

**OTSEGO COUNTY
PLANNING COMMISSION**

March 20, 2017

6:00 PM

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

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF MINUTES: From January 16, 2017 meeting
5. CONSENT AGENDA
6. OTHER
7. PUBLIC PARTICIPATION FOR ITEMS NOT ON THE AGENDA:
(Please identify yourself for the record. All comments will be limited to two (2) minutes)
8. PUBLIC HEARINGS:
 - 1) *Johnson Oil Company, property owner, has requested a Special Use Permit for property located in Otsego Lake Township:
900 Marlette Rd
Frederic, MI 49733
090-028-300-010-01
Property is located in a HX/Highway Interchange Zoning District
PZSU16-004-proposed use of the property is to install an eighteen thousand (18,000) gallon propane tank at their existing gas station site*
9. ADVERTISED CASES:
 - 1) *Johnson Oil Company, property owner, has requested a Special Use Permit for property located in Otsego Lake Township:
900 Marlette Rd
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Property is located in a HX/Highway Interchange Zoning District
PZSU16-004-proposed use of the property is to install an eighteen thousand (18,000) gallon propane tank at their existing gas station site*
10. UNFINISHED COMMISSION BUSINESS
11. NEW BUSINESS
 1. 2016 Annual Report to the Otsego County Board of Commissioners
12. REPORTS AND COMMISSION MEMBER'S COMMENTS:
 1. Otsego County Parks & Recreation report/Judy Jarecki
 2. Restrictions on Zoning Authority -MSU Ext/Zoning Information
13. ADJOURNMENT

Otsego County Planning Commission

Proposed Minutes for January 16, 2017

Call to Order: 6:00pm by Chairperson Hartmann

Pledge of Allegiance

Roll Call:

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

Absent: Mr. Klee, Ms. Corfis

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

Public Present: Walter Moore, Marlene Dobrzelewski, Ted Freeland, Karen Franckowiak, Josh Dobrzelewski, Ryan Dobrzelewski, Rosalie Makarewicz, Ken Bradstreet, Wolverine Power representative

Approval of minutes from: December 19, 2016

Motion made to approve minutes as presented by Mr. Brown; Seconded by Mr. Arndt

Motion approved unanimously.

Consent Agenda: None

Other: None

Public participation for items not on the agenda:

Ken Bradstreet, Wolverine Power representative, was in attendance to answer any questions or concerns in connection with the Alpine Power Plant. He stated the building constructed to enclose the gas intake valve was complete and sound levels would definitely be lower now than previously reported; Wolverine continues to make improvements to be a good neighbor.

Public Hearing:

*Walter Moore, property owner, has requested a Rezone for property located in Bagley Township:
60 Little League Dr
Gaylord, MI 49735
010-003-100-060-00*

*Property is currently zoned R2/General Residential with a request to be rezoned to B2/General Business
PZRZ16-001-proposed purpose of the rezone is to create consistency with adjoining properties and uses*

Chairperson Hartmann stated the case and opened the public hearing.

Public Hearing open: 6:02pm

Mr. Arndt, Bagley Township representative, stated the case had been heard at the Bagley Township Planning Commission meeting December 27th. The current use had been discussed and it had been determined a special use permit would still be required if the rezoning was approved; any conditions could be placed on it at that time and the property could be utilized as such. The members thought it made sense to rezone the single parcel for consistency with the surrounding parcels.

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Ted Freeland stated he was against rezoning because his request for a rezone for properties from Little League Dr to Krys Rd had been denied years ago. He had issues with vehicles driving down Little League Dr to drop off garbage and did not understand why the current businesses were not screened. He thought Mr. Moore's property was an eyesore.

Chairperson Hartmann read a portion of the letter received from Dr. Harbin, adjacent property owner, stating rezoning the single parcel made sense but the current business would need to follow zoning rules to prevent the property from being offensive.

Marlene Dobrzelewski stated she was against the rezone with having the Little League fields down the road and did not understand why the cars were there in the first place. She stated she thought there was a citation given at that location.

Mr. Schlaud stated no citations had been issued for properties in that area; it was an enforcement that had been placed on the property. The reason the hearing was being held tonight was to rectify the issue through compliance with the zoning ordinance and rezoning the property was the first step.

Ms. Nowak read a portion of Dr. Harbin's letter stating his property concerns were the existing poor aesthetics and the location on a main thoroughfare; she agreed with the his concerns.

Discussion ensued concerning the existing vehicles, repairing of those vehicles and site contamination.

Mr. Schlaud stated any used car lot had to meet the guidelines of the state and work done within the building would need to meet the requirements of a special use permit and site plan review before it could open as a legal business. As a commercial business, state building codes would also need to be met.

Mr. Borton questioned the amount of vehicles on site and why they were being serviced.

Mr. Moore stated the property was not a junk yard; he did not pull motors or transmissions and did not work on the vehicles mechanically. He did not repair vehicles for the public and only did body part replacement and sheet metal work. The vehicles were sold once repaired and junk vehicles removed from the property; there were no dismantled vehicles on site.

Mr. Arndt questioned the location of the vehicles for sale.

Mr. Moore stated he would not have more than one (1) vehicle for sale at a time and it would be on the front parcel with a For Sale sign on it.

Mr. Schlaud questioned if he intended to utilize the property as a used car lot because a B2 Zoning District permitted the use with a special use permit.

Mr. Moore stated he had no intention of opening a used car lot.

Mr. Borton questioned the current state of the property and was concerned with the future condition should the rezone be granted.

Mr. Arndt stated it was being assumed the property would get worse instead of better; without rezoning and a special use permit there was no framework for zoning enforcement and the only choice would be to limit any exterior car parking on the R2 site or force the owner to abandon the site.

Mr. Freeland stated if the property was left R2, the problem was solved.

Chairperson Hartmann stated there were not any other R2 zoned properties around it and did not feel that was fair to the applicant.

Mr. Schlaud stated that even if the property was rezoned, the use would still be in violation of the Zoning Ordinance until a special use permit was retained. He felt if obtaining a special use permit was Mr. Moore's intent in order to run his business, then the parcel should be rezoned.

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Mr. Moore stated all the vehicles were titled to him; he owned them all. He was not repairing cars for anyone that walked through the door so did not consider it as running a business.

Mr. Schlaud stated even though he was not advertising it that way, repairing and selling vehicles was considered a business. If he sold the vehicles on the property, he would need to follow the guidelines for a used car lot.

Chairperson Hartmann closed the public hearing.

Public Hearing closed: 6:36pm

Advertised Case:

*Walter Moore, property owner, has requested a Rezone for property located in Bagley Township:
60 Little League Dr
Gaylord, MI 49735
010-003-100-060-00*

Property is currently zoned R2/General Residential with a request to be rezoned to B2/General Business

PZRZ16-001-proposed purpose of the rezone is to create consistency with adjoining properties and uses

Mr. Brown stated he thought going through the process was correct but wondered why Mr. Borton was so concerned with moving that process forward.

Mr. Borton stated his concern was the current violation and questioned why it had not been corrected.

Mr. Schlaud stated this was part of the process of enforcement. Mr. Moore was given options and decided to have the property rezoned so he could move forward with a special use permit. It did take him a considerable amount of time to get all the required information to Land Use but this is the process to correct the violation.

Mr. Moore stated the property had been used as a business prior to his buying it; the parcel to the south was already zoned B2 and had a commercial pole barn on it.

Mr. Arndt stated if the property is rezoned, Mr. Moore would have to submit application along with a site plan meeting the requirements of the Zoning Ordinance and it would be heard at Bagley Township first; everyone was welcome to attend. Then it would come before the County Planning Commission.

It was questioned if the existing residence would have to be removed.

Mr. Schlaud stated an existing residence was permitted in the zoning district and could still be rented out.

Chairperson Hartmann requested a motion for PZRZ16-001 and read the Finding of Fact aloud. *SEE ATTACHMENT*

Motion made by Mr. Arndt to approve case PZRZ16-001, the rezoning of parcel number 010-003-100-060-00 from a R2/General Residential Zoning District to a B2/General Business Zoning District; Seconded by Mr. Brown.

Motion approved by majority.

Mr. Borton abstained in lieu of voting privilege at the Board of Commissioner's meeting.

Unfinished Commission Business: None

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New Business:

Mr. Arndt stated the committee had met to review Section 21.38 Signs and Billboards and decided to address items in the section one by one. He presented members the items worked on thus far, discussed reasons for changing and requested input from members. The next scheduled committee meeting is February 14th at 9:00am at Land Use Services.

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 continues to be busy; a snowshoe event was being held on February 25th at the Groen Preserve by the Headwaters Land Conservancy; a grant for removable stairs into Otsego Lake at the County Park was being researched; bid information for the two (2) new cabins and relocation of the existing is still be gathered; Otsego County Parks & Recreation no longer has authority over the property at Wah Wah Soo since an easement granted by the Road Commission was discovered, the Road Commission is now in charge; the Committee has two (2) openings and has had multiple applicants.

Mr. Bauman stated Livingston Township was in the final stages of their recreation plan and application for grants from the state.

Mr. Brown stated Charlton Township's Master Plan was submitted to the Township Board for review and approval.

Mrs. Jarecki clarified that a Conservation Easement is a legal document transferring the rights to the easement; ownership is retained subject to the easement. If the property is sold, the easement follows the land; compliance is checked yearly.

Mr. Arndt stated Bagley Township's new supervisor seemed eager to work with the Township Planning Commission.

Mr. Borton stated the contribution to the Iron Bell Trail had been voted on in Bagley Township and had been approved. The trail will extend through the County along the snow mobile trail. Originally, the trail through Gaylord was to be paved with asphalt but after discussion with different entities it was decided to pave the entire trail with the crushed limestone. The monies saved will be used at the trailheads. A resolution was made to ensure the change. A maintenance plan has also been set up.

2. Signage - Michigan Billboard Cases/Zoning Information

Chairperson Hartmann adjourned the meeting.

Adjournment: 7:25pm by Chairperson Hartmann

Ken Arndt; Secretary

Christine Boyak-Wohlfeil; Recording Secretary

Otsego County Planning Commission

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ATTACHMENT 1:

Revised:

**OTSEGO COUNTY
PLANNING COMMISSION**

**PZRZ16-001
REZONE
010-003-100-060-00**

Exhibit List

- Exhibit #1:* Application for case PZRZ16-001 submitted by Applicant
- Exhibit #2:* Otsego County Zoning Map Effective Date March 20, 2010/Amended September 2016
- 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 1321/789
- Exhibit #5:* Site Plan for case PZRZ16-001 submitted by Applicant
- Exhibit #6:* Survey 188/496
- Exhibit #7:* Public Hearing Notice
- Exhibit #8:* Letter to Bagley Township Planning Commission dated December 5, 2016
- Exhibit #9:* Response from Bagley Township Planning Commission dated January 3, 2017/December 27, 2016
- Exhibit #10:* Map and list of parties notified
- Exhibit #11:* Receipt #01311541
- Exhibit #12:* Finding of Fact/PZRZ16-001
- Exhibit #13:* Otsego County Future Land Use Map
- Exhibit #14:* Letter from Adjoining Property Owner dated January 9, 2017

Otsego County Planning Commission

Proposed Minutes for January 16, 2017

Revised:

OTSEGO COUNTY PLANNING COMMISSION

PZRZ16-001
REZONE
010-003-100-060-00

FINDING OF FACT

1. This is a proposal for a rezone of a single parcel located in Bagley Township at 60 Little League Dr Gaylord. *Exhibit #1, Exhibit #5*
2. The property is currently zoned R2/General Residential with a request to be rezoned B2/General Business. *Exhibit #2*
3. Adjoining properties are zoned B2/General Business, properties to the east of Little League Dr are zoned R2/General Residential and properties to the north of M-32 are part of the City of Gaylord and a PUD/Planned Unit Development. *Exhibit #2*
4. The proposed property is currently under the ownership of Walter Moore, applicant. *Exhibit #4*
5. Mr. Moore owns the parcel directly to the south already zoned B2/General Business. *Exhibit #4, Exhibit #2*
6. Approval of the proposed rezone would be consistent with the adjoining properties and Otsego County Future Land Use Map. *Exhibit #13*
7. The Public Hearing Notice was published in the Herald Times on December 30, 2016. *Exhibit #7*
8. The requirements of Article 27 of the Otsego County Zoning Ordinance have been met. *Exhibit #8, Exhibit #9*
9. All property owners within three hundred (300') feet were properly notified of the public hearing. *Exhibit #10*
10. The Planning Commission has the authority to approve a *Rezone* request after review and compliance with the Otsego County Zoning Ordinance, Future Land Use Map and Master Plan. (Section 25.7) *Exhibit #3, Exhibit #13, Exhibit #14*
11. The required fees have been collected by Otsego County Land Use Services. *Exhibit #11*

*** Motion made by Mr. Arndt to approve case PZRZ16-00, the rezoning of parcel number 010-003-100-060-00 from a R2/General Residential Zoning District to a B2/General Business Zoning District; Seconded by Mr. Brown.

Motion approved by majority

**OTSEGO COUNTY
PLANNING COMMISSION**

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

Exhibit List

- Exhibit #1:* Application for case PZSU16-004 submitted by Applicant
- Exhibit #2:* Otsego County Zoning Map Amended September 13, 2016
- Exhibit #3:* Otsego County Zoning Ordinance Amended September 13, 2016
- Exhibit #4:* Copy of Otsego County Equalization Department record card/Warranty Deed 0994/484
- Exhibit #5:* Letter of representation from Steven Johnson/Johnson Oil Co dated October 25, 2016
- Exhibit #6:* Site Plan submitted by Applicant/*Revised*
- Exhibit #7:* Public Hearing Notice
- Exhibit #8:* Letter to Otsego Lake Township Planning Commission dated December 22, 2016
- Exhibit #9:* Letter dated February 9, 2017 from Otsego Lake Township Planning Commission
- Exhibit #10:* Map and list of parties notified
- Exhibit #11:* Receipt #01306858
- Exhibit #12:* General Finding of Fact/PZSU16-004
- Exhibit #13:* Specific Finding of Fact/PZSU16-004
- Exhibit #14:*

**OTSEGO COUNTY
LAND USE SERVICES**
1322 HAYES RD GAYLORD MI 49735
PHONE: 989.731.7400 * FAX: 989.731.7419
www.otsegoctymmi.gov

APPLICATION FOR SPECIAL USE PERMIT

Date:	Parcel Number: 092-900-008-401 ⁰⁹⁰⁻⁰⁰⁸⁻³⁰⁰⁻⁰¹⁰⁻⁰¹
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PROPERTY LOCATION: (REQUIRED)

Address: 900 MARLBOROUGH RD.	City: WATERS	Zip Code: 49797
Township: OTSEGO LAKE	Zoning District: HIGHWAY INTERCHANGE	Section: 28
		T 29 N/R 3 W

APPLICANT:

Name: ED JOHNSON	Owner/Agent/Other Interest (circle one)		
Address: 2076 SCHUSS LN.	City: GAYLORD	State: MI	Zip Code: 49735
Phone: (989) 619-9227	Fax: () -		

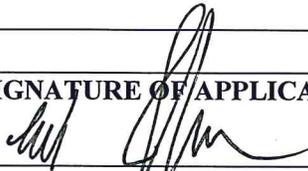
PROPERTY OWNER: (If different from Applicant)

Name: JOHNSON OIL CO.	Phone: (989) 732-2451		
Address: 507 S. OTSEGO LAKE	City: GAYLORD	State: MI	Zip Code: 49735

DESCRIPTION OF PROJECT AND PROPOSED USE:

INSTALL A 18,000 GALLON PROPANE TANK FOR HOTEL & RESTAURANT WITH A FILL STATION FOR BOBTAH DELIVERY TRUCKS

SIGNATURE OF APPLICANT:



DATE:

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

OFFICE USE ONLY

Date Application Received: 10.6.16	Permit Number: PZS016-004
Date Application Complete: 10.21.16	Fee: — Receipt Number: 01306858

**OTSEGO COUNTY
LAND USE SERVICES**
1322 HAYES RD GAYLORD MI 49735
PHONE: 989.731.7400 * FAX: 989.731.7419
www.otsegoctymt.gov

APPLICATION FOR SITE PLAN REVIEW

APPLICANT:

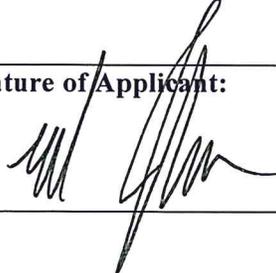
Name: <u>Ed JOHNSON</u>	Owner/Agent/Other Interest <i>(circle one)</i>
Address: <u>2076 SCHUSS LN.</u>	
Phone: <u>(989) 619-9227</u>	Fax: () -

PROPERTY OWNER: *(If different from Applicant)*

Name: <u>JOHNSON OIL Co.</u>	
Address: <u>507 S. OTSEGO AVE GAYLORD MI 49735</u>	
Phone: <u>(989) 732-2451</u>	Fax: <u>(989) 732-1682</u>

PROPERTY LOCATION:

Township: <u>OTSEGO LAKE</u>	Section: <u>28</u>	T <u>29</u> N/R <u>3</u> W	Zoning District: <u>HIGHWAY INTERCHANGE</u>
Site Address: <u>900 MARLETTE RD.</u>			
Parcel Number: 092-900-008-401 <u>090-008-300-010-01</u>			
Description of Project and Proposed Use: <u>INSTALL A 18,000 GALLON PROPPANE TANK FOR HEAT & RESTURANT WITH A FILL STATION FOR BORTAL DUMPER TRUCKS</u>			

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

*****Attention*****

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

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

1. The applicant's name, address and phone number in full.
Yes No NA if "NA" explain: _____
2. Proof of property ownership and whether there are any options on the property or any liens against it.
Yes No NA if "NA" explain: _____
3. A signed statement that the applicant is the owner of the property or officially acting on the owner's behalf.
Yes No NA if "NA" explain: _____
4. The name and address of the owner(s) of record if the applicant is not the owner of record (or firm or corporation having a legal or equitable interest in the land) and the signature of the owner(s).
Yes No NA if "NA" explain: _____
5. The address and or parcel number of the property.
Yes No NA if "NA" explain: _____
6. Name and address of the developer (if different from the applicant).
Yes No NA if "NA" explain: _____
7. Name and address of the engineer, architect and/or land surveyor.
Yes No NA if "NA" explain: _____
8. Project title.
Yes No NA if "NA" explain: _____
9. Project description, including the total number of structures, units, bedrooms, offices, square feet, total and usable floor area, parking spaces, carports or garages, employees by shift, amount of recreation and open space, type of recreation facilities to be provided and related information as pertinent or otherwise required by the ordinance.
Yes No NA if "NA" explain: _____
10. A vicinity map drawn at a scale of 1"=2000' with North point indicated.
Yes No NA if "NA" explain: _____
11. The gross and net acreage of all parcels in the project.
Yes No NA if "NA" explain: _____
12. Land uses, zoning classification and existing structures on the subject parcel and adjoining parcels.
Yes No NA if "NA" explain: _____
13. Project completion schedule/development phases.
Yes No NA if "NA" explain: _____

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

Yes No ___ NA ___ if "NA" explain: _____

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

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

Yes No ___ NA ___ if "NA" explain: _____

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

Yes No ___ NA ___ if "NA" explain: _____

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

Yes ___ No ___ NA ___ if "NA" explain: _____

18. Location and type of significant existing vegetation.

Yes No ___ NA if "NA" explain: _____

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

Yes No ___ NA ___ if "NA" explain: _____

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

Yes ___ No NA ___ if "NA" explain: _____

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

Yes No ___ NA ___ if "NA" explain: _____

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

Yes No ___ NA ___ if "NA" explain: _____

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

Yes No ___ NA ___ if "NA" explain: _____

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

Yes No ___ NA ___ if "NA" explain: _____

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

Yes ___ No NA ___ if "NA" explain: _____

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

Yes ___ No NA ___ if "NA" explain: _____

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

Yes No NA if "NA" explain: _____

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

Yes No NA if "NA" explain: _____

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

Yes No NA if "NA" explain: _____

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

Yes No NA if "NA" explain: _____

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

Yes No NA if "NA" explain: _____

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

Yes No NA if "NA" explain: _____

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

Yes No NA if "NA" explain: _____

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

Yes No NA if "NA" explain: _____

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

Yes No NA if "NA" explain: _____

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

Yes No NA if "NA" explain: _____

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

Yes No NA if "NA" explain: _____

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

Yes No NA if "NA" explain: _____

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

Yes No NA if "NA" explain: _____

40. Paid appropriate fees to Otsego County.

Yes No NA if "NA" explain: _____

*****Attention*****

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

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

Or

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

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

Date Application Received: 12-6-16	Fee: —	Receipt Number: 01306858
Permit No: PZSU 16-004	Soil Erosion Permit No: —	
Approved:	Denied:	By:
Conditions:		
Reasons:		

PZSU16-004
 090-028-300-010-01
 900 Marlette Rd/Johnson Oil Co



ZONING LEGEND	
	RR/RECREATION RESIDENTIAL
	FR/FORESTRY RECREATION
	STATE LAND
	AR/AGRICULTURAL RESOURCE
	B-2/GENREAL BUSINESS
	R-1/RESIDENTIAL
	R-2/GENERAL RESIDENTIAL
	N/A
	R-3/RESIDENTIAL ESTATES
	I/INDUSTRIAL
	B-3/BUSINESS, LIGHT MANUFACTURING
	B-1/LOCAL BUSINESS
	PUD/PLANNED UNIT DEVELOPMENT
	C-2/CITY
	C-1/CITY
	MUZ/MULTIPLE USE ZONE
	HX/HIGHWAY INTERCHANGE

Exhibit 2

} 5-3-04



I hereby certify that according to our records all taxes referred to this
of: are paid for Five years preceding the date of this instrument.
This does not include taxes in the process of collection or S.O.R.
adjustments.

OTSEGO COUNTY MICHIGAN
RECEIVED FOR RECORD
EVELYN M. PRATT, CLERK/REGISTER OF DEEDS
05/03/2004 1:00:06 PM

June Van Den Broom COUNTY TREASURER

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That Joseph A. Burzynski Living Trust, dated February 3, 1993 and Genevie Y. Burzynski Living Trust, dated February 3, 1993 and Joseph A. Burzynski and Genevie Y. Burzynski, Husband and Wife, whose address is: 110 U Court, Gaylord, MI 49735

Warrants and Conveys to Johnson Oil Company of Gaylord, a Michigan Corporation, whose address is: 507 South Otsego, Gaylord, MI 49735

See Exhibit A attached hereto and made a part hereof.

Subject to easements, reservations and restrictions of record.
As Set forth in Valuation Affidavit Filed

THIS CONVEYANCE INCLUDES ALL AVAILABLE LAND DIVISION(S) UNDER SECTION 108 OF THE LAND DIVISION ACT, ACT NO. 288 OF THE PUBLIC ACTS OF 1967; AS AMENDED.

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

Dated: April 30, 2004

Joseph A. Burzynski Living Trust
Dated February 3, 1993

Joseph A. Burzynski
By: Joseph A Burzynski,
As Trustee and Individually

Genevie Y. Burzynski Living Trust
dated February 3, 1993

Genevie Y. Burzynski
By: Genevie Y. Burzynski
As Trustee and Individually

STATE OF MICHIGAN
COUNTY OF OTSEGO

ss.

This foregoing instrument was acknowledged before me this 30 day of April, 2004 by Joseph A. Burzynski as individually and as Trustee of the Joseph A. Burzynski Living Trust, dated February 3, 1993 on behalf of said trust and by Genevie Y. Burzynski as individually and as Trustee of the Genevie Y. Burzynski Living Trust, dated February 3, 1993 on behalf of said trust.

Rita L. Johnson

My commission expires

Rita L. Johnson, Notary Public
Otsego County, State of Michigan
My Commission Expires 3-13-2007
Notary Public Otsego County, Michigan
Acting in the County of Otsego

Instrument Drafted by: Daniel J. Bebble, attorney for Alpine Title Company
Business Address: 114 E. Main St., Gaylord, MI 49735(02420197/RJ) Drafted without opinion as to Land Division Rights

Recording Fee \$18.00 _____ : When recorded return to: GRANTEE
County Transfer Tax \$ _____ : Send subsequent tax bill to GRANTEE
State Transfer Tax: \$ _____
Tax ID: #090-028-300-010-01

Exhibit 4

3

AT TOB 11/2



Exhibit A

Land in the Township of Otsego Lake, County of Otsego, Michigan described as:

Part of the Southwest 1/4 of the Northwest 1/4 and part of the Northwest 1/4 of the Southwest 1/4 of Section 28, Town 29 North, Range 3 West, described as beginning at a point on the East right-of-way line of I-75 located distant North 88°43'40" West along the south line of Section 29 a distance of 540.38 feet to said East line of I-75; thence along said East right-of-way line the following five courses and distances North 22°49'11" East, 897.73 feet and North 32°24'01" East, 872.62 feet and North 17°13'49" West, 147.85 feet and North 27°46'11" East, 318.20 feet and North 62°13'49" West, 70.71 feet from the Southwest corner of said Section 28; thence continuing North 62°13'49" West, 212.13 feet; thence North 17°13'49" West, 450.00 feet; thence North 04°41'38" West, 307.94 feet; thence North 10°09' East, 275.00 feet; thence South 68°42' East, 328.27 feet; thence South 17°13'49" East, 940.00 feet to the north line of 50 foot wide Marlette Road; thence South 72°46'11" West along said north line, 300.00 feet to the point of beginning.

Grantor	Grantee	Sale Price	Sale Date	Inst. Type	Terms of Sale	Liber & Page	Verified By	Prcnt. Trans.	
BURZYNSKI, JOSEPH A & GENE JOHNSON OIL COMPANY		0	04/30/2004	WD	Affidavit	0994/484	DEED	0.0	
Property Address	Class: 202 Commercial Str:Zoning: HX Building Permit(s)								
900 MARLETTE RD	School: Gaylord Community SIGNS 10/23/2013 PB13-0584								
Owner's Name/Address	P.R.E. 0% DEMOLITION 04/14/2005 PB050134								
JOHNSON OIL COMPANY PO BOX 629 GAYLORD MI 49734	: 0.00 COMMERCIAL, ADD/ALTER/REPA 04/06/2005 PB050052								
	2015 Est TCV 930,000 (Value Overridden) COMMERCIAL, ADD/ALTER/REPA 03/28/2005 PB050035								
	Improved	X	Vacant	Land Value Estimates for Land Table .					
	Public * Factors *								
	Improvements Description Frontage Depth Rate %Adj. Reason Value								

	Dirt Road 9.99 Total Acres Total Est. Land Value = 0							
	Gravel Road 0 100 0							
	Paved Road							
	Storm Sewer							
	Sidewalk							
	Water							
	Sewer							
	Electric							
	Gas							
	Curb							
	Street Lights							
	Standard Utilities							
	Underground Utils.							
	Topography of							
	Site							

Year	Land Value	Building Value	Assessed Value	Board of Review	Tribunal/Other	Taxable Value
2015	465,000	0	465,000	465,000M		412,902C
2014	450,100	0	450,100	450,100M		406,400C
2013	615,000	0	615,000		400,000A	400,000S
2012	644,300	0	644,300	644,300M		644,300S

Who When What

Level Rolling

Low

High

Landscaped

Swamp

Wooded

Pond

Waterfront

Ravine

Wetland

Flood Plain

The Equalizer. Copyright (c) 1999 - 2009. Licensed To: County of Otsego, Michigan

*** Information herein deemed reliable but not guaranteed***



P.O. Box 629, 507 S. Otsego Avenue
Gaylord, MI 49734
Phone: 989-732-2451 ★ Fax: 989-732-1682



October 5, 2016

To Whom It May Concern:

This letter authorizes Ed Johnson to act as agent on behalf of Johnson Oil Company of Gaylord in regards to the propane tank project at Hilltop Marathon, 900 Marlette Road, Waters, MI.

Sincerely,

A handwritten signature in black ink, appearing to read "KEVIN E. JOHNSON", with a long horizontal line extending to the right.

Kevin E Johnson
President
Johnson Oil Company of Gaylord

**OTSEGO COUNTY
PLANNING COMMISSION**

PUBLIC HEARING NOTICE

March 20, 2017

The Otsego County Planning Commission will hold a public hearing on Monday, March 20, 2017 at 6:00 pm in the Planning and Zoning Meeting room located at 1322 Hayes Rd Gaylord, Michigan.

The purpose of the public hearing will be to obtain citizen comment on the following:

Johnson Oil Company is requesting a special use permit for the installation of an eighteen thousand (18,000) gallon propane tank at their existing gas station site. Above ground storage of flammable and combustible liquids, chemicals and hazardous liquids is a permitted use subject to special conditions in a HX/Highway Interchange Zoning District.

Parcel identification number: **090-028-300-010-01**
900 Marlette Rd
Frederic, MI 49733
Otsego Lake Township

Legal Description:

PART OF SW 1/4 OF NW 1/4 & PART OF NW 1/4 OF SW 1/4 SEC 28, BEG E ROW LI I-75 LOCATED DISTANT N 88D 43M 40S W ALG S LI SEC 29 540.38FT TO SD E LI I-75; TH ALG ROW LIN 22D 49M 11S E 897.73FT; TH N 32D 24M 01S E 872.62FT; TH N 17D 13M 49S W 147.85FT; TH N 27D 46M 11S E 318.20FT; TH N 62D 13M 49S W 70.71FT FROM SW COR SEC 28; TH N 62D 13M 49S W 212.13FT; TH N 17D 13M 49S W 450.00FT; TH N 04D 41M 38S W 307.94FT; TH N 10D 09M 00S E 275.00FT; TH S 68D 42M 00S E 328.27FT; TH S 17D 13M 49S E 940.00FT TO N LI MARLETTE RD; TH S 72D 46M 11S W 300.00FT TO POB. SEC 28 T29N R3W CONT 10 ACRES

All citizens are welcome to attend the meeting or provide written comment. If written comments are provided the comments must be received at the Otsego County Land Use Services Office by noon (12:00 pm) the day of the meeting.

Any citizen who has questions regarding this application or needs assistance to attend this meeting should contact the Director of Land Use Services at 989. 731.7400.



Otsego
COUNTY
M I C H I G A N

**Department of
Land Use Services**

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

December 22, 2016

Otsego Lake Township
PO Box 99
Waters, MI 49797

Pursuant to Article 27 of the Otsego County Zoning Ordinance/Township Participation in County Zoning, I am forwarding the application for a Special Use Permit.

If you require the applicant, Ed Johnson, representative for Johnson Oil Co to be present at your meeting, he can be notified at the following:

Johnson Oil Co
c/o Ed Johnson
2076 Schuss Ln
Gaylord, MI 49735
989.619.9227

If you have any questions, please contact us and we will be glad to assist you. We look forward to your input concerning this matter. Thank you for your participation in County Zoning.

Sincerely,

Vern Schlaud
Otsego County Land Use Director

cbw

encl

February 9, 2017

Otsego County Land Use Services
Mr. Vern Schlaud, Director
1322 Hayes Rd
Gaylord, Mi 49735

Dear Mr. Schlaud,

The Otsego Lake Township Planning Commission held its meeting on February 2, 2017. The Special Use Permit PZU16-004 for Johnson Oil was reviewed. Mr. Ed Johnson and his attorney Mr. David Delaney were present. The Planning Commission discussed the deficiencies and concerns it had with the submitted site plan. Because of these concerns the Planning Commission did not have sufficient information to make a recommendation to the County. Some of our concerns are listed below.

1. A site grading plan was submitted, but not a complete site plan.
2. No underground piping from the propane tank to the Hilltop Restaurant is shown.
3. On the check list from exhibit one, item 25, location, size and characteristics of all loading areas and unloading areas are not shown.

Other items that the Planning Commission had concerns are:

4. Item 28, location of all other utilities.
5. Item 31, exterior lighting with area of illumination, type of fixtures and shielding used.
6. Item 32, location and specifications for all fences, gates, walls and other protective features with elevation views from front to side.
7. Item 35, location and specifications for any existing or proposed above or below ground facilities for flammable or hazardous materials, as well as, containment structures or clear zones required.

There was also discussion regarding concerns about the frequency that the Johnson delivery trucks in the area would be using the 18,000 gallon tank for fill ups. (Mr. Johnson had previously stated it was to be only for occasional use.) Mr. Johnson anticipates that the tank would be used approximately 3 to 5 times per week to fill delivery trucks in the area.

The Otsego Lake Township Planning Commission appreciated the opportunity to provide input regarding this special use permit; however we feel that more information should have been provided on the site grading plan to make an informed decision which protects the safety and welfare of our residents.

Sincerely,

A handwritten signature in cursive script that reads "Kara Corfis".

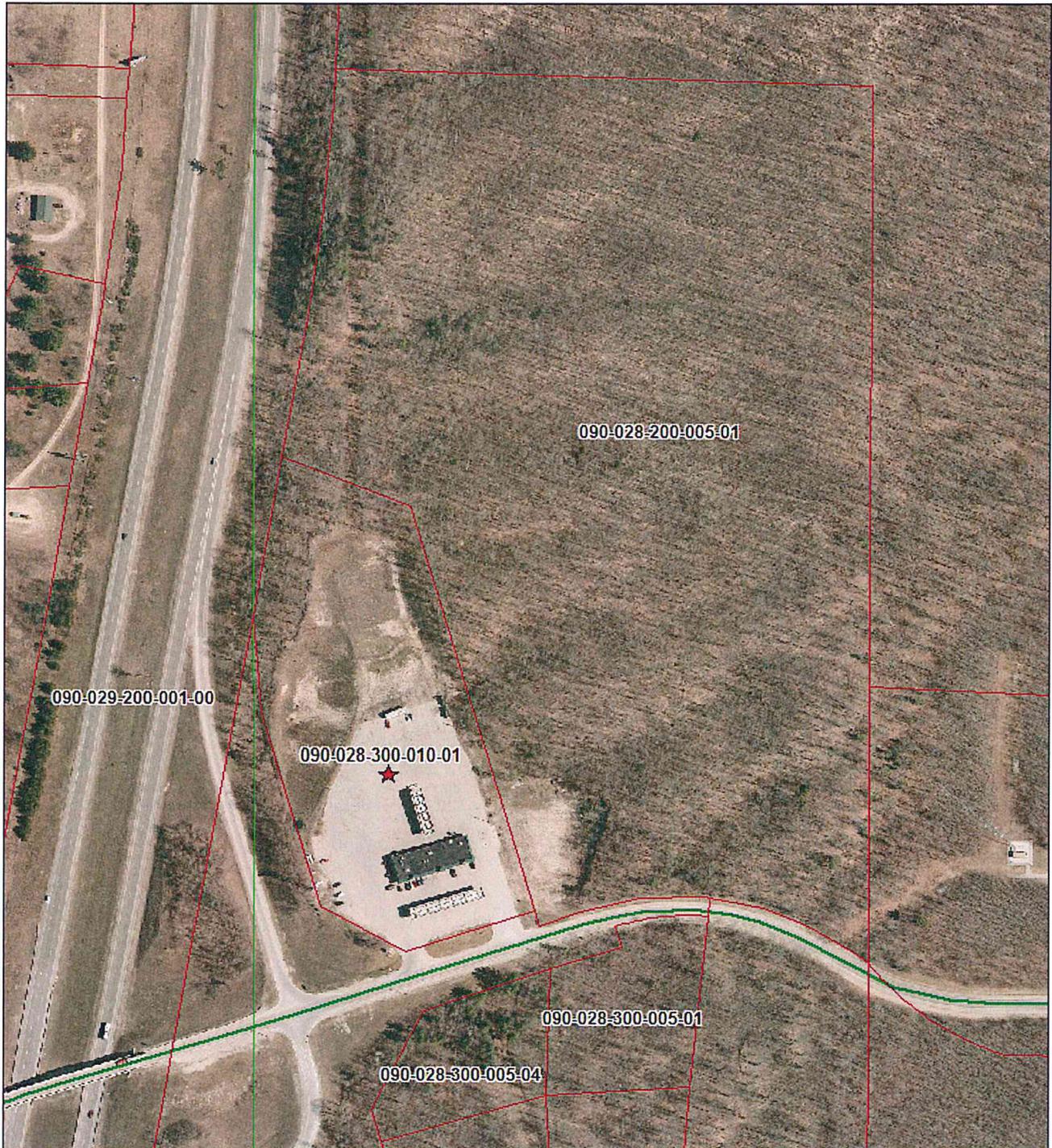
Secretary
Otsego Lake Township Planning Commission

Cc Mr. Ed Johnson
Mr. David Delaney
Mr. Thomas Wagar

PZSU16-004

090-028-300-010-01

900 Marlette Rd/Johnson Oil Co



090-028-300-005-01

090-028-300-005-04

090-028-200-005-01

090-029-200-001-00

OWNERS WITHIN THREE HUNDRED FEET (300')				
PARCEL NUMBER	PROPERTY ADDRESS	OWNER NAME	OWNER ADDRESS	ZONING
090-028-300-005-01		GELOW, GARY L	PO BOX 4085 GAYLORD MI 49735	HX
090-028-300-005-04		GELOW, GARY L	PO BOX 4085 GAYLORD MI 49735	HX
090-028-200-005-01		BREWBAKER, ROGER J & JEANNIE M	PO BOX 155 ONAWAY MI 49765-0155	FR
090-029-200-001-00		MIDOT	PO BOX 30050 LANSING MI 48909	NA

Exhibit 10

OTSEGO COUNTY LAND USE SERVICE
 1322 HAYES RD
 GAYLORD, MI 49735
 PH: 989-731-7400
 FAX: 989-731-7419
 INSPECTION LINE: 989-731-7401



Paid By:

JOHNSON OIL COMPANY
 PO BOX 629
 GAYLORD, MI 49734

RECEIPT NUMBER

01306858

12/19/2016

Type	Record	Category	Description	Amount
Permit		ADMIN ZONING		\$ 700.00

Total	\$ 700.00
Cash	
Check	\$ 700.00
Credit	
Transferred	
Tendered	\$ 700.00
Change	\$ 0.00
To Overpayment	\$ 0.00

Expiration of permit:

A permit will remain valid as long as work is progressing and inspections are requested and conducted. A permit will become invalid if the authorized work has not commenced within 6 months of issuance or if the authorized work is suspended or abandoned for a period of 6 months.

**OTSEGO COUNTY
PLANNING COMMISSION**

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

GENERAL FINDING OF FACT

1. This is a proposal for the installation of an eighteen thousand (18,000) gallon propane tank. *Exhibit #1*
2. The property is located in a HX/Highway Interchange Zoning District. *Exhibit #2*
3. Above-ground storage of flammable and hazardous materials is a permitted use subject to special conditions in a HX Zoning District. *Exhibit #3*
4. The proposed tank will enable the applicant a safer means of heating the existing building as well as a fill station for deliveries in the area. *Exhibit #1*
5. Applicant's property is currently and will continue to be used as a gas station. *Exhibit #1, Exhibit #6*
6. The purpose of the tank is to improve the current heating system in their building as well as better servicing the customers in the area.
7. The property is currently under the ownership of Johnson Oil Company and being represented by Ed Johnson *Exhibit #4, Exhibit #5*
8. The Public Hearing Notice was published in the Herald Times on March 3, 2017 *Exhibit #7*
9. The requirements of Article 27 of the Otsego County Zoning Ordinance have been met. *Exhibit #8, Exhibit #9*
10. All property owners within three hundred (300') feet were properly notified of the public hearing. *Exhibit #10*
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 submitted by applicant and reviewed by Otsego County Land Use Services. *Exhibit #1, Exhibit 3, Exhibit #12, Exhibit #13*
13. The Planning Commission has the authority to approve a Special Land Use request after review and compliance with the Otsego County Zoning Ordinance. (Section 19.7) *Exhibit #3*

**OTSEGO COUNTY
PLANNING COMMISSION**

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

SPECIFIC FINDINGS OF FACT

FINDINGS UNDER ARTICLE 14

ARTICLE 14 HIGHWAY INTERCHANGE COMMERCIAL DISTRICT

INTENT:

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

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

- 14.2.5 Retail uses over one hundred thousand (100,000) square feet
- 14.2.6 Offices and showrooms of plumbers, electricians, decorators or similar trades, with outdoor storage
- 14.2.7 Rental shops with outdoor storage
- 14.2.8 Nursery sales and garden supply centers with outdoor display areas
- 14.2.9 Lumber yards, building material suppliers, and home improvement centers, with outdoor storage
- 14.2.10 Rifle or pistol ranges when within a completely enclosed building as an accessory use
- 14.2.11 Auto repair garages or auto body shop, including wrecker service, provided that outdoor storage of vehicles under repair be confined to the rear yard and screened from view
- 14.2.12 Sales, rental, and service centers for mobile home, modular home, manufactured homes, or farm equipment provided:
 - 14.2.12.1 Ingress and egress to the use shall be at least sixty (60) feet from the intersection of any two (2) streets.
 - 14.2.12.2 The arrangement of vehicles stored in the open shall be uniform, following the patterns established for off street parking lots.
 - 14.2.12.3 No sales or display shall occupy any public street or road right-of-way and further must be set back at least twenty (20) feet from the front property.
- 14.2.13 Above-ground storage of flammable or hazardous material provided:**
 - 14.2.13.1 Aggregate storage above 5000 gallons up to 20,001 gallons shall be in a single tank
 - 14.2.13.2 Signage on the tank shall be limited to that which is statutorily required by law. Advertising signage of any type will be prohibited on the tank.
 - 14.2.13.3 Tank location is to be a minimum of fifty (50) feet from the traffic pattern on the site

FINDINGS UNDER ARTICLE 21/SECTION 21.7

SECTION 21.7 DISCRETIONARY APPROVAL CONDITIONS

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

FINDINGS UNDER ARTICLE 21/SECTION 21.10

SECTION 21.10 FENCES

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

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

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

21.10.2

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

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

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

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

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

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

FINDINGS UNDER ARTICLE 21/SECTION 21.18

SECTION 21.18 LANDSCAPING

21.18.1 PURPOSE

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

21.18.2 General Performance Standards:

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

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

21.18.2.1 Landscape Materials:

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

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

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

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

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

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

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

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

21.18.2.2 Irrigation & Maintenance Performance Standards:

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

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

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

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

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

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

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

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

21.18.2.3 Existing Vegetation:

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

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

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

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

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

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

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

21.18.3 Buffer Yards:

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

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

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

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

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

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

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

21.18.4 Roadside Greenbelt Buffers:

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

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

21.18.5 Screening of Unsightly Areas:

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

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

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

21.18.6 Parking Lot Screening:

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

Landscaping design standards:

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

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

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

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

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

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

***ADDITIONAL LANDSCAPING-PLANNING COMMISSION DISCRETION**

21.118 TABLE I : Planting Buffer Yard

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 II

FINDINGS UNDER ARTICLE 21/SECTION 21.19

SECTION 21.19 LIGHTING, OUTDOOR

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

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

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

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

21.19.1.2 That all light sources and light lenses are shielded,

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

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

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

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

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

21.19.5 Decorative lights during holiday seasons shall be allowed.

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

***LIGHTING REQUIREMENT MET**

FINDINGS UNDER ARTICLE 21/SECTION 21.21

SECTION 21.21 LOADING AND UNLOADING (OFF-STREET)

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

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

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

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

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

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

***NO REQUIREMENT SPECIFIED FOR HX DISTRICT**

FINDINGS UNDER ARTICLE 21/SECTION 21.28

SECTION 21.28 PERFORMANCE STANDARDS

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

21.28.1 Smoke, Dust, Dirt, and Fly Ash

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

21.28.2 Open Storage

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

21.28.3 Glare and Radioactive Materials

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

21.28.4 Fire and Explosive Hazards

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

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

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

***STATE REGULATED**

FINDINGS UNDER ARTICLE 21/SECTION 21.38

SECTION 21.38 SIGNS AND BILLBOARDS

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

21.38.1 Signs Permitted

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

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

21.38.1.3 Accessory Signs in B, HX and I Districts

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

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

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

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

21.38.2 Signs Prohibited

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

21.38.2.2 Signs with moving or revolving parts.

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

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

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

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

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

21.38.3 Signs Not Requiring a Zoning Permit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 21.38.6.2 Exceed the maximum sign area for reasons of unusual setback, cooperative sign use (joint use or community type advertising), large site area, and/or natural feature limitations to attaining reasonable signing of the use.
- 21.38.6.3 Revolve, provided it can be demonstrated that a stationary sign would not afford reasonable notice to the use.
- 21.38.6.4 Have intermittent lighting in order to construct a public service time and temperature sign in those instances where the applicant can demonstrate a need or show community desire for such a sign service.
- 21.38.6.5 Exceed the maximum height in those instances where a taller sign is necessary to overcome natural conditions (topography, vegetation, etc.).

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

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

FINDINGS UNDER ARTICLE 19

SECTION 19.7 STANDARDS FOR SPECIAL LAND USE APPROVAL

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

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

HAS – HAS NOT BEEN MET

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

HAS – HAS NOT BEEN MET

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

HAS – HAS NOT BEEN MET

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

HAS – HAS NOT BEEN MET

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

HAS – HAS NOT BEEN MET

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

HAS – HAS NOT BEEN MET

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

HAS – HAS NOT BEEN MET

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

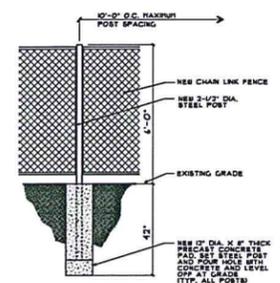
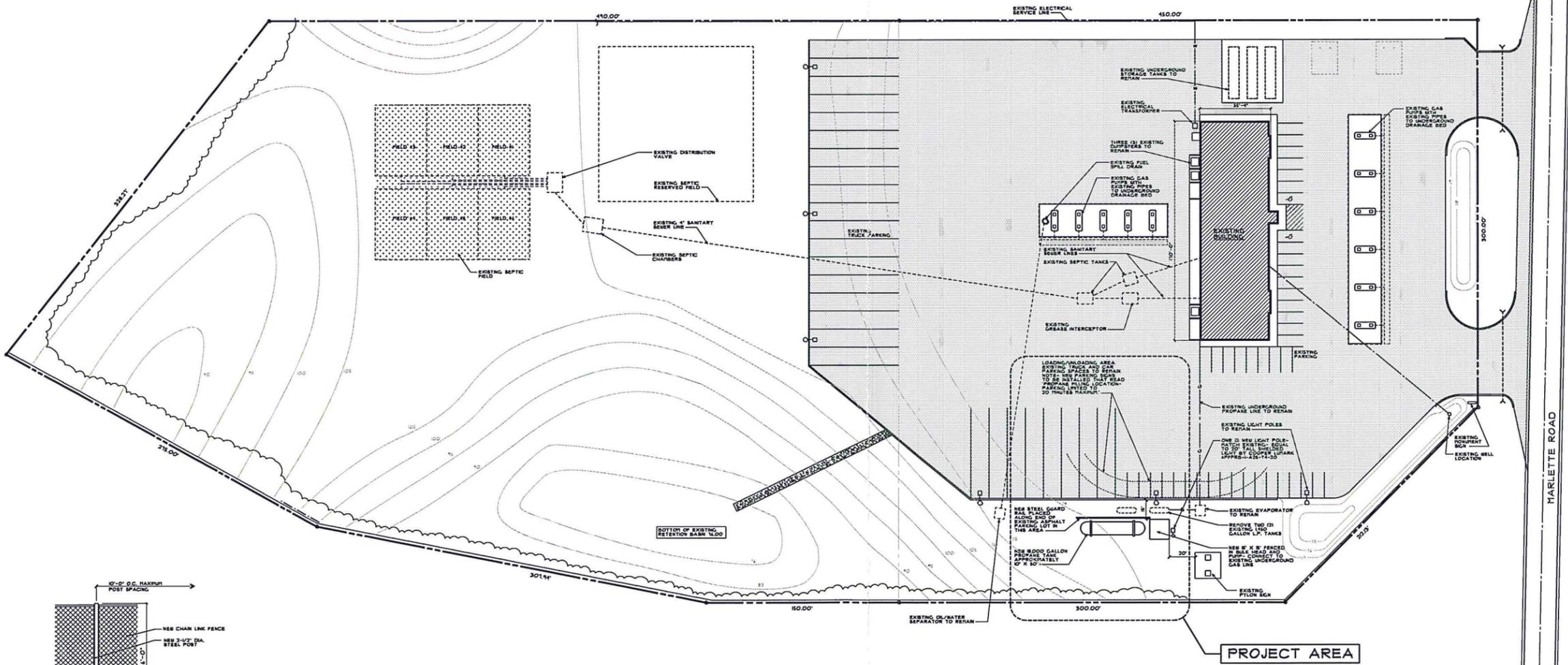
HAS – HAS NOT BEEN MET

SECTION 19.8 CONDITIONS

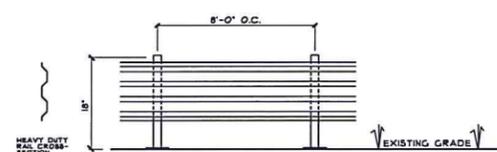
The Planning Commission may attach reasonable conditions to the approval of a special use permit. These conditions may include those necessary to insure that public services and facilities affected by a proposed special land use will be capable of accommodating increased service and facility loads caused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

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

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



CHAIN LINK FENCE DETAIL
NO SCALE



STEEL GUARD RAIL DETAIL
NO SCALE

SITE PLAN
SCALE: 1" = 40'-0"



PROJECT JOHNSON OIL COMPANY:	REVISIONS	DATE	BY
	SITE PLAN APPROVALS	7/17/15	T.S.
	REVISIONS	3/13/17	T.S.
	DATE	7/17/15	T.S.
DRAWN BY CHECKED APPROVED BY DATE PRINT DATE	T.S.		
	T.S.		
 SEIDELLS ARCHITECTS COMMERCIAL 114 N. COURT AVE., STE. 301 GAYLORD, MICHIGAN 49734 PHONE (616) 331-8822 FAX (616) 331-8823			
SITE PLAN WATERS, MICHIGAN			
SHEET 			

Otsego County Planning Commission 2016 Annual Report to the Otsego County Board of Commissioners

This report is submitted as required under the Michigan Planning Enabling Act, Act 33 of 2008, MCL 125.3819 (2).

125.3819 Bylaws; adoption; public record requirements; annual report by planning commission.
Sec. 19. (1) A planning commission shall adopt bylaws for the transaction of business, and shall keep a public record of its resolutions, transactions, findings, and determinations.
(2) A planning commission shall make an annual written report to the legislative body concerning its operations and the status of planning activities, including recommendations regarding actions by the legislative body related to planning and development.

2016 Planning Commission Cases

- January:** Special Use Permit PZSU15-011 Telecad Wireless – a request for the installation of a three hundred feet (300’) wireless telecommunications tower located in a FR Forestry Recreation Zoning District-*Approved*
- March:** Special Use Permit PZSU15-010 John & Mary Brink-a request for 20’x200’ storage building containing twenty (20) storage units located in a B2 General Business Zoning District-*Approved*
- June:** Special Use Permit PZSU15-008 Dennis Freeman-a request to remodel an existing barn as a wedding venue located in an AR Agricultural Resource Zoning District-*Approved* (The ZBA found the use comparable to other listed uses subject to special conditions in an AR Zoning District)
- August:** Proposed language to SECTION 21.46 WIRELESS COMMUNICATIONS/PERSONAL WIRELESS COMMUNICATIONS- the allowance of smaller guyed towers on leased property for increased internet access-*Recommended to Board of Commissioners*; Proposed ARTICLE 15 MUZ Multiple Use Zoning District-new zoning district addition-Recommended to the Board of Commissioners; 2017-2022 Otsego County Capital Improvement Plan was presented-*Recommended to the Board of Commissioners*
- September:** Proposed language to ARTICLE 14 HX HIGHWAY INTERCHANGE ZONING DISTRICT-the allowance of *Above ground storage of flammable or hazardous material* with restrictions-*Recommended to the Board of Commissioners*
- October:** Special Use Permit PZSU16-002 Cherry Capital Connections LLC-a request for the installation of a one hundred twenty-eight foot (128’) guyed personal wireless communications tower located in an AR Agricultural Resource Zoning District-*Postponed*
- November:** Special Use Permit PZSU16-003 Snowbelt-a request for a detailing/small engine repair garage with outside sales display located in a B2 General Business Zoning District-*Approved*; Special Use Permit PZSU16-002 Cherry Capital Connections LLC-a request for the installation of a one hundred twenty-eight foot (128’) guyed personal wireless communications tower located in an AR Agricultural Resource Zoning District-*Approved*

**Otsego County Planning Commission
2016 Annual Report**

Other Activities

- January:** Proposed language for Personal Wireless Communications towers discussed and returned to Committee for revisions
- March:** Proposed language addition to SECTION 21.46 WIRELESS COMMUNICATIONS for Personal Wireless Communications towers sent to townships; 2015 Annual Report to Board of Commissioners
- May:** Proposed language for the addition of the new MUZ Multiple Use Zoning District reviewed and sent to townships along with the Schedule of Dimensions; Minor amendments to the Planning Commission By-Laws reviewed; Discussion on the format for conducting a public hearing
- June:** Elmira residents brought concerns over noise levels at the Alpine Power Plant to the Planning Commission members; Planning Commission By-Laws amended as presented ; Proposed language addition to the HX Highway Interchange Zoning District sent to townships; Special Use Permit PZSU15-001 Dean & Sara Gapinski one (1) year extension request-Approved
- August:** Discussion continued over noise issues between Elmira residents, Wolverine Power representatives and Planning Commission members
- September:** Special Use Permit PZSU15-003 DTE Energy one (1) year extension request-Approved; Discussion concerning language in SECTION 21.46 WIRELESS COMMUNICATIONS requiring a stamped site plan and the possibility of waiver-ARTICLE 23 SITE PLAN REVIEW to be reviewed
- October:** 2016 Objective List update discussed; Elections
- November:** Wolverine Power reported updates to the Alpine Power Plant intended to improve noise reduction
- December:** Wolverine Power submitted the final sound testing report prepared by Hessler Associates Inc with results below the stipulated measurements attached to Special Use Permit PSUP14-004; 2017 Objective List prioritized and approved; 2017 Meeting Dates presented and approved

The Planning Commission sets priorities with an Objective List of Zoning Ordinance sections for review and revision along with items from the Otsego County Master Plan for implementation to guide the Planning Commission and staff in activities. Ordinance revision and development recommendations are made to the Board of Commissioners as developed throughout the year.

**Otsego County Planning Commission
2016 Annual Report**

Attendance Record of Planning Commission Meetings

ATTENDANCE FOR THE CALENDAR YEAR 2016

Member	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
K. Arndt	X	--	X	--	A	X	--	X	A	X	X	X
W. Brown	X	--	X	--	A	X	--	X	X	X	X	X
F. Nowak	X	--	X	--	X	X	--	X	X	X	X	X
J. Jarecki	X	--	X	--	X	X	--	X	A	X	X	X
C. Klee	X	--	A	--	X	X	--	X	X	X	X	X
P. Hartmann	X	--	A	--	X	X	--	X	X	X	A	X
J. Caverson	X	--	X	--	X	X	--	A	X	X	X	X
R. Tholl	X	--	X	--	--	--	--	--	--	--	--	--
S. Bauman	--	--	--	--	--	--	--	X	X	X	X	A
N. Corfis	A	--	X	--	X	X	--	X	X	X	X	X
J. Hilgendorf	A	--	X	--	X	A	--	X	A	X	X	X
K. Borton	X	--	X	--	X	X	--	X	X	X	X	X

X = Attended
A = Absent
-- = Meeting canceled

Member Training

Members attended training at Treetops in Gaylord pertaining to the roles of Planning Commission / ZBA members; a workshop for regulation changes to *Sign Ordinances* was attended at the University Center as well.

Planning Commission Members

The Planning Commission Members as of January 1, 2016 are:

Ken Arndt:	Term expires: 12.31.2017 (<i>Secretary</i>)
Willard Brown:	Term expires: 12.31.2016
Frances Nowak:	Term expires: 12.31.2017
Judy Jarecki:	Term expires: 12.31.2018 (<i>Vice Chairperson</i>)
Charles Klee:	Term expires: 12.31.2017
Paul Hartmann:	Term expires: 12.31.2018 (<i>Chairperson</i>)
Jason Caverson:	Term expires: 12.31.2016
Roberta Tholl:	Term expires: 12.31.2018 <i>Mrs. Tholl resigned April 13, 2016</i>
Steve Bauman:	Term expires: 12.31.2018 <i>Mr. Bauman appointed June 12, 2016</i>
Nora Corfis:	Term expires: 12.31.2016
Jim Hilgendorf:	Term expires: 08.25.2018 (<i>School District Representative</i>)
Ken Borton:	Board of Commissioner Representative

Respectfully submitted,

OTSEGO COUNTY PLANNING COMMISSION

May 16, 2002

Last revised September 13, 2016

Bringing
Knowledge
to Life!

Restrictions on Zoning Authority

This publication summarizes the state and federal limitations on zoning in Michigan. Local governments receive power, including authorization for planning and zoning, from the state. The authority to adopt and enforce zoning is granted to local governments through the zoning enabling acts.¹ When authority is granted to a local government, it often comes with strings attached which may require the task to be done a certain way or within certain limitations. In addition, various court cases, other state statutes and the federal code often limit what local governments can do with zoning.

Limits placed on zoning can change. Always check back to web site lu.msue.msu.edu to insure use of the most recent version of this publication. This document attempts to outline restrictions on zoning as they currently exist. Limitations described here are categorized as outlined below. For the limitations on zoning listed here, detailed footnotes are included to help the reader find the source of the limitation.

This list, starting on the next page, is divided into the following categories:

1. General Rules (page 2).
2. Outright Preemption (page 2).
3. Preemption, sort of (page 9).
4. If one use is permitted, others must be, also (page 12).
5. Can regulate but not prohibit (page 13).
6. Can regulate but not less strictly than the state (page 13).

Appendix A, on page 14, lists a few commonly believed things to be exempt from zoning, but they are subject to zoning. Appendix B, on page 15, reproduces the Michigan Supreme Court and Michigan Appeals Court guidelines to aid courts to determine if state statute preempts zoning. Appendix C, on page 16, reports the history of this *Land Use Series* updates over time.

Michigan State University
Extension,

Greening Michigan Institute,
Government and Public Policy

Author:

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¹P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*). (This footnote used to cite the following acts, each repealed as of July 1, 2006: P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.201 *et seq.*); P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.271 *et seq.*); P.A. 207 of 1921, as amended (the City and Village Zoning Act, M.C.L. 125.581 *et seq.*))

1. General rules

- A. The zoning enabling acts require consideration of all legitimate land uses: “A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a local unit of government in the presence of a demonstrated need for that land use within either that local unit of government or the surrounding area within the state, unless a location within the local unit of government does not exist where the use may be appropriately located or the use is unlawful.”²
- B. Local zoning must allow the continuation of a nonconforming use³ and expansion of a nonconforming use⁴ (existing building or use of land that lawfully existed prior to zoning or prior to the zoning amendment). However, the ordinance can provide for reasonable terms for restoration, reconstruction, extension, substitution, and acquiring of nonconforming uses that may limit their life span.
- C. Local zoning cannot constitute a taking, which occurs if a regulation requires or permits physical invasion by others onto private property or is so sweeping that it, in effect, takes away all economically viable

²Section 207 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3207). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 27a. of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.227a); section 27a of P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.297a); and section 12 of P.A. 207 of 1921, as amended (the City and Village Zoning Act, M.C.L. 125.592).)

³Section 208 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3208). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 16 of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.216); section 16 of P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.286.); and section 3a of P.A. 207 of 1921, as amended (the City and Village Zoning Act, M.C.L. 125.583a).)

⁴*Century Cellunet of Southern Michigan v. Summit Township et al.*, 250 Mich.App. 543 (2002), Jackson Circuit Court LC No. 99-096108-AA.

use of land⁵

- D. Zoning must provide for due process of law and must provide equal protection of all persons affected by the laws.⁶

2. Outright preemption

Outright preemption occurs if the regulation of a particular land use is reserved to the state – that is, it “occupies the field.” The Michigan Supreme Court set forth four guidelines to aid courts in determining whether a statute occupies the field of regulation.⁷ See Appendix B, on page 15, for more detail on this.

- A. Local zoning cannot regulate the location or operation of hazardous waste disposal and/or storage facilities.⁸ (It is probably acceptable to regulate fencing and haul routes if approved by the state siting board.)
- B. Local zoning cannot regulate the location or operation of solid waste facilities such as

⁵Both state and federal constitutions prohibit taking of private property for public use without just compensation – U.S. Constitution, Amendment V, and Michigan Constitution 1963, Article 10 §2. The U.S. Supreme Court has recognized that the government effectively “takes” a person’s property by overburdening that property with regulations. *Pennsylvania Coal Co. v. Mahon*, 260 US 393, 415; 43 S Ct 158; 67 L Ed 2d 322 (1922). See also *K & K Construction, Inc. v. Department of Natural Resources*, 456 Mich 570, 576; 575 NW2d 531 (1998); *Lucas v. South Carolina Coastal Council*, 505 US 1003, 1015; 112 S Ct 2886; 120 L Ed 2d 798 (1992); *Penn Central Transportation Co. v. New York City*, 438 US 104; 98 S Ct 2646; 57 L Ed 2d 631 (1978); *Adams Outdoor Advertising v. City of East Lansing* (after remand), 463 Mich 17, 23-24; 614 NW2d 634 (2000); *Palazzolo v. Rhode Island*, 533 US 606; 121 S Ct 2448, 2457; 150 L Ed 2d 592 (2001); *Loveladies Harbor Inc. v. United States*, 28 F3d 1171 (1994); *Creppel v. United States*, 41 F3d 627 (1994); *Good v. United States*, 189 F3d 1355 (1999); *Lingle v. Chevron USA, Inc.*, 125 S.Ct. 2074 (2005).

⁶U.S. Constitution, Amendment IV.

⁷*People v. Llewellyn*, 401 Mich 314, 257 NW2d 902 (1977).

⁸Section 11122 of Part 111 of Act 451 of 1994, as amended (the hazardous waste part of Natural Resources and Environmental Protection Act, M.C.L. 324.11121). See also M.C.L. 324.11122.

landfills and incinerators.⁹ (It is probably acceptable to regulate fencing and haul routes if included in the county solid waste management plan.)

- C. Local zoning cannot regulate utility (power) lines.¹⁰
- D. Local zoning cannot regulate wind energy power transmission lines¹¹ within Primary and other Wind Energy Resource Zones established by order of the Michigan Public Service Commission, if a Expedited Siting Certificate for a transmission line is issued to a public utility by the Public Service Commission. Wind Energy Resource Zones do not include areas zoned residential at the time of the designation.
- E. Local zoning cannot regulate pipelines that are regulated by the Michigan Public Service Commission.¹²

⁹Section 11538 of Part 115 of Act 451 of 1994, as amended (the solid waste part of Natural Resources and Environmental Protection Act M.C.L. 324.11538(8)).

¹⁰Section 205(1) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3205(1)); and section 10 of Act 30 of 1955, as amended (the Electric Transmission Line Certification Act, M.C.L. 460.570). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 1(2) of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.201(2)); and section 1(2) of P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.271(2)); section 1(3) of P.A. 207 of 1921, as amended (the City and Village Zoning Act, M.C.L. 125.581(2)).)

¹¹P.A. 295 of 2008, as amended, (being the Clean, Renewable, and Efficient Energy Act, M.C.L. 460.1001 *et seq.*). In particular see sections 143, 145(4), 147(1), 149(1), and 153(4) in Part 4 of the act.

¹² The public service commission has the power and jurisdiction to hear and pass upon all matters pertaining to, necessary, or incident to the regulation of public utilities, except for railroads and railroad companies. (Some additional (non-zoning) regulatory powers rest with cities.) Section 4 and 6 of P.A. 3 of 1939, as amended, (being the Michigan Public Service Commission Act, M.C.L. 460.4 and 460.6). P.A. 3 of 1895, as amended, (being the General Law Village Act, M.C.L. 67.1a). P.A. 278 of 1909, as amended, (being the Home Rule Village Act, M.C.L. 78.26a). P.A. 215 of 1895, as amended, (Being the Fourth Class City Act, M.C.L. 91.6). P.A. 270 of 1909, as amended, (being the Home Rule City Act, M.C.L. 117.5d).

- F. Local zoning (and state and local government) cannot regulate railroads,¹³
- G. Local zoning cannot regulate state prisons and public correctional facilities¹⁴ including halfway houses.¹⁵ Private facilities can be regulated.
- H. Township and county zoning cannot regulate oil and gas wells, exploration, and operation of the wellhead site¹⁶ (but it can be regulated off-site.) A flowline (pipeline) which is part of the operation of a well is also not subject to local regulation.¹⁷ An exception to not regulating oil and gas wells is that local regulation can occur if

¹³Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10101 *et seq.* P.A. 354 of 1993, as amended, (being the Railroad Code of 1993, M.C.L. 462.131) and *Wabash, St. L. & P.R. Co. v. Illinois*, 118 U.S. 557 (1886).

¹⁴Section 4 of Chapter I of Act 232 of 1953, as amended (Department of Corrections Act M.C.L. 791.204). Also M.C.L. 791.216. Noted exception is at 791.220g(7).

¹⁵*Dearden v. Detroit*; Supreme Court of Michigan, 403 Mich. 257; 269 N.W.2d 139; 1978 Mich., August 30, 1978, Decided.

¹⁶Section 205(2) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3205(2)); and part 615 of Act 451 of 1994, as amended (the supervisor of wells part of the Natural Resources and Environmental Protection Act, M.C.L. 324.61501 *et seq.*). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 1(1) of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.201(1)); section 1(1) P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.271(1)).)

¹⁷There are different types of pipelines. For a flowline (pipeline) from an oil or gas well connecting them together, and maybe up to a compression plant (gas), and/or up to the first point of sale (e.g., the meter from which royalty payments are calculated for those oil/gas wells), the Supervisor of Wells has exclusive jurisdiction. But there is dispute over how far the flowline from the well might go.

A local government may have some jurisdiction over a pipeline from the point of sale, or 'downstream' from the in-field processing (e.g., a compression plant (gas)) that goes to the market point.

Third are pipelines which are under the regulation of the Michigan Public Service Commission, see "pipelines" on page 3.

- zoning is for a designated “natural river.”¹⁸
- I. Local zoning cannot regulate surface coal mining and reclamation operations.¹⁹ (See also “mining” on page 16.) An exception is that this regulation can occur if zoning is for a designated natural river.²⁰
 - J. State water pollution regulations occupy the field for both point²¹ and nonpoint²² sources of pollution.
 - K. Regulations about farms/farming²³ are severely restricted by the Right To Farm Act. To determine what can, and cannot, be regulated locally is a two part thought process. First is the land use going to fall under the Right To Farm Act (RTFA), that is, is it a farm or agriculture? Start by asking these questions

- Is it a “farm operation?”²⁴
- Is it producing “farm products?”²⁵
- Is it commercial?

If the answer is “yes” to each of these above then it applies under the RTFA. If one of the answer(s) is “no” then that land use on that parcel can be regulated by local ordinance.

If all three are “yes”, then second, is to determine what local regulations are preempted and which local regulations can still be enforced. If the topic of the regulation is already covered in the RTFA or in any of the published Generally Accepted Agricultural Management Practices (GAAMP), then local government cannot regulate it. If the topic is not in RTFA and not in any of the GAAMPs, then local regulation can still apply. Topics in RTFA, and thus off limits for local regulation are:

- Anything about a farmer’s liability in a public or private nuisance lawsuit.²⁶
- Anything about enforcement or investigation process for complaints involving agriculture.²⁷
- The conversion from one or more farm operation activities to other farm operation activities.²⁸

However, GAAMPs cover a much larger range of topics and an effort is made to keep GAAMPs up-to-date with the most current science-based best practices for farm operations. Usually in January or February of each year, the Commission is adopting updated versions of the GAAMPs.

Local zoning of agriculture cannot

¹⁸Section 30508 of Act 451 of 1994, as amended (the Natural Rivers part of the Natural Resources and Environmental Protection Act, M.C.L. 324.30508).

¹⁹Sec. 63504 of Act 451 of 1994, as amended (the surface and underground coal mine reclamation part of the Natural Resources and Environmental Protection Act, M.C.L. 324.63504). However, section 63505 reads, “This part shall not be construed as preempting a zoning ordinance enacted by a local unit of government or impairing a land use plan adopted pursuant to a law of this state by a local unit of government.”

²⁰Section 30508 of Act 451 of 1994, as amended (the natural rivers part of the Natural Resources and Environmental Protection Act, M.C.L. 324.30508).

²¹Section 3133 of Part 31 of Act 451 of 1994, as amended (the water resources (point source) part of the Natural Resources and Environmental Protection Act, M.C.L. 324.3133(1)) and upheld by *City of Brighton and Department of Environmental Quality v. Township of Hamburg*, 260 Mich.App. 345 (2004), Livingston Circuit Court LC No. 00-017695-CH.

²²Section 8328(1) of Part 83 of P.A. 451 of 1994, as amended (the general non-point source pollution control part of the Natural Resources and Environmental Protection Act, M.C.L. 324.8328(1)).

²³Farm means any activity that produces a *farm product* via a *farm operation* which is *commercial*, as defined in the Right To Farm Act, M.C.L. 286.472. (There is no minimum amount of *commercial* required, and *farm operation* does not have to be within what one commonly thinks of as a traditional farm.)

²⁴Defined in the act: MCL 286.472(b).

²⁵Defined in the act: MCL 286.472(c).

²⁶MCL 286.473

²⁷MCL 286.474

²⁸MCL 286.472(b)(ix)

extend, revise or conflict with provisions of the Right to Farm Act or any generally accepted agricultural and management practices (GAAMPs)²⁹, including:

- Manure management and utilization.
- Pesticide utilization and pest control.
- Nutrient utilization.
- Care of farm animals.
- Cranberry production.
- Site selection and odor control for new and expanding livestock production facilities.
- Irrigation water use.
- Farm Markets³⁰

²⁹Section 4(6) of Act 93 of 1981, as amended (the Michigan Right to Farm Act, M.C.L. 286.474(6)) and respective Michigan Department of Agriculture adopted generally accepted agricultural and management practices (GAAMPs).

³⁰The GAAMP sets forth that a farm market is an 'area' where transactions between a farm market operator and customers take place (not necessarily but might be a building). At least 50 percent of the products marketed/offered for sale (measured over a five year timeframe) must be from the affiliated farm. The '50 percent' is measured by use of floor space.

The farm market must be 'affiliated' with a farm, meaning a farm under the same ownership or control (e.g. leased) as the farm market, but does not have to be located on the same property where the farm production occurs. The market must be located on land where local land use zoning allows for agriculture and its related activities.

Marketing is part of a farm market, and can include Community Supported Agriculture (CSA), U-Pick operations (also known as pick your own (PYO)), and associated activities and services to attract and entertain customers (e.g., cooking demonstrations, corn mazes, tours, fishing pond, hay rides, horseback riding, petting farms, picnic areas, etcetera (a much longer list is in the GAAMP)). Services to attract and entertain customers are subject to local zoning ordinances, state, federal laws, and associated rules and regulations.

If in a building/structure, the structure must comply with the Stille-Derosset-Hale Single State Construction Code Act (MCL 125.1501 *et seq.*) and placement of the structure shall comply with local zoning, including set-backs from property lines and right-of-ways. Parking may be on grass, gravel, or pavement; one vehicle parking space for every 200 sq. ft. of interior retail space or 1,000 sq. ft. of outdoor activity space. Driveways must have a Michigan Department of Transportation (MDOT), county road commission, or village/city street agency permits. Signs outside the farm market must comply with sign regulations of MDOT, and all applicable local regulations. External lighting must comply with all (continued...)

See more detailed materials on this topic at www.msue.msu.edu/lu.

There is debate as to if one can, or cannot restrict farming to certain zoning districts. Unpublished court rulings suggest farms/farming must be allowed anywhere. Others suggest those cases were dealing with nonconforming farm uses. Michigan Department of Agriculture takes the position a community can allow, or not allow farm/farming in various zoning districts. If farm/farming is allowed, then all types of farms must be allowed. A community cannot pick and choose what types of farms are allowed.

Complicating things further, some GAAMPs delegate regulation authority back to the local unit of government.

Examples of this (as of April 2015) include:

- Municipalities with a population of 100,000 or more in which a zoning ordinance has been enacted to allow for urban agriculture (and designates existing agricultural operations present as non-conforming uses).
- Category 4 sites for livestock operations as determined in the *Site Selection and Odor Control for New and Expanding Livestock Facilities* GAAMPs.
- Vehicle access and egress, building setbacks, parking (but not the surface of the parking lot), signs for Farm Markets as designated in the *Farm Markets* GAAMPs.
- Beer breweries, bonfires, camping, carnival rides, concerts, corn mazes, distilleries, fishing pond, haunted barns/trails, mud runs, play-scapes, riding stables, and winery/hard cider associated with Farm Markets as

³⁰(...continued)

applicable local, state, and federal regulations for lighting outside the farm market.

All details in the GAAMP are not covered, above. See also Section 2(b)(i) of Act 93 of 1981, as amended, (the Michigan Right to Farm Act, M.C.L. 286.472(b)(i)).

designated in the *Farm Markets GAAMPs* (or not considered as part of the *Farm Market GAAMPs*).

There are far more nuances to all this, including unsettled case law as to if a GAAMPs can delegate back regulatory authority that is preempted by state statute.

If a local government submits its ordinance on farm/agriculture, showing that adverse effects on the environment or public health will exist within the local government without the ordinance, to the Michigan Department of Agriculture and the Michigan Agricultural Commission approves the ordinance then those local regulations may apply.³¹

- L. State fertilizer regulations occupy the field.³²
- M. Local zoning cannot regulate uses on state-owned land on Mackinac Island under the control of the Mackinac Island Park Authority. (Furthermore, all buildings in the city of Mackinac Island are subject to design review and approval by the city architect.)³³
- N. State Fairgrounds are under the jurisdiction of the State Exposition and Fairgrounds Council, one in Detroit and one in the Upper Peninsula.³⁴
- O. Local zoning cannot regulate trails that have received Natural Resources Commission designation as a “Michigan

³¹Section 4(7) of Act 93 of 1981, as amended (the Michigan Right to Farm Act, M.C.L. 286.474(7)).

³²Section 8517(1) of Part 85 of Act 451 of 1994, as amended (the fertilizer part of the Natural Resources and Environmental Protection Act, M.C.L. 324.8517).

³³Section 76504(2) of Part 76 of Act 451 of 1994, as amended (Mackinac Island State Park part of Natural Resources and Environmental Protection Act, M.C.L.324.76504(2)).

³⁴P.A. 361 of 1978, as amended (the Michigan Exposition and Fairgrounds Act, M.C.L. 285.161 *et. seq.*) and *City of Detroit v. State of Michigan*, 626 Mich.App. 542 (2004), Wayne Circuit Court LC No. 00-021062-CE.

trailway”³⁵ and snowmobile trails which are subject to the Snowmobile Act.³⁶

- P. Local zoning cannot regulate any part of the Michigan State Police radio communication system.³⁷ The statute provides for the State Police to notify the local zoning authority of the proposed facility, and a 30 day period where the zoning authority can issue a special use permit or propose an alternative location. If the special use permit is not issued within 30 days, or the alternative location does not meet siting requirements the state police can proceed with the first proposed site.
- Q. Local zoning cannot regulate state-owned or leased armories and accessory buildings, military warehouses, arsenals and storage facilities for military equipment, and the land for military uses.³⁸

³⁵Section 82101 *et seq.* of Part 821 of Act 451 of 1994, as amended (Snowmobiles part of Natural Resources and Environmental Protection Act, M.C.L. §§ 324.72101; *Township of Bingham v. RLTD Railroad Corp.*, 463 Mich. 634, 624 N.W.2d 725 (2001). (See also part 721, section 72103 of P.A. 451 of 1994, as amended (the Michigan railways part of the Natural Resources and Environmental Protection Act, M.C.L. 324.72103) and section 10 of P.A. 295 of 1976, as amended (the State Transportation Preservation Act of 1976, M.C.L. 474.60)).

³⁶M.C.L. 324.82101 *et seq.* and *Chocolay Charter Township v Department of Natural Resources*, no. 246171 (Mich. App., October 28, 2003) (unpublished).

³⁷P.A. 152 of 1929, as amended (the Michigan State Police Radio Broadcasting Stations Act, M.C.L. 28.281 *et. seq.*).

³⁸Section 380 of chapter 6 of P.A. 150 of 1967, as amended (the armories and reservations chapter of the Michigan Military Act, M.C.L. 32.780).

- R. Local zoning cannot regulate U.S. nuclear power³⁹ facilities and military facilities.⁴⁰
- S. Activities of a federally recognized Native American (Indian) tribal government within trust lands or within “Indian country” are not subject to local zoning. (Tribal zoning, if any, does have jurisdiction.)⁴¹
- T. Public Schools under the jurisdiction of the Michigan superintendent of public instruction are not subject to local zoning.⁴²
- U. Certain public colleges and universities are

- not subject to local zoning.⁴³
- V. A municipality that adopts a zoning ordinance need not follow its own ordinance.⁴⁴ The court case establishing this preemption is specifically interpreting the City and Village Zoning Act, but the language the court used suggests this concept might also apply to a township or county. This preemption is only for a government’s own zoning ordinance. A city, township, and village government must comply with another government’s zoning ordinance.⁴⁵
- W. County buildings owned and built/located by a county board of commissioners is not subject to zoning⁴⁶ in so much as the county has the power to determine “the site of, remove, or to designate a new site

³⁹Title 42, Chapter 23 of the United States Code (42 USC Chap. 23); Atomic Energy Act of 1954, 68 Stat 919 (1954); 42 USC 2011; Michigan Attorney General Opinion No. 4073 (1962), No. 4979 (1976). According to Michigan Attorney General Opinion No. 5948 (1981), the state can regulate radioactive air pollution, including air pollution from nuclear power plants, but cannot prohibit nuclear power plants or nuclear waste disposal facilities within its boundaries.

⁴⁰Title 40, Chapter 12, Section 619(h) of the United States Code (40 USC Sec. 619(h)).

⁴¹*Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation et al.*, 492 US 408 (1989) addressed zoning jurisdiction in a checkerboarded ownership pattern area. This case was appealed. The U.S. Supreme Court combined the case with others before hearing it. The Supreme Court case, also involving the Crow Tribe in *Montana v. United States*, 450 US 544 (1981), further modified the *Brendale* decision to say ‘fee’ lands and ‘trust’ lands are different. Trust lands are zoned by the tribal *Ogema* (government).

The tribe also retains its zoning authority over non-Indian members in portions of a reservation where only a few, isolated parcels had been alienated and the tribe’s power to determine that area’s essential character remains intact. The tribe does not have zoning authority within a reservation in an area predominantly owned and populated by non-Indian members because such an area has lost its character as an exclusive tribal resource. The issue becomes where the lines --boundary-- for these areas are drawn. Thus resolution of where tribe or municipality jurisdiction exists is decided in court.

The court requires a case-by-case review to settle the issue of zoning jurisdiction, arguing it is impossible to articulate precise rules that will govern when tribal zoning or municipal/county zoning has jurisdiction.

⁴²*Charter Township of Northville et al. v. Northville Public Schools* 469 Mich 285, 666 N.W.2d 213 (2003). Section 1263(3) of Act 451 of 1976, as amended (the Revised School Code, M.C.L. 380.1263(3)).

⁴³Article VIII Section 5 of the 1963 Michigan Constitution; Article VIII Section 6 of the 1963 Michigan Constitution; Section 5 of Act 151 of 1851, as amended (the University of Michigan Act, M.C.L. 390.5); Sections 2 and 6 of Act 269 of 1909, as amended (the Michigan State University Act, M.C.L. 390.102 and 390.106); Section 5 of Act 183 of 1956, as amended (the Wayne State University Act, M.C.L. 390.645)); Section 4 of Act 35 of 1970, as amended (the Oakland University Act, M.C.L. 390.154); Section 2 of Act 70 of 1885, as amended (the Michigan Technological University Act, M.C.L. 390.352); Section 4 of Act 26 of 1969, as amended (the Lake Superior State University Act, M.C.L. 390.394); Section 3 of Act 72 of 1857, as amended (the Albion College Act, M.C.L. 390.703); Section 1 of Act 278 of 1965, as amended (the Saginaw Valley State University Act, M.C.L. 390.711); Section 2 of Act 95 of 1943, as amended (the Hillsdale College Act, M.C.L. 390.732); Sections 1 and 2 of Territorial Laws of 1833, Vol. III (the Kalamazoo College Act, M.C.L. 390.751 and 390.752); Section 3 of Act 114 of 1949, as amended (the Ferris State University Act, M.C.L. 390.803); Section 3 of Act 120 of 1960, as amended (the Grand Valley State University Act, M.C.L. 390.843); Section 3 of P.A. 48 of 1963 (2nd Ex. Sess.), as amended (the Central, Eastern, Northern and Western Michigan Universities Act, M.C.L. 390.553). See also *Marquette Co. v. Bd. of Control of Northern Michigan Univ.*, 111 Mich.App. 521, 314 N.W.2d 678 (1981).

⁴⁴*Morrison et al. v. City of East Lansing*, 255 Mich. App. 505 (2003).

⁴⁵Michigan Attorney General Opinion No. 6982 (1998).

⁴⁶*Pittsfield Charter Township v. Washtenaw County and City of Ann Arbor*, 468 Mich 702, 664 N.W.2d 193 (2003).

for a county building,” and to erect “the necessary buildings for jails, clerks’ offices, and other county buildings....”⁴⁷ A county’s power under the CCA “is limited to the siting of county buildings.” The court case establishing this preemption involved a county building and township zoning, but the language used by the court suggests the county is exempt from city and village zoning as well. Ancillary land uses indispensable to the building’s normal use (not other types of land uses) are also not subject to zoning.⁴⁸ But a county has no authority to establish a principal land use (with or without ancillary building(s)).⁴⁹

- X. A local unit of government shall not regulate underground storage tanks that is inconsistent with the state statute and rules, nor require a permit, license, approval, inspection, or the payment of a fee or tax for the installation, use, closure, or removal of an underground storage tank system.⁵⁰
- Y. A local unit of government shall not enact or enforce an ordinance that regulates a large quantity water withdrawal⁵¹ (more

than an average of 100,000 gallons of water per day).

- Z. A local unit of government cannot regulate the ownership, registration, purchase, sale, transfer, possession of, or otherwise deals with pistols or other firearms.⁵² (Under current statute local government can only have such regulations that (1) duplicate current state criminal law, (2) regulation of its own government employee’s use of firearms in the course of their employment duties, (3) requiring those under 16 to use a pneumatic gun under adult supervision when not on their own private property, (4) prohibiting use of a pneumatic gun in a threatening manner with intent to induce fear in another,⁵³ (5) prohibiting discharge of a gun within a city or charter township, and (6) prohibiting discharge of a pneumatic gun within areas of a city or charter township with density of population such that discharge would be dangerous [but does not prevent use of target ranges and does not prevent if

⁴⁷ *Herman v. County of Berrien* (Published No. 134097, June 18, 2008) Michigan Supreme Court.

⁴⁸ *Herman v. County of Berrien* (Published No. 134097, June 18, 2008) Michigan Supreme Court.

⁴⁹ *Colma Charter Twp v. Berrien County* (Published No. 325226, September 6, 2016) Michigan Court of Appeals.

⁵⁰ Section 109, and 108(2) of Part 211 of P.A. 451 of 1994, as amended, (being the Underground Storage Tanks part of the Michigan Natural Resources and Environmental Protection Act, (M.C.L. 324.21109, M.C.L. 324.21108(2).) However the DEQ may delegate underground storage tanks to certain local governments, M.C.L. 324.21102(7). Note: these sections are repealed by act 451 of 1994, as amended, effective upon the expiration of 12 months after part 215 becomes invalid pursuant to section M.C.L. 324.21546 (3).

⁵¹ Section 26 of Part 327 of P.A. 451 of 1994, as amended, (being the Great Lakes Preservation part of the Michigan Natural Resources and Environmental Protection Act, (M.C.L. 324.32726) reads: “Except as authorized by the public health (continued...) ”

⁵¹ (...continued)

code, 1978 PA 368, M.C.L. 333.1101 to 333.25211, a local unit of government shall not enact or enforce an ordinance that regulates a large quantity withdrawal. This section is not intended to diminish or create any existing authority of municipalities to require persons to connect to municipal water supply systems as authorized by law.”

MCL 324.32701(p) defines “Large quantity withdrawal” to mean “1 or more cumulative total withdrawals of over 100,000 gallons of water per day average in any consecutive 30-day period that supply a common distribution system.”

⁵² MCL 123.1102 and *Michigan Coalition for Responsible Gun Owners v City of Ferndale* (256 Mich App 401, 409-410; 662 NW2d 864 (2003), lv den 469 Mich 880 (2003))

A local unit of government shall not... enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state. [MCL 123.1102; emphasis added.]

⁵³ MCL 123.1103

contained within private property].⁵⁴)

- AA. Southeast Michigan Regional Transit Authority public transit facilities and public transportation system are exempt from local zoning ordinances or regulations which conflict with a coordination directive issued by the Authority.⁵⁵

3. Preemption, sort of

- A. Local governments cannot implement regulations that are more stringent than those of the state for the interior design of mobile (manufactured) home parks or standards related to the business, sales, and service practices of mobile home dealers, mobile home installers and repairers (unless the local regulation has been approved by the Michigan Manufactured Home Commission).⁵⁶
- B. Local government cannot regulate activities of the U. S. government on land owned by the federal government (although privately-owned facilities leased by the federal government can be regulated). Federal government must “consider” local regulations and follow them to “the maximum extent feasible.” It must also follow requirements for landscaping, open space, minimum distance, maximum height, historic preservation and esthetic qualities, but it

is not required to obtain a permit.⁵⁷ A federal instrumentality (where a federal government function is being done by a private entity) is also immune from any state law or local regulation directly inhibiting the purpose (and only its purpose).⁵⁸

- C. Local governments cannot implement regulations about nonferrous metallic mineral mining (nonferrous metallic sulfide deposits) that duplicate, contradict, or conflict with part 632 of the Natural Resources and Environmental Protection Act.⁵⁹ And such regulations (concerning hours of operation and haul routes) shall be reasonable in accommodating customary nonferrous metallic mineral

⁵⁴MCL 123.1104

⁵⁵Section 205(1)(b) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, MCL 125.3205(1)(b) (effective March 27, 2013 at noon) and section 8(12) and section 15 of the Regional Transit Authority Act, MCL _ 8(12) and _ 15 (P.A.387 of 2012).

⁵⁶Section 7 of Act 96 of 1987, as amended (the Mobile Home Commission Act, M.C.L. 125.2307). Also, a local ordinance shall not be stricter than the manufacturer's recommended mobile home setup and installation specifications, or mobile home setup and installation standards promulgated by the federal Department of Housing and Urban Development pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 to 5426.

⁵⁷Title 40, Chapter 12, Section 619 of the United States Code (40 USC Sec. 619).

In carrying out its Federal functions, neither the United States nor its agencies are subject to state or local regulations absent a clear statutory waiver to the contrary. This concept is based upon the Supremacy Clause of the United States Constitution which states, in part, that it and the laws of the United States are the “supreme law of the land.” (U.S. Constitution, Article VI, cl.2.)

It is a “seminal principal” of law that the United States Constitution and the laws made pursuant to it are supreme. *Hancock v. Train*, 426 U.S. 167,178.

“(I)t is of the very essence of supremacy to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their own influence.”

Hancock, 426 U.S. 167,178 (*McCulloch v. Maryland*, 4 *Wheat*. 316,426 (1819)). Sovereign immunity means that where “Congress does not affirmatively declare its instrumentalities or property subject to regulation,” “the federal function must be left free” of regulation. *Id.* (*Mayo v. United States*, 319 U.S. 441, 447-48).

⁵⁸*City of Detroit v. Ambassador Bridge Co.* Michigan Supreme Court (No. 132329, May 7, 2008); *United States v. Michigan*; and *Name.Space, Inc. v. Network Solutions, Inc.* (2nd Cir.). See also *Commodities Exp. Co. v. Detroit Int'l Bridge*, U.S. Court of Appeals Sixth Circuit No. 11-1758, September 24, 2012.

⁵⁹Part 632 of P.A. 451 of 1994, as amended, (being the Nonferrous Metallic Mineral Mining part of the Michigan Natural Resources and Environmental Protection Act, (M.C.L. 324.63203(4)).

See also Michigan Attorney General Opinion 7269, September 27, 2012.

- mining operations.
- D. Local zoning can regulate only certain specific aspects of extraction (mining) of natural resources (e.g., gravel, sand and similar pits).⁶⁰ Zoning can not prevent extraction of natural resources unless “very serious consequences”⁶¹ would occur. Regulations can include government’s reasonable regulation of hours of operation, blasting hours, noise levels, dust control measures, and traffic (not preempted by the nonferrous metallic mineral mining part of the Natural Resources and Environmental Protection Act⁶²). Such regulation shall be reasonable in accommodating customary mining operations. Extraction of minerals supercedes surface rights. (Oil and gas and coal mining can not be regulated, see 2H and 2I.) Further regulation of mineral extraction might be acceptable if the zoning is for a designated natural river.
- E. Wireless communication antenna⁶³ and towers local regulation is preempted, in part by the Federal Communications Act, court cases, and Michigan Zoning Enabling Act. In summary: cannot unreasonably discriminate between different provider

companies⁶⁴; “[t]he regulation of the placement, construction, and modification of personal wireless service facilities . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services”⁶⁵; regulations cannot be based on “environmental effects of radio frequency emissions to the extent that such facilities comply with the [FCC]’s regulations. . . .”⁶⁶; applications must be acted on within a certain deadlines and decisions shall “be in writing and supported by substantial evidence contained in a written record”⁶⁷ as well as following deadline requirements of local ordinance (if any) and the Michigan Zoning Enabling Act⁶⁸; anyone harmed by a decision to deny a wireless facility permit can bring the issue to court, and the court must hear and rule on the case in an expedited manner⁶⁹; state or local government must allow certain types of expansion of existing wireless facilities⁷⁰; arguments concerning the impacts of property values must be documented by an expert, testifying on the record who has

⁶⁰Section 205(3)-205(6) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3206(3)-125.3205(6).

See also Michigan Attorney General Opinion 7269, September 27, 2012.

⁶¹See *Silva v Ada Township*, 416 Mich 153 (1982); *American Aggregates Corp v Highland Twp*, 151 Mich. App. 37; and MCL 125.3205(5).

⁶²Part 632 of P.A. 451 of 1994, as amended, (being the Nonferrous Metallic Mineral Mining part of the Michigan Natural Resources and Environmental Protection Act, (M.C.L. 324.63203(4).

⁶³Title 47, Chapter 5, Subchapter III, Section 332(c)(7) of the United States Code (47 USC Sec. 332(c)(7). (See also section 251 of P.A. 179 of 1991, as amended (the Michigan Telecommunications Act, M.C.L. 484.2251). Note that section 251 is repealed, effective December 31, 2005.)

⁶⁴47 U.S.C. § 332(c)(7)(B)(i)(I) (2006).

⁶⁵47 U.S.C. § 332(c)(7)(B)(i) (2006) and U.S. Court of Appeals Sixth Circuit (691 F.3d 794; 2012 U.S. App. LEXIS 17534, August 21, 2012).

⁶⁶47 U.S.C. § 332(c)(7)(B)(iv) (2006).

⁶⁷47 U.S.C. §§ 332(c)(7)(B)(ii)-(iii) and *City of Arlington, Texas v. Federal Communications Commission*, U.S. Supreme Court, May 20, 2013.

⁶⁸Section 514 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3514).

⁶⁹47 U.S.C. § 332(c)(7)(B)(v).

⁷⁰Public Law 112-96—Feb. 22, 2012; 126 U.S.C. 156 and FCC Public Notice DA 12-2047 “Wireless Telecommunications Bureau Offers Guidance on Interpretation of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012”; January 25, 2013.

conducted a study of the specific site⁷¹; and Michigan requires most applications for wireless facilities to be a permitted use in the local zoning ordinance with two exceptions as well as state decision deadlines.⁷²

- F. Regulation that (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal of customer-end antennas to receive signals⁷³ (e.g., “dish” antenna one meter or less in diameter,⁷⁴ direct-to-home satellite service, receive or transmit fixed wireless signals, video programming via broadband radio service (wireless cable) and wireless signals, and antenna designed to receive local television broadcasts). Clearly-defined local regulation exclusively for safety (e.g., securely fastened down), historic site protection are exceptions, and may be locally regulated. This does not apply to local AM/FM radio reception antennas, satellite, wireless, WiFi,

broadband, amateur “ham” radio,⁷⁵ CB radio, Digital Audio Radio Services “DARS” antennas.)

- G. A local unit of government is limited to regulate the hours of use of fireworks so long as the regulation does not apply to the day of, preceding, or after a national holiday. (If a municipality with 50,000 or more population in a county with 750,000 or more population may regulate fireworks between midnight and 8am on New Year’s day. If a municipality with less than 50,000 population in a county with less than 750,000 population may regulate fireworks between 1am and 8am on New Year’s day.)⁷⁶ A local unit of government is limited to regulate fireworks sale, display, storage, transportation or distribution which are regulated under the Michigan Fireworks Safety Act in a manner that is only incidental.⁷⁷ But the Fireworks Safety Act leaves open the door to limited regulation so long as that regulation does contravene the state law and the local ordinance is incidental because it applies its regulations to any and all retail operations, and fireworks sales are not treated any differently than all other retail enterprises. It may also be that local ordinances cannot regulate novelties.⁷⁸
- H. Activity at a publically owned airport under control of an airport authority created by the Airport Authorities Act (Capital Regional Airport in Lansing)

⁷¹Donna J. Pugh; FOLEY & LARDNER LLP, Chicago office, presenting at the APA national conference, April 15, 2013.

⁷²Section 514 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3514).

⁷³Section 207 of Public Law 104-104 (Title 47, Chapter 5, Subchapter III, Part I, Section 303 of the United States Code (47 USC Sec. 303), the Communications Act of 1934, as amended); and rules adopted by the Federal Communications Commission (rule 47 C.F.R. Section 1.4000) See: <http://www.fcc.gov/guides/over-air-reception-devices-rule>.

See also U.S. Federal Communications Commission Information Sheet (Dec. 2007), <http://www.fcc.gov/mb/facts/otard.html>, and http://www.hindmansanchez.com/docs/fcc_otard_rule_questions_and_answers_05240652.pdf.

⁷⁴Title 47, Chapter 5, Subchapter III, Section 303(v) of the United States Code (47 USC Sec. 303) and Federal Communications Commission administrative rules (47 USC Sec. 210(c).

⁷⁵But see 47 C.F.R. §97.15.

⁷⁶MCL 28.457(2).

⁷⁷Michigan Attorney General Opinion 7266 (June 12, 2012) and Section 7 of PA 256 of 2011 (being the Michigan Fireworks Safety Act, M.C.L. 28.457).

⁷⁸Section 3 of PA 256 of 2011 (being the Michigan Fireworks Safety Act, M.C.L. 28.453). “Novelties” is defined in M.C.L. 28.452(t) as the same as defined under 2001 APA standard 87-1 (American Pyrotechnics Association of Bethesda, Maryland), and toy paper caps/pistols, flitter sparklers, toy noisemakers, toy snakes, etc.

which are aeronautical uses are exempt from zoning, though non-aeronautical uses of such an airport are subject to zoning.⁷⁹ This may not apply to other types of public or private airports.

- I. An amateur radio service station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur radio service communications. Regulation amateur radio antenna must not preclude amateur radio service communications and reasonably accommodate and be the minimum practicable regulation to accomplish local government's purpose.⁸⁰ If near an airport federal code⁸¹ and more than 60.96 meters (200 feet) tall must notify the federal aviation administration and register with the federal communications commission.⁸²

- Mobile homes.⁸⁴
- State-licensed residential facilities for six or fewer persons.⁸⁵
- Home occupation for instruction in a craft or fine art (e.g., music lessons).⁸⁶
- “Family day-care home” and “group day-care home” (e.g., child daycare facilities) in counties and townships.⁸⁷ (Cities and villages can regulate these by special use permit.⁸⁸)

- C. If land is zoned to allow farms, or farms are allowed as a nonconforming use then a biofuel production facility that produces 100,000 or less gallons of biofuel shall be a permitted use on a farm subject to certain conditions. A biofuel production facility of more than 100,000 but not more than 500,000 gallons of biofuel shall be a possible special use on a farm subject to certain conditions.⁸⁹

4. If one use is permitted, others must be, also

- A. If land is zoned “residential” of a specified density, then the ordinance must provide for a cluster (open space) type of development.⁸³
- B. In zoning districts where dwellings are permitted, the ordinance must also allow:

⁷⁹ *Capital Region Airport Authority v. Charter Tp. of DeWitt*, 236 Mich.App. 576 (1999). Airport Authorities Act, PA 73 of 1970, as amended, MCL 259.801 *et seq.*, in particular MCL 259.801, 259.807, and 259.809. Aeronautics Code, MCL 259.1.

⁸⁰ Section 205a of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3205a).

⁸¹ 47 CFR 97.15.

⁸² 47 CFR part 17.

⁸³ Section 506 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3506). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 16h of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.216h.); section 16h of P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.286h.); and section 4f of P.A. 207 of 1921, as amended (the City and Village Zoning Act, M.C.L. 125.584f).)

⁸⁴ *Robinson Township v. Knoll*, 410 Mich 310 (1981) and Section 7(6) of Act 96 of 1987, as amended (the Mobile Home Commission Act, M.C.L. 125.2307(6)).

⁸⁵ Section 206 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3206). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 16a of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.216a); section 16a of P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.286a.); and section 3b of P.A. 207 of 1921, as amended (the City and Village Zoning Act, M.C.L. 125.583b).)

⁸⁶ Section 204 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3204). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 1a of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.201a); section 1a of P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.271a.); and section 3c of P.A. 207 of 1921, as amended (the City and Village Zoning Act, M.C.L. 125.583c).)

⁸⁷ Section 206(3) and 206(4) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3206(3) and 125.3206(4)). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 16g of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.216g); and section 16g of P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.286g).)

⁸⁸ Section 206(5) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3206(5)).

⁸⁹ Section 513 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3513).

5. Can regulate but not prohibit

- A. Signs can be regulated so long as the regulation is not dependent on (does not regulate) the content of the sign.⁹⁰ Also, sign regulation just for aesthetic purposes can be problematic.⁹¹

There are many, and complex, additional limitations on sign regulation (for example limited or no regulation of signs via zoning in a road right-of-way, and constrains of regulation (also shared with the Michigan Department of Highway) in highway right-of-ways. See *Michigan Sign Guidebook*, Scenic Michigan,⁹² December 2011, in particular table 7-2 on pages 7-13 and 7-14.

- C. Local zoning cannot limit religious activities/land uses in any terms that differ from those for other assemblies and nonreligious activities/land uses, nor can they interfere with religious activity.⁹³
- D. Adult entertainment or sexually oriented businesses can be regulated but not totally

⁹⁰U.S. Constitution, Amendment I. Sign regulation for “commercial speech” (an ad to propose a commercial transaction): *Bolger v. Youngs Drug Products Corp.*, 463 US 60, 66 (1983).

Sign regulation for “noncommercial” speech (political or ideological speech): *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 US 557 (1980).

Regulations that relate only to “time, place or manner” (e.g., regulations that are “content-neutral”) must meet court rules set down in *U.S. v. O’Brien*, 391 US 367 (1968): (1) furthers an important or substantial governmental interest, (2) is unrelated to the suppression of speech, and (3) limits speech no more than necessary to protect whatever 1st Amendment interests are involved.

⁹¹*St. Louis Gunning Advertising Co. v. City of St. Louis*, 137 SW 929 (1911), appeal dismissed 231 US 761 (1913). *City of Passaic v. Paterson Bill Posting, Advertising & Sign Co.*, 62 A. 267 (1905).

⁹²*Michigan Sign Guidebook*, © Scenic Michigan: http://www.scenicmichigan.org/guidebook_2011.html.

⁹³Title 42, Chapter 21C of the United States Code, codification of Religious Land Use and Institutionalized Persons Act of 2000 (PL 106-274).

excluded.⁹⁴

- E. Existing shooting ranges (gun clubs) can continue after zoning is changed to prohibit or further regulate the range.⁹⁵
- F. Local ordinance can regulate, but not prohibit the raising or possessing marijuana for medical purposes which is allowed under the Michigan Medical Marihuana Act.⁹⁶

6. Can regulate but not less strictly than the state

- A. Local air pollution regulations must be at least as strict as those of the state.⁹⁷

⁹⁴*Young v. American Mini Theaters, Inc.*, 427 US 50, 71, 96 S Ct 2440, 49 L Ed 2d 310 (1976).

⁹⁵Section 2a(1) of Act 269 of 1989, as amended (the Sport Shooting Ranges Act, M.C.L. 691.1542a(1)).

⁹⁶*Ter Beek v City of Wyoming*, __ Mich __ (2014) (No. 145816) and §4(a) of the Michigan Medical Marihuana Act (MCL 333.26421 *et seq.*

⁹⁷Section 5542(1) of Part 55 of P.A. 451 of 1994, as amended (the air pollution control part of the Natural Resources and Environmental Protection Act, M.C.L. 324.5542(1)).

“(1) Nothing in this part or in any rule promulgated under this part invalidates any existing ordinance or regulation having requirements equal to or greater than the minimum applicable requirements of this part or prevents any political subdivision from adopting similar provisions if their requirements are equal to or greater than the minimum applicable requirements of this part.

(2) When a political subdivision or enforcing official of a political subdivision fails to enforce properly the provisions of the political subdivision's ordinances, laws, or regulations that afford equal protection to the public as provided in this part, the department, after consultation with the local official or governing body of the political subdivision, may take such appropriate action as may be necessary for enforcement of the applicable provisions of this part.

(3) The department shall counsel and advise local units of government on the

(continued...)

- B. Local zoning can not conflict with adopted airport zoning.⁹⁸
- C. Regulation of Great Lakes shoreline high-risk erosion areas is subject to approval and oversight by the Michigan Department of Environmental Quality.⁹⁹
- D. Designated sand dunes protection is subject to approval and oversight by the Michigan Department of Environmental Quality.¹⁰⁰ Zoning can not be more restrictive than the state model plan.¹⁰¹
- E. State natural rivers protection is subject to approval and oversight by the Michigan Department of Natural Resources.¹⁰²
- F. Local governments can regulate/protect wetlands, but the local regulations cannot deviate from the state's definition of a wetland, and the local parts of the zoning ordinance must be approved by the Michigan Department of Environmental

- Quality.¹⁰³
- G. Local regulation of floodplains cannot be less strict than that of the state.¹⁰⁴
- H. Local regulation of soil erosion and sedimentation cannot be less strict than that of the state (or of counties administering rules promulgated under state statute).¹⁰⁵
- I. Local regulation of disposal of septage can be the same or more strict than state statute.¹⁰⁶

⁹⁷(...continued)

administration of this part. The department shall cooperate in the enforcement of this part with local officials upon request.”

⁹⁸Section 18 of P.A. 23 of 1950 Extra Session, as amended (the Airport Zoning Act, M.C.L. 259.448 *et seq.*). (Section 15 (M.C.L. 259.445) provides for airport zoning to be a part of local zoning.)

⁹⁹Part 321 of P.A. 451 of 1994, as amended (the shorelands protection and management part of the Natural Resources and Environmental Protection Act, M.C.L. 324.32301).

¹⁰⁰Part 353 of P.A. 451 of 1994, as amended (the sand dunes protection and management part of the Natural Resources and Environmental Protection Act, M.C.L. 324.35301).

¹⁰¹Part of P.A. 451 of 1994, as amended (the shorelands protection and management part of the Natural Resources and Environmental Protection Act, M.C.L. 324.32312(2)). The statute was changed by amendment in 2012.

¹⁰²Part 305 of P.A. 451 of 1994, as amended (the natural rivers part of the Natural Resources and Environmental Protection Act, M.C.L. 324.30501).

Appendix A.

COMMONLY BELIEVED TO BE EXEMPT FROM ZONING Items subject to zoning

There are some prevailing misunderstandings which have lead some to believe the following activities are exempt, or not subject to zoning. However in fact these activities are subject to zoning:

1. Michigan Department of Natural Resources boat launches (and by extension other state park and state forest land uses).
2. Private schools and other schools which are not under the jurisdiction of the Michigan superintendent of public instruction.

¹⁰³Part 303 of P.A. 451 of 1994, as amended (the wetlands part of the Natural Resources and Environmental Protection Act, M.C.L. 324.30301) and Opinion of the Attorney General No. 6892 (March 5, 1996).

¹⁰⁴Part 301 of P.A. 451 of 1994, as amended (the inland lakes and streams part of the Natural Resources and Environmental Protection Act, M.C.L. 324.30501).

¹⁰⁵Part 91 of P.A. 451 of 1994, as amended (the soil erosion and sedimentation control part of the Natural Resources and Environmental Protection Act, M.C.L. 324.9101 *et seq.*).

¹⁰⁶Part 117 of the Natural Resources & Environmental Protection Act (NREPA) (MCL 324.110701 *et seq.*) And *Gmoser's Septic Service, LLC v. Charter Township of East Bay* Michigan Court of Appeals (Published No. 309999, February 19, 2013).

Appendix B.

The following court case is instructive in determining if a state statute preempts local zoning. Court: Michigan Court of Appeals (Unpublished No. 248702) Case Name: *Salamey v. Dexter Twp. Zoning Bd. of Appeals*

Based on the plain language of MCL 324.21109 and the ordinance, the court rejected plaintiff's argument the ordinance was preempted because it was in direct conflict with Natural Resources and Environmental Protection Act (NREPA), and the court further held NREPA did not preempt the ordinance by virtue of completely occupying the field the ordinance attempted to regulate.

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

Quoting, on the issue of state law preemption:

"State law preempts a municipal ordinance where (1) the statute completely occupies the field that ordinance attempts to regulate, or 2) the ordinance directly conflicts with a state statute." *Michigan Coalition for Responsible Gun Owners, supra*, 256 Mich App 408, quoting *Rental Prop Owners Ass'n of Kent Co v Grand Rapids*, 455 Mich 246, 257; 566 NW2d 514 (1997). Regarding the second method of preemption set forth above, our Supreme Court has held that "[a] direct conflict exists . . . when the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits." *People v Llewellyn (City of East Detroit v Llewellyn)*, 401 Mich 314, 322 n 4; 257 NW2d 902 (1977).

"According to MCL 324.21109(3) of NREPA, a local unit of government "shall not enact or enforce a provision of an ordinance that requires a permit, . . . [or] approval . . . for the installation, use, closure, or removal of an underground storage tank system." The act further provides that a local unit of government "shall not enact or enforce a provision of an ordinance

that is inconsistent with this part or rules promulgated under this part." M.C.L. 324.21109(2). Under the township zoning ordinance at issue in the instant case, Section 13.01(D)(5), Art XIII of the Dexter Township zoning ordinance requires a special approval use permit in order for the ZBA to permit an "automobile service station" in a general commercial district.

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

....

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

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

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

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

Fourth, the nature of the regulated subject matter may demand exclusive state regulation to achieve the uniformity may demand exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest."

[*Llewellyn, supra*, 401 Mich 323-324 (citations omitted).]

Full Text Opinion:

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

See also Attorney General Opinion 7266 (June 12, 2012):

<http://www.ag.state.mi.us/opinion/datafiles/2010s/op10345.htm>

Appendix C.

Note. This *Land Use Series* is regularly updated. The first edition was prepared May 16, 2002. Subsequent updates include:

- June 23, 2003; July 14, 2003; August 5, 2003; January 21, 2004:
 - County buildings, *Pittsfield Charter Township v. Washtenaw County and City of Ann Arbor*, 468 Mich 702, 664 N.W.2d 193 (2003)
 - Follow one's own ordinance, *Morrison et al. v. City of East Lansing*, 255 Mich. App. 505 (2003).
 - Public schools, *Charter Township of Northville et al. v. Northville Public Schools* 469 Mich 285, 666 N.W.2d 213 (2003).
 - State fair, *City of Detroit v. State of Michigan*, 626 Mich.App. 542 (2004), Wayne Circuit Court LC No. 00-021062-CE.
- December 6, 2005:
 - Takings, *Lingle v. Chevron USA, Inc.*, 125 S.Ct. 2074 (2005), and
 - repeal of section 251 of the Michigan Telecommunications Act, M.C.L. 484.2251 effective December 31, 2005.
 - Water pollution, *City of Brighton and Department of Environmental Quality v. Township of Hamburg*, 260 Mich.App. 345 (2004), Livingston Circuit Court LC No. 00-017695-CH.
- April 24, 2006: P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*)
- June 26, 2006: Section 109, and 108(2) of Part 211 of P.A. 451 of 1994, as amended, (being the Underground Storage Tanks part of the Michigan Natural Resources and Environmental Protection Act, (M.C.L. 324.21109, M.C.L. 324.21108(2).)
- January 8, 2007: Large quantity water withdrawal added: Section 26 of Part 327 of P.A. 451 of 1994, as amended, (being the Great Lakes Preservation part of the Michigan Natural Resources and Environmental Protection Act, (M.C.L. 324.32726), effective February 28, 2006.
- May 2, 2007: Added *Herman v. County of Berrien* ((Published No. 273021, April 26, 2007) __ Mich __, __ N.W.2d __ (2007)) to footnote on county building exception from zoning.
- June 28, 2007: Added information on zoning regulation of railroads.
- January 30, 2008: Added information on snowmobile trails.
- April 9, 2008: To remove:
 - '4.C. If a county zones an area "business," "commercial," "industrial," "manufacturing," "service" or similar (or the area is not zoned), then it must allow billboards along state highways.'as a result of P.A. 93 of 2008 amendment to P.A. 106 of 1972, as amended, (being the Highway Advertising Act of 1972, M.C.L. 252.301 *et seq.*) which provide counties the authority to regulate billboards.
- May 14, 2008: Added "Federal Instrumentality"; Case Name: *City of Detroit v. Ambassador Bridge Co.* Michigan Supreme

Court (No. 132329, May 7, 2008); and added "*Kyser v. Kasson Twp.*, Michigan Court of Appeals (Published No. 272516 and No. 273964, May 6, 2008)." to the footnote on gravel/sand mining.

- June 26, 2008: Added more detail about county building exemption from zoning as a result of *Herman v. County of Berrien* (Published No. 134097, June 18, 2008) Michigan Supreme Court.
- October 8, 2008:
 - added further discussion on federal supremacy concerning zoning not having jurisdiction over federal activities.
 - added wind energy power transmission lines as a result of M.C.L. 460.1001 *et seq.*
- December 10, 2008:
 - added farm market discussion.
 - television reception antennas
 - Added Appendix A. List of items which are subject to zoning, but confusions results in some believing the land use is exempt from zoning.
- February 11, 2009: Added appendix B.
- April 3, 2009: Added halfway houses operated by the Michigan Department of Corrections.
- August 7, 2009: Moved "farming" from "Preemption, Sort of" to "Outright Preemption" and revised text.
- January 18, 2010: Added "farm market" to list of GAAMPs.
- July 19, 2010: Removed from "5. Can Regulate, but Not Prohibit" the following text:

Local zoning can regulate extraction (mining) of natural resources (e.g., gravel, sand and similar pits), but this does not include coal, oil and gas.¹⁰⁷ Zoning can not prevent extraction of natural resources unless "very serious consequences" would occur. Regulations can include time limits for mining and reclamation. Extraction of minerals supercedes surface rights. (Oil and gas and coal mining can not be regulated, see 2H and 2I.) Further regulation of mineral extraction might be acceptable if the zoning is for a designated natural river.¹⁰⁸

This was removed as a result of *Kyser v. Kasson Twp.*, July 15, 2010.¹⁰⁹
- July 14, 2011: Added nonferrous metallic mineral mining

¹⁰⁷ *Certain Teed Products Corp. v. Paris Township*, 351 Mich 434 (1958); *Silva v. Ada Township and Ottawa Silica Company v. Brownstown Township*, 416 Mich 153, 330 NW2d 663 (1982); *Kyser v. Kasson Twp.*, Michigan Court of Appeals (Published No. 272516 and No. 273964, May 6, 2008).

¹⁰⁸ Section 30508 of Act 451 of 1994, as amended (the natural rivers part of the Natural Resources and Environmental Protection Act, M.C.L. 324.30508).

¹⁰⁹ Michigan Supreme Court (No. 136680, 278 Mich. App. 743, 755 N.W.2d 190, 2008 Mich. App. (2008), July 15, 2010)); *Kyser v. Kasson Twp.*

- (nonferrous metallic sulfide deposits) to “Preempted, sort of.”
- July 20, 2011: Added to “Preemption, Sort of” mining of valuable natural resources which reinstates the *Silva v. Ada Township* “no serious consequences rule” along with additional specifics in statute (PA 113 of 2011).
 - August 1, 2011: Added “Biofuel production facility” (PA 97 of 2011).
 - December 21, 2011: Editing changes. Clarification of jurisdiction over farms concerning the Right to Farm Act.
 - May 9, 2012: Added “fireworks” and “novelties” to “outright preemption.”
 - May 29, 2012: Added “Wireless communications” to preemption, sort of.
 - June 14, 2012:
 - Added pistols and firearms.
 - Relocated discussion on Fireworks to “Preempted, Sort of” reflecting A.G. Opinion 7266 (June 12, 2012).
 - October 31, 2012:
 - Added Michigan Attorney General Opinion 7269, September 27, 2012, to footnotes on mining.
 - Added *Commodities Exp. Co. v. Detroit Int’l Bridge*, U.S. Court of Appeals Sixth Circuit No. 11-1758, September 24, 2012 to footnote on federal government preemption.
 - January 3, 2013: Added the southeast Michigan Regional transit authority public transit facilities as exempt from zoning.
 - February 22, 2013: Added disposal of septage.
 - June 21, 2013: Revised entry on “fireworks” to reflect amendments (PA 65 of 2013) to the Michigan Fireworks Safety Act.
 - September 16, 2013:
 - Updated Wireless Communication Facilities to reflect court, federal law, FCC guidelines, and the Sequestration Act changes.
 - Updated for customer-end antennas to receive signals.
 - January 24, 2014: Added further explanation about sign regulation, and reference to *Michigan Sign Guidebook*.
 - February 7, 2014: Added can regulate but not prohibit medical marijuana.
 - February 26, 2014: Added footnote to clarify different types of pipelines (flowlines).
 - October 1, 2014: Added publically owned airport under control of an airport authority (Lansing).
 - October 16, 2014: Clarified item 2.P. on Michigan State Police communication facilities.
 - November 10, 2014: Clarified item 6.D. on sand dunes (local regulation cannot be more strict than the state model regulation, and item 2.K. on Right to Farm Act.
 - January 15, 2015: Added amateur radio service station antenna structure regulation restrictions.
 - June 22, 2015: Further clarification about Right to Farm Act preemption of local authority and possible GAAMPs delegating that authority back.
 - August 24, 2015: Further clarification about prohibition of local regulation of firearms and pneumatic guns (item 2.Z.).
 - September 13, 2016: Added court case *Coloma Charter Twp. V. Berrien County* – a county cannot establish a land use over zoning (item 2.W.).
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