment before it leaves the project site. Establish drainage ways with sufficient capacity and stability to carry concentrated runoff from the reclaimed area into receiving streams without causing erosion.
- 18.25.2.7 Do site preparation, planting and seeding at a time and in a manner to ensure survival and growth of the selected species. In the plans and specifications, identify the criteria for successful establishment of vegetation such as minimum percent ground/canopy cover, percent survival and irrigation for initial establishment or stand density. Apply soil amendments and or plant nutrients as appropriate, according to the requirements of NRCS Conservation Practice Standard Nutrient Management (590). If the recommended fertilizer rate exceeds the criteria in NRCS Conservation Practice Standard Nutrient Management (590), use appropriate mitigating practices to reduce the risk of nutrient losses from the site. Use vegetation adapted to the site that will accomplish the desired purpose. Preference shall be given to native species in order to reduce the introduction of invasive plant species; provide management of existing invasive species; and minimize the economic, ecological, and human health impacts that invasive species may cause. If native plant materials are not adaptable or proven effective for the plant use, then non-native species may be used. Refer to the Field Office Technical Guide, Section II, Invasive Plant Species, for plant materials identified as invasive species.
- 18.25.2.8 Identify in the plans and specifications the species, rates of seeding or planting, minimum quality of planting stock, such as PLS or stem caliper, and method of establishment. Use only viable, high quality seed or planting stock. Use local NRCS criteria for seedbed preparation, seeding rates, planting dates, depths and methods.

**18.25.3 Restore the Quality of Soils to Their Pre-mining Level**

- 18.25.3.1 Complete a detailed soil survey of the proposed mine area if suitable soils information is not available. Use the soil survey information to determine the extent and location of prime farmland soils.

- 18.25.3.2 Remove all upper soil horizons from the project area that are suitable for reconstruction before operations commence.
- 18.25.3.3 Separate soils identified with high electrical conductivity, calcium carbonate, sodium or other restrictive properties, and treat if practicable.
- 18.25.3.4 Removal of overburden material for use as topsoil. Selected overburden materials can be substituted for or added to the A and B horizons if field observations and/or chemical and physical laboratory analyses demonstrate that the material, or a mixture of overburden and original topsoil, is suited to restoring the capability and productivity of the original A and B horizon material. Analyze overburden materials for pH, sulfide content, organic matter, nitrogen, phosphorus, potassium, sodium absorption ratio, electrical conductivity, texture and available water holding capacity. If the overburden material is determined to be suitable for topsoil, remove and separate from other materials and replace according to the requirements for topsoil placement.
- 18.25.3.5 Storage of soil materials. Stockpile soil materials to be used as topsoil until they are needed for reclamation. Locate stockpiles to protect against wind and water erosion, dust generation, unnecessary compaction and contamination by noxious weeds, invasive species or other undesirable materials.
- 18.25.3.6 Replacement of soil material. When placing cover materials, treat graded areas to eliminate slippage surfaces and promote root penetration before spreading topsoil. Spread topsoil so the position and thickness of each horizon is equivalent to the undisturbed soil without causing excess compaction the moist bulk density and soil strength of the reconstructed soil must support plant growth at a level equivalent to that of a similar layer in undisturbed soil.
- 18.25.3.7 Reclaim the site to maintain or improve visual quality based on the scenic quality of the reclaimed site as well as the function of the site for the end land use. Plan the reclamation to be compatible with the topography and land cover of the adjacent landscape. Focus on areas of high public visibility, and those offering direct or indirect human and wildlife benefits.
- 18.25.3.8 Grade and shape spoil piles and borrow areas to blend with the adjacent landscape topography to the extent practicable.
- 18.25.3.9 Develop a planting plan that mimics the species, arrangement, spacing and density of plants growing on adjacent landscapes. Choose native species of erosion control vegetation and other plant materials where practical. Arrange plantings to screen views, delineate open space, act as windbreaks, serve as parkland, wildlife habitat or protect stream corridors.

**18.25.4 PLANS AND SPECIFICATIONS:**

- 18.25.4.1 Plans and specification for Land Reclamation - Currently Mined Land shall be in keeping with this standard and shall describe the requirements for applying the practice to achieve its intended purpose.

**18.25.5 Application Procedure:**

An application for Mining- Gravel, Sand, Clay, Top Soil or Marl, Shall contain all of the following:

- 18.25.5.1 Name and address of owner(s) of land where mining, excavation, extraction or filling are proposed to take place.
- 18.25.5.2 Name, address and telephone number of person, firm or corporation who will be conducting the actual operation. This person, firm or corporation shall be referred to as operator.
- 18.25.5.3 A current Survey and legal description of the site where the proposed operation is to take place.
- 18.25.5.4 A site plan complying with all requirements of Article 20 of the Otsego County Zoning Ordinance in addition to showing all of the following:
  - a. The mining area:

Setbacks in which no part of the mining operation may take place excepting ingress and egress shall be as follows:

Excavation below the existing grade of adjacent roads or property lines shall not take place within fifty (50) feet minimum from any adjacent property line or road right-of-way line. This shall include any sloping during the reclamation of the site.

On any site that is adjacent to lakes, rivers, streams or flowages of water that appear on most Geological Survey Quadrangle maps. The Otsego County Planning Commission reserves the right to increase the minimum set-back to a distance greater than fifty (50) feet to insure the maintenance of safe healthy conditions on the shorelands within Otsego County.

- b. The placement of all equipment to be used during the operation.

No machinery shall be erected or maintained within one hundred (100) feet of any property or road right-of-way line.

- c. Required Screening of the site shall be in compliance with standards of Section 18.18 of the Otsego County Zoning Ordinance.

If the operator chooses to use a berm to achieve the required screening, the berms shall be placed no closer than 20 feet to any property line.

- d. The proposed ingress and egress at the site and route(s) to be used to access the site when not located on a primary road. The route(s) for ingress and egress when not located on a primary road shall have written approval from the Otsego County Road Commission. The operator shall be responsible for all road damage to public roads caused as a result of the operation.
- e. The type and location of any proposed accessory uses. The Planning Commission may approve vehicle maintenance, sorting, crushing, concrete mixing, asphalt batching and other uses as accessory uses subject to conditions placed upon the accessory uses.

#### 18.25.7 Operational Plan including the following:

- 18.25.7.1 The Operational plan shall be in written form.
- 18.25.7.2 The written plan shall indicate the proposed size, depths, methods of operation, and type of material(s) to be mined, excavated, extracted or filled.
- 18.25.7.3 The written plan shall indicate the phases of operation and ending date for each phase.
- 18.25.7.4 The written plan shall indicate the method by which the operation shall be secured from entry during hours of non- operation.
- 18.25.7.5 The written plan shall indicate the proposed hours and days of operation.

#### 18.25.8 Reclamation Plan:

- 18.25.8.1 A written detailed reclamation plan meeting all of the requirements of 18.25.2, 18.25.3 shall be submitted with the application and operational plan. The submitted reclamation plan shall include photographs of the site prior to commencement of the proposed operation.
- 18.25.8.2 The written reclamation plan shall be approved by Planning Commission and may have additional conditions placed upon it prior to final approval.
- 18.25.8.3 The approved site plan and/or reclamation plan may be revised at any time by mutual consent of the operator and the Planning Commission to adjust to changed conditions, technology or to correct an oversight. Any costs to amend the plan(s) are to be borne by the initiating party. The Planning Commission may require the modification of the approved Site plan and/or reclamation plan when:

- a. Modification of the plan is necessary so that it will conform to existing laws.
- b. It is found that the previously approved plan is clearly impractical to implement and maintain.
- c. The approved plan is obviously not accomplishing the intent of the Ordinance.
- d. Any modification shall be subject to all provisions of Article 16 and Article 20.

**18.25.9 Approval Process:**

18.25.9.1 All approvals shall be made in accordance with the process prescribed in Article 16 Permitted Uses Subject to Special Conditions.

**18.25.10 Performance Guarantees:**

After a special use permit application has been approved, but before the permit is issued, the applicant shall file with the Otsego County Clerk, a performance guarantee in the form of a cash deposit, certified check, irrevocable letter of credit, or surety bond acceptable to the Planning Commission and conditioned on faithful performance of all requirements under Section 18.25 and the permit.

The performance guarantee shall cover that area of land within the permit area on which the applicant will initiate and conduct the mining and rehabilitation operations. The amount of the performance guarantee shall be determined by the Planning Commission and shall reflect the rehabilitation requirements of the permit and the probable difficulty of the rehabilitation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential. The amount of the performance guarantee shall be sufficient to assure the completion of the rehabilitation plan if the rehabilitation had to be performed by the County in the event of non-performance by the applicant. Any cash deposit of certified funds shall be refunded to the applicant in the following manner:

- a. One-third of the cash deposit after completion of one-third of the rehabilitation plan;
- b. Two-thirds of the cash deposit after completion of two-thirds of the rehabilitation plan;
- c. The balance at the completion of the rehabilitation plan. Any irrevocable letter of credit or surety bond shall be returned to the applicant upon completion of the rehabilitation plan.

In order to receive a refund of the performance guarantee as provided for in subsections (a) through (c) above, the applicant shall file a written request with the Zoning Administrator. The written request shall include the type and dates of rehabilitation work performed, and a description of the results achieved as they relate to the applicant's rehabilitation plan. Within thirty (30) days after receiving the written request for a refund of the performance guarantee, the Zoning Administrator shall conduct an inspection and evaluation of the rehabilitation work performed. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining rehabilitation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of the pollution, and the estimated cost of abating the pollution. Within thirty (30) days after the inspection, the Zoning Administrator shall send written recommendations to the Planning Commission indicating approval, partial approval, rejection, or approval with conditions, of the rehabilitation work performed by the applicant, along with a statement of the reasons for any rejections.

The Planning Commission shall approve, partially approve, or reject the rehabilitation work performed by the applicant with the recommendation of the Zoning Administrator's written statement, and shall notify the applicant in writing of the action of the Planning Commission. Where partial approval is granted the applicant shall be refunded a portion of the performance guarantee that is proportionate to the cost of the rehabilitation work approved. Upon approval or partial approval by the Planning Commission, the County Clerk shall refund the performance guarantee or a portion thereof as specified by the Planning Commission to the applicant.

~~18.25.10.1 The Planning Commission shall require that the applicant file with the County Treasurer a surety bond, executed by a reputable surety company admitted to do business in the State of Michigan in a minimum amount of one thousand (\$1,000.00) dollars per acre of excavated area; or an irrevocable letter of credit from a commercial bank or cash bond in a minimum of one thousand (\$1,000.00) dollars per acre of excavated area. The Planning Commission shall determine the amount of the Financial Guarantee.~~

~~Excavated area shall include all areas of excavation, stockpiling, and processing which are not rehabilitated pursuant to Sections 18.25.2 and 18.25.3 of this Ordinance. Required financial guarantees shall be reduced at a rate equal to the ratio of rehabilitation work completed and as other required improvements are completed upon certification by the Zoning Administrator.~~

~~18.25.10.2 The Planning Commission in establishing the amount of financial guarantee. Shall consider information provided to them by the Zoning Administrator, regarding the scale of operations, the prevailing cost to rehabilitate the property upon default of the operator. Road damage that may occur to public roads, court costs, administrative costs, and other reasonable expenses likely to be incurred by the county or township where the surface mine is located.~~

**18.25.11 Inspection:**

18.25.11.1 Mining, excavation, extraction or filling permits granted for a period exceeding one (1) year shall be inspected a minimum of once a year during the operation period and a minimum of each 100 days during restoration, by the Zoning Administrator to insure compliance with the permit and Ordinance. The operator shall pay an inspection fee, as determined by the Otsego County Board of Commissioners, for each inspection to cover the costs of extraction and reclamation inspections required by this section within 30 days of the invoice being sent to them or they will be in violation of the Special Use Permit.

**18.25.12 Certificate of completion:**

18.25.12.1 A certificate of completion shall be issued to the operator when the Zoning Administrator makes the following determination.

18.25.12.2 All evidence of the operation has been removed from the site.

18.25.12.3 All required grading of the site has been completed.

18.25.12.4 All required re-vegetation of the site has been completed and initial growth has begun and there is no erosion present.

18.25.12.5 Completion and approval of the soil erosion permit has been given.

**18.25.13 Evidence of Continuing Use:**

18.25.13.1 When activities on or the use of the mining area, or any portion thereof, have ceased for more than one (1) year or when, by examination of the premises or other means, the Zoning Administrator determines a manifestation of intent to abandon the mining area, the Zoning Administrator shall give the operator written notice of their intention to declare the mining area or portion thereof abandoned. Within thirty (30) days following receipt of said notice, the operator shall have the opportunity to rebut the Zoning Administrator's evidence and submit other relevant evidence to the contrary. If the Zoning Administrator finds the operator's evidence of continued use satisfactory, he/she shall not declare abandonment.

**18.25.14 Transference of a Special Use Permit:**

18.25.14.1 Permits for surface mining shall be issued to the operator. If an operator disposes of his interest in an extraction area prior to final reclamation by sale, lease, assignment, termination of lease, or otherwise, the Planning Commission may release the operator

10-22-2012(JSF)

from the duties imposed upon him by this Ordinance, as to the operation, but only if the successor, operator, or property owner assumes the obligations of the former operator with reference to the reclamation activities. At that time the Special Use Permit may be transferred.

**18.25.15 Permit extension:**

18.25.15.1 All requests for an extension/renewal of a special Use permit shall for mining, excavation, extraction or filling follow the same process as a request for a new permit.

**18.25.16 Permit Expiration:**

18.25.16.1 If approval for a Special Use Permit for mining, excavation, extraction or filling is granted by the Otsego County Planning Commission it shall be for a specific period of time not to exceed five (5) years and shall specify the period of restoration which cannot extend more than 18 months beyond the permitted time for operation.

\* \* \* \* \*

**FR - FORESTRY RECREATION DISTRICT**

8.2.16 Surface mining of gravel, sand, clay, topsoil or marl (~~gravel, sand, etc.~~).

**AR - AGRICULTURAL RESOURCE DISTRICT**

9.2.17 Surface mining of gravel, sand, clay, topsoil or marl (~~gravel, sand, etc.~~).

**I - INDUSTRIAL DISTRICT**

~~13.1.5 Surface mining Gravel extraction, mining, or quarrying.~~

Allowed as a Principal Use Permitted in the (I) zoning district: **change to a special use**

**Insert under Section 13.2 Permitted Uses Subject to Special Conditions:**

**13.2.7 Surface mining of gravel, sand, clay, topsoil or marl**

**Renumber all uses that follow**

The Otsego County Planning Commission has discovered a discrepancy with the following sections of the Otsego County Zoning Ordinance language.

9.2.4 Livestock auction yards with accessory buildings on **ten (10) acres** or more with a minimum width of six hundred (600) feet, provided that there is no nuisance imposed upon the surrounding farms or dwellings.

#### **SECTION 18.20 LIVESTOCK AUCTION YARD**

18.20.1 Special Use Permit may be granted by the Planning Commission in AR Zone.

18.20.2 Minimum forty **(40) acres** site size.

The Planning Commission is recommending that Section 9.2.4 be amended to contain matching language found in Section 18.20.2.

#### **Proposed new language:**

9.2.4 Livestock auction yards with accessory buildings on a minimum forty (40) acre site size, provided that there is no nuisance imposed upon the surrounding farms or dwellings.

The Otsego County Planning Commission and the Otsego County Zoning Board of Appeals are recommending the following to clarify that a land owner is allowed a maximum of four thousand (4000) square feet of accessory buildings.

**Current Zoning Ordinance language:**

**SECTION 18.1 ACCESSORY BUILDINGS**

- 18.1.1 Accessory buildings in the R1, R2, R3 & RR Districts shall be subject to the side and front yard setback requirements as regulated in Article 14 SCHEDULE OF DIMENSIONS, but need not be farther than ten (10) feet from the rear property line.
- 18.1.2 In Residential Districts all accessory buildings and uses shall be in the rear yard except in the case of one detached private garage which may be allowed in the side or front yard, provided it maintains the setback requirements as regulated in Article 14 SCHEDULE OF DIMENSIONS.
- 18.1.3 Detached accessory buildings for residential use in any district shall not exceed a total ground floor area of: twelve hundred (1,200) square feet in R1, R2 and RR, and two thousand (2,000) square feet in R3, FR and AR, except:
  - 18.1.3.1 Where the lot is larger than the minimum size for that zoning district, the total accessory building square footage may be increased proportionally to the lot size in the following manner: twenty-five (25) square feet increase in allowable accessory buildings for every one thousand (1,000) square feet that the lot exceeds minimum lot size, **up to a maximum of a four thousand (4,000) square foot building.**
- 18.1.4 Agricultural buildings and structures incident to use for agricultural purposes are exempt from accessory building requirements.
- 18.1.5 Accessory buildings shall not be used for residences.
- 18.1.6 Accessory building may not be used for commercial storage.

**Proposed corrected language:**

- 18.1.3.1 Where the lot is larger than the minimum size for that zoning district, the total accessory building square footage may be increased proportionally to the lot size in the following manner: twenty-five (25) square feet increase in allowable accessory buildings for every one thousand (1,000) square feet that the lot exceeds minimum lot size, **up to a maximum of four thousand (4,000) feet.**

Act No. 143  
Public Acts of 2012  
Approved by the Governor  
May 23, 2012  
Filed with the Secretary of State  
May 24, 2012  
EFFECTIVE DATE: May 24, 2012

**STATE OF MICHIGAN  
96TH LEGISLATURE  
REGULAR SESSION OF 2012**

Introduced by Senator Kowall

**ENROLLED SENATE BILL No. 1064**

AN ACT to amend 2006 PA 110, entitled "An act to codify the laws regarding local units of government regulating the development and use of land; to provide for the adoption of zoning ordinances; to provide for the establishment in counties, townships, cities, and villages of zoning districts; to prescribe the powers and duties of certain officials; to provide for the assessment and collection of fees; to authorize the issuance of bonds and notes; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," (MCL 125.3101 to 125.3702) by adding section 3514.

*The People of the State of Michigan enact:*

Sec. 3514. (1) Wireless communications equipment is a permitted use of property and is not subject to special land use approval or any other approval under this act if all of the following requirements are met:

(a) The wireless communications equipment will be collocated on an existing wireless communications support structure or in an existing equipment compound.

(b) The existing wireless communications support structure or existing equipment compound is in compliance with the local unit of government's zoning ordinance or was approved by the appropriate zoning body or official for the local unit of government.

(c) The proposed collocation will not do any of the following:

(i) Increase the overall height of the wireless communications support structure by more than 20 feet or 10% of its original height, whichever is greater.

(ii) Increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation.

(iii) Increase the area of the existing equipment compound to greater than 2,500 square feet.

(d) The proposed collocation complies with the terms and conditions of any previous final approval of the wireless communications support structure or equipment compound by the appropriate zoning body or official of the local unit of government.

(2) Wireless communications equipment that meets the requirements of subsection (1)(a) and (b) but does not meet the requirements of subsection (1)(c) or (d) is a permitted use of property if it receives special land use approval under subsections (3) to (6).

(3) An application for special land use approval of wireless communications equipment described in subsection (2) shall include all of the following:

(a) A site plan as required under section 501, including a map of the property and existing and proposed buildings and other facilities.

(b) Any additional relevant information that is specifically required by a zoning ordinance provision described in section 502(1) or 504.

(4) After an application for a special land use approval is filed with the body or official responsible for approving special land uses, the body or official shall determine whether the application is administratively complete. Unless the body or official proceeds as provided under subsection (5), the application shall be considered to be administratively complete when the body or official makes that determination or 14 business days after the body or official receives the application, whichever is first.

(5) If, before the expiration of the 14-day period under subsection (4), the body or official responsible for approving special land uses notifies the applicant that the application is not administratively complete, specifying the information necessary to make the application administratively complete, or notifies the applicant that a fee required to accompany the application has not been paid, specifying the amount due, the running of the 14-day period under subsection (4) is tolled until the applicant submits to the body or official the specified information or fee amount due. The notice shall be given in writing or by electronic notification. A fee required to accompany any application shall not exceed the local unit of government's actual, reasonable costs to review and process the application or \$1,000.00, whichever is less.

(6) The body or official responsible for approving special land uses shall approve or deny the application not more than 60 days after the application is considered to be administratively complete. If the body or official fails to timely approve or deny the application, the application shall be considered approved and the body or official shall be considered to have made any determination required for approval.

(7) Special land use approval of wireless communications equipment described in subsection (2) may be made expressly conditional only on the wireless communications equipment's meeting the requirements of other local ordinances and of federal and state laws before the wireless communications equipment begins operation.

(8) If a local unit of government requires special land use approval for wireless communications equipment that does not meet the requirements of subsection (1)(a) or for a wireless communications support structure, subsections (4) to (6) apply to the special land use approval process, except that the period for approval or denial under subsection (6) is 90 days.

(9) A local unit of government may authorize wireless communications equipment as a permitted use of property not subject to a special land use approval.

(10) As used in this section:

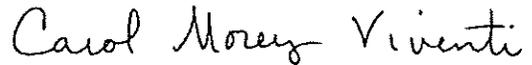
(a) "Collocate" means to place or install wireless communications equipment on an existing wireless communications support structure or in an existing equipment compound. "Collocation" has a corresponding meaning.

(b) "Equipment compound" means an area surrounding or adjacent to the base of a wireless communications support structure and within which wireless communications equipment is located.

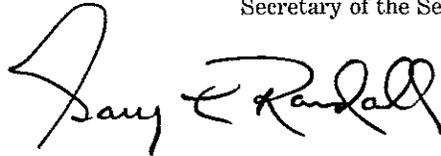
(c) "Wireless communications equipment" means the set of equipment and network components used in the provision of wireless communications services, including, but not limited to, antennas, transmitters, receivers, base stations, equipment shelters, cabinets, emergency generators, power supply cables, and coaxial and fiber optic cables, but excluding wireless communications support structures.

(d) "Wireless communications support structure" means a structure that is designed to support, or is capable of supporting, wireless communications equipment, including a monopole, self-supporting lattice tower, guyed tower, water tower, utility pole, or building.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved .....

.....  
Governor



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bill 1064 (as enacted)  
Sponsor: Senator Mike Kowall  
Senate Committee: Economic Development  
House Committee: Energy and Technology

**PUBLIC ACT 143 of 2012**

Date Completed: 7-24-12

**CONTENT**

**The bill amended the Michigan Zoning Enabling Act to do the following:**

- Provide that wireless communications equipment that meets certain conditions is a permitted use of property and is not subject to special land use approval or any other approval under the Act.
- Provide that equipment that does not meet all of the conditions is a permitted use if it receives special land use approval.
- Require a zoning body or local official to grant or deny special land use approval within 60 days after receiving an administratively complete application, or 90 days under certain circumstances.
- Provide that an application is considered approved if the zoning body or official does not act within the prescribed time period.
- Limit a special land use application fee to \$1,000 or the local unit's administrative costs, whichever is less.
- Limit the conditions that may be imposed on special land use approval.
- Allow a local unit to authorize wireless communications equipment as a permitted use not subject to special land use approval.

The bill took effect on May 24, 2012.

Specifically, under the bill, wireless communications equipment is a permitted use of property and is not subject to special

land use approval or any other approval under the Act if all of the following requirements are met:

- The equipment will be collocated on an existing wireless communications support structure or in an existing equipment compound.
- The existing structure or compound is in compliance with the local unit of government's zoning ordinance or was approved by the appropriate zoning body or official for the local unit.
- The proposed collocation complies with the terms and conditions of any previous final approval of the structure or compound by the appropriate zoning body or official.

In addition, the proposed collocation may not do any of the following:

- Increase the overall height of the support structure by more than 20 feet or 10% of its original height, whichever is greater.
- Increase the width of the support structure by more than the minimum necessary to permit collocation.
- Increase the area of the existing compound to greater than 2,500 square feet.

(The bill defines "wireless communications equipment" as the set of equipment and network components used in the provision of wireless communications services, including antennas, transmitters, receivers, base stations, equipment shelters, cabinets, emergency generators, power supply cables,

and coaxial and fiber optic cables. The term excludes wireless communications support structures.

"Wireless communications support structure" means a structure that is designed to support, or is capable of supporting, wireless communications equipment, including a monopole, self-supporting lattice tower, guyed tower, water tower, utility pole, or building. "Equipment compound" means an area surrounding or adjacent to the base of a wireless communications support structure and within which the equipment is located.)

Wireless communications equipment that will be collocated on an existing support structure or in an existing compound or that is in compliance with the zoning ordinance or was properly approved, but does not meet the requirements regarding compliance with previous final approval or an increase in size, is a permitted use of property if it receives special land use approval.

An application for special land use approval for the equipment must include both of the following:

- A site plan, including a map of the property and existing and proposed buildings and other facilities.
- Any additional relevant information required specifically by a zoning ordinance provision regarding special land uses.

After an application is filed with the body or official responsible for approving special land uses, the body or official must determine whether the application is administratively complete. Unless the body or official proceeds as described below, the application must be considered administratively complete when the determination is made or 14 days after the application is received, whichever is first.

If the body or official notifies the applicant before the 14-day period expires that the application is not administratively complete, specifying the information necessary to make it complete, or notifies the applicant that a required application fee has not been paid, specifying the amount due, the running of the 14-day period will be tolled until the applicant submits the specified information or fee amount due. The notice must be given in writing or electronically. A

fee required to accompany the application may not exceed the local unit's actual, reasonable costs to review and process the application or \$1,000, whichever is less.

The body or official responsible for approving special land uses must approve or deny the application within 60 days after it is considered to be administratively complete. If the body or official fails to approve or deny the application in a timely manner, it will be considered approved and the body or official will be considered to have made any determination required for approval.

If a local unit requires special land use approval for a wireless communications support structure, or for equipment that does not meet the requirement of collocation on an existing support structure or in an existing compound, the period for approval or denial is 90 days.

Special land use approval of wireless communications equipment may be made expressly conditional only on the equipment's meeting the requirements of local ordinances and of Federal and State laws before the equipment begins operation.

MCL 125.3514

Legislative Analyst: Julie Cassidy

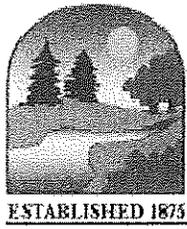
#### **FISCAL IMPACT**

The bill will increase both revenue and expenses for local units by an unknown amount, depending on the number of entities that file applications and the fees charged for applications. Because the bill limits fees to the lesser of \$1,000 or the local unit's actual costs, the bill potentially will increase costs by more than it increases revenue, although any differences likely will be minimal.

Fiscal Analyst: David Zin

#### **S1112s1064es**

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.



*Otsego*  
**COUNTY**  
M I C H I G A N

*Department of  
Land Use Services*  
1068 Cross St • Gaylord, MI 49735  
Phone (989)731.7420 • Fax (989)731.7429  
[www.otsegocountymi.gov](http://www.otsegocountymi.gov)

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Planning Commission Report      1-21-2013

Inspection report for lighting at 8710 M-32 E.

Inspection performed on 12-17-12 at 9:30 PM pictures taken. Lights on inside of greenhouse shining thru roof. On 12-13-12 property owner came to office to obtain Zoning permit for Agricultural Exempt Structure. At that time I discussed the issue of the greenhouse lighting with him. He stated that his property is inspected under the State guidelines for his use by State Inspectors & the FDA. He also mentioned that the lights were on a timer to go off between 10:00 PM & 6:00 AM. He stated the lighting used depends on the time of year to extend the seed growing process.

Please see attached letter explaining a Greenhouse Farming Operation.

Sincerely,

Vern Schlaud

Otsego County Land Use Director  
Interim

CUMMINGS • MCCLOREY



DAVIS & ACHO, P.L.C.

ATTORNEYS AND COUNSELORS AT LAW

125 PARK STREET, SUITE 415, TRAVERSE CITY, MICHIGAN 49684 (231) 922-1888 ■ FACSIMILE: (231) 922-9888

Haider A. Kazim  
hkazim@cmda-law.com

January 8, 2013

*VIA E-MAIL ONLY [jburt@otsegocountymi.gov](mailto:jburt@otsegocountymi.gov)*

Mr. John Burt, Otsego County Administrator  
City/County Building

RE: Greenhouse farming operation

Dear Mr. Burt:

You have asked whether a greenhouse farm is subject to the Otsego County Zoning Ordinance (OCZO) or whether it is exempt under the Right To Farm Act (RTFA). Specifically, you have informed us that a greenhouse farm has been in operation for many years in Johannesburg, Michigan. The greenhouse is located in the Agricultural Resources zoning district (AR District). The greenhouse grows, raises, and harvests genetically engineered potatoes that it sells to other farmers to utilize the seedlings of the genetically engineered potatoes, and to companies such as Lays, which utilizes the potatoes in manufacturing potato chips.

Article 9 of the OCZO describes the uses permitted in the AR District. Section 9.1 of the OCZO enumerates the principal uses permitted in the AR District. Section 9.1.4 allows growing, raising, and harvesting of agricultural products and livestock. Section 9.1.5 permits woodlots, tree farms, nursery field stock, and harvesting activities, while section 9.1.9 provides for farm industries. While greenhouses are not specifically listed as a permitted use in the AR District, the purpose of the subject greenhouse which, is used for growing, raising, and harvesting genetically engineered potatoes, would qualify the use under section 9.1.4 as growing, raising, and harvesting an agricultural product. The issue in the present matter is the lighting that is used by the greenhouse to grow and raise the potatoes. It is our understanding that the owners have updated the indoor lighting of the greenhouse to LED lighting which, has resulted in a neighbor complaining about the intensity and brightness of the lights. You would like to know if the provisions concerning outdoor lighting in the OCZO would be applicable to the lighting used by the greenhouse.

Section 18.19 of the OCZO regulates outdoor lighting. As the term indicates, it applies to lighting that is used outdoors such as search, spot and flood lights for buildings and structures, parking lot lighting, landscape lighting, billboards, street lighting, product display lighting, building overhangs and open canopies. Section 18.19 does not regulate lighting that is inside a building or structure. In the present matter, the lighting that is complained of is installed inside the greenhouse but it is the outward reflection of the indoor lighting that is the cause of the neighbor's complaint.

Mr. John Burt  
January 8, 2013  
Page 2

There are no provisions of the OCZO that regulate indoor lighting. Therefore, section 18.19 would not be applicable to the greenhouse lighting at issue in the present matter.

Even if the OCZO had regulations that pertained to indoor lighting, it is likely that the greenhouse would have been exempt from the regulations pursuant to the RTFA. MCL 286.473(1) provides in pertinent part:

A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agricultural and management practices according to policy determined by the Michigan commission of agriculture.

The term "farm" is defined under MCL 286.472(a) as "the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products." The term "farm operation" is defined as "the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products". MCL 286.472(b). "Farm product" is defined as "those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, ... fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, ... ." MCL 286.471(c).

Both the definitions for "farm" and "farm operation" use the terms "farm products" and "commercial production". While the RTFA defines the term "farm product", it does not define "commercial production." Words that are not defined by a statute will be given their plain and ordinary meanings, and a court may consult dictionary definitions when ascertaining those meanings. *Koontz v Ameritech Services, Inc.*, 466 Mich 304, 312 (2002). In *Charter Township of Shelby v Papesch*, 267 Mich App 92, 100-101 (2005), the Court of Appeals, utilizing the dictionary definitions of the "commercial" and "production" defined "commercial production" as "the act of producing or manufacturing an item intended to be marketed and sold at a profit." You have informed us that the greenhouse produces genetically engineered potatoes for sale to other farmers who wish to utilize the seeds to grow the potatoes on their own farms, and also to companies such as Lays which, uses the potatoes to manufacture potato chips. Thus, the greenhouse is engaged in commercial production of farm products since, as defined in the RTFA, potatoes would be considered a farm product.

In *Northville Township v Coyne*, 170 Mich App 446, 448-449 (1988), the appellate court noted:

The Legislature undoubtedly realized that, as residential and commercial development expands outward from our state's urban centers and into our agricultural communities, farming operations are often threatened by local zoning ordinances and irate neighbors. It, therefore, enacted the Right to Farm Act to protect farmers from

Mr. John Burt  
January 8, 2013  
Page 3

the threat of extinction caused by nuisance suits arising out of alleged violations of local zoning ordinances and other local land use regulations as well as from the threat of private nuisance suits.

According to the plain language of the RTFA, a farm or farming operation cannot be found to be a nuisance if it is commercial in nature and conforms to Generally Accepted Agricultural and Management Practices (GAAMPs). Whether a farm conforms to the GAAMPs is decided according to policies adopted by the Michigan Commission of Agriculture. *Richmond Township v Erbes*, 195 Mich App 210, 221 (1992).

Our research has not revealed any GAAMPs regarding greenhouses. There are however, Greenhouse System Verification Standards developed by Michigan Agriculture Environmental Assurance Program (MAEAP). (See attached). The Standards refer to 2011 Right to Farm Pesticide Utilization and Pest Control GAAMPs, Nutrient Utilization GAAMPs, and Irrigation Water Use GAAMPs, as well as various other statutes such as the Natural Resources and Environmental Protection Act, Public Health Code, and the Safe Drinking Water Act. The absence of GAAMPs specific to greenhouse operations does not in and of itself deprive the greenhouse from the protections afforded by RTFA. In *City of Troy v Papadelis*, 1996 WL 33364405 (Mich App, May 10, 1996), the city argued that since there are no GAAMPs in place for greenhouse operations, defendants greenhouse operation cannot benefit from the RTFA. The Court of Appeals rejected city's argument and stated that the RTFA provides only that, if a farm operation conforms to GAAMPs, it shall not be found to be a public or private nuisance. The statute does not provide that only operations for which there are GAAMPs in place are protected. Thus, the absence of GAAMPs for greenhouse operations, does not automatically deprive the subject greenhouse from the protections of RTFA.

It should be mentioned that in *Papadelis v City of Troy*, 478 Mich 934 (2007), the Michigan Supreme Court, in its order remanding the case to the trial court stated:

As no provisions of the RTFA or any published generally accepted agricultural and management practice address the permitting, size, height, bulk, floor area, construction, and location of buildings used for greenhouse or related agricultural purposes, no conflict exists between the RTFA and the defendant city's ordinances regulating such matters that would preclude their enforcement under the facts of this case.

In the present matter however, the building permit, size, height, bulk, floor area, construction, and location of the subject greenhouse are not at issue. The lighting of the greenhouse is a "condition or activity that occurs ... as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products". MCL 286.472(b). Thus, the lighting is part of the operation of the greenhouse, and would be protected under the RTFA.

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January 8, 2013  
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MCL 286.474(6) states:

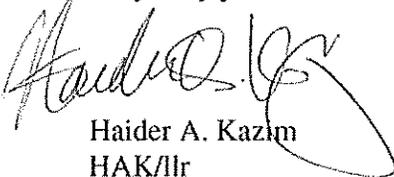
Beginning June 1, 2000, except as otherwise provided in this section, it is the express legislative intent that this act preempt any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of this act or generally accepted agricultural and management practices developed under this act. Except as otherwise provided in this section, a local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that conflicts in any manner with this act or generally accepted agricultural and management practices developed under this act.

The language of the statute is unambiguous. It clearly states that a local ordinance is preempted when it purports to extend or revise the RTFA or GAAMPs. It further plainly states that a local unit of government shall not enforce an ordinance that conflicts in any manner with the RTFA or GAAMPs. *Charter Township of Shelby v Papesh, supra*, 267 Mich App at 106. There are no GAAMPs, to our knowledge, that address indoor lighting in a greenhouse that is necessary for growing and raising farm products. There are Standards promulgated by the MAEAP that address greenhouse site/soil evaluation, water well condition, pesticide storage and handling, fertilizer storage and handling, petroleum product storage and management, waste management, septic system management, nutrient management practices, water management practices, and pest management practices. None of these standards address lighting. Therefore, since the subject greenhouse is commercial in nature, and if it is in compliance with the Standards, it is a farm operation protected by the RTFA. Therefore, any ordinance that would preclude a protected farm operation by regulating lighting inside the greenhouse that is necessary in connection with the commercial production and harvesting of the potatoes, is preempted by the RTFA. Any ordinance, including a zoning ordinance, is unenforceable to the extent that it would prohibit conduct protected by the RTFA.

It is therefore our opinion that the subject greenhouse is exempt from the provisions of the OCZO so long as it is commercial in nature and conforms with the GAAMPs. To the extent that the subject greenhouse is a commercial farm operation, and if it complies with the Standards as promulgated by MAEAP, the greenhouse is a protected farming activity under the RTFA.

If you have any questions, please feel free to contact me.

Very truly yours,



Haider A. Kazim

HAK/ljr

Enc.

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