

**OTSEGO COUNTY
PLANNING COMMISSION**

November 21, 2016

6:00 PM

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

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF MINUTES: From October 17, 2016 meeting
5. CONSENT AGENDA
6. OTHER: Wolverine Power to discuss updates to the Alpine Power Plant
7. PUBLIC PARTICIPATION FOR ITEMS NOT ON THE AGENDA:
(Please identify yourself for the record. All comments will be limited to two (2) minutes)
8. PUBLIC HEARING:

Snowbelt Motors/Mike Skowronski, owner has requested a Special Use Permit/Site Plan Review for property located in Livingston Township:
68 Meecher Rd
Gaylord, MI 49735
081-210-000-079-02

Property located in a B2/General Business Zoning District
PZSU16-003-proposed use of the property is to operate a detailing/small engine repair garage w/outside sales display
9. ADVERTISED CASE:

Snowbelt Motors/Mike Skowronski, owner has requested a Special Use Permit/Site Plan Review for property located in Livingston Township:
68 Meecher Rd
Gaylord, MI 49735
081-210-000-079-02

Property located in a B2/General Business Zoning District
PZSU16-003-proposed use of the property is to operate a detailing/small engine repair garage w/outside sales display
10. UNFINISHED COMMISSION BUSINESS
 1. Cherry Capital SUP -- updated site plan review/decision
11. NEW BUSINESS
12. REPORTS AND COMMISSION MEMBER'S COMMENTS:
 1. Otsego County Parks & Recreation report/Judy Jarecki
 2. MSU Restrictions on Zoning Authority 12-2011/Zoning Information
13. ADJOURNMENT

Otsego County Planning Commission

Proposed Minutes for October 17, 2016

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. Klee, Mr. Caverson, Mr. Bauman, Ms. Corfis

Absent: None

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

Public Present: Tim Maylone, Cherry Capital Connection representative, Paul Slough, Ken Bradstreet, Wolverine Power, Randy Stults, Scott White

Approval of minutes from: September 19, 2016

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

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 further questions or concerns related to the Alpine Power Plant. Elmira residents were not present to voice any.

Public Hearing:

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

4264 Martindale Rd

Elmira, MI 49730

060-002-400-010-00

Property located in an AR/Agricultural Resource Zoning District

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

Chairperson Hartmann stated the case before them and opened the public hearing.

Public Hearing open: 6:03pm

Tim Maylone, Cherry Capital Connection representative, thanked the Planning Commission for amending the language to Wireless Communications. He stated the application was submitted with the request to waive the sealed site plan requirement as most items requested on the application were not applicable. They had contacted multiple architects requesting quotes but did not receive replies. They were requesting the waiver for this site only as it was so rural an area and not for future site plans. They also were requesting a waiver of surety.

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Chairperson Hartmann stated Fleming Farms was in the northwest corner of Elmira Township at the end of Martindale Rd on eighty (80) acres.

Vice Chairperson Jarecki questioned the eight foot (8') climbing barriers and the placement of the shed, with concerns about climbing access from the top of the shed.

Mr. Maylone stated the climbing barriers would begin three feet (3') from grade so there would be eleven feet (11') in total; they would place the barriers four feet (4') from the top of the shed.

Ms. Corfis questioned the site plan provided by Cherry Capital stating it was uncertain where things were located.

Mr. Maylone pointed out the different items on the site plan projected on the screen to the members.

Ms. Corfis stated she did not feel the site plan was adequate and more time and care could have been taken to provide the information clearly; she felt the site plan did not meet all the criteria of the Zoning Ordinance. She questioned if there was propane storage on the property.

Mr. Maylone stated there was a small tank but it was nowhere near the tower site.

Ms. Corfis stated that was one of items that needed to be depicted on the site plan.

Vice Chairperson Jarecki questioned the amount of trees to be cut.

Mr. Maylone stated they would cut as few as possible but any ash trees would be removed; they are susceptible to the ash borer and become a hazard.

Chairperson Hartmann stated the majority of trees on site were maples.

Chairperson Hartmann asked if there were any other questions or comments; hearing none, the public hearing was closed.

Public Hearing closed: 6:12pm

Advertised Case:

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

4264 Martindale Rd

Elmira, MI 49730

060-002-400-010-00

Property located in an AR/Agricultural Resource Zoning District

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

Mr. Hilgendorf stated waiving of the sealed site plan requirement should be made very clear it was for this site plan only so as not to set precedence for any future towers.

Chairperson Hartmann stated he had contacted a couple of engineers and a distinction was made between a plot plan and site plan as noted in the minutes from the Elmira Planning Commission meeting.

Ms. Corfis requested discussion on waiving the surety stating the Ordinance read; '*The application shall include a description of security.*'

Chairperson Hartmann questioned if that could be waived also.

It was stated that would be a variance of the Zoning Ordinance and only the Zoning Board of Appeals could grant a variance.

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Mr. Schlaud stated the security was required. He read aloud Section 23.2.4 and cautioned the Planning Commission on setting precedence; that section referred to site plans in general but Section 21.46.2.11 was a requirement for all wireless towers.

Chairperson Hartmann stated he would recommend that Land Use verify the site to what is being shown on the plot plan.

Mr. Brown questioned why a sealed site plan was not provided as plenty of time had elapsed for one to be produced.

Ms. Corfis stated she would like to see some quality of work to the site plan and was unsure if waiving the sealed document constituted the same thing.

Mr. Caverson stated they were the same, the only difference being the engineer or architect's seal. He stated the site plan could be better and should be better.

Ms. Corfis stated she liked to see a complete site plan included in the packet.

Mr. Schlaud stated a sealed site plan was requested of the applicant but they chose to move forward to try having the requirement waived.

Mr. Arndt suggested dealing with the surety first since that could not be waived; he did not think it would require very much to remove the tower and suggested \$500.

It was cautioned that the cost should be based on the life span of the tower and reviewed in a set time period.

Chairperson Hartmann questioned Mr. Maylone of the \$500 surety amount.

Mr. Maylone thought ten percent (10%) of the cost was fair.

Chairperson Hartmann made a motion to approve PZSU16-002 with the required conditions of a \$500 surety with a ten (10) year review and an improved site plan to be reviewed by Land Use with the waiving of the sealed site plan requirement.

It was stated the final site plan needed approval by the Planning Commission; it should not be delegated. It was suggested to include what provisions were being met for the waiver also.

Mr. Arndt stated a list of conditions should be made to be sure nothing was missed in the motion.

Mr. Brown cautioned members on setting the ground work to protect the process for future towers.

Ms. Nowak stated a \$1,000 surety bond should be requested to insure the necessary equipment could be set up for removal of the tower.

Mr. Arndt stated there might be a minimum for a bond; a letter of credit or escrow account could also be set up for the security.

Mr. Schlaud stated if the sealed site plan requirement was waived, it was important that all other items be included on the drawing.

The Planning Commission requested a better drawing from Cherry Capital before approval could be granted.

Motion made by Mr. Hartmann to postpone a decision on PZSU16-002 until additional site plan work was completed and reviewed by the Planning Commission; Seconded by Mr. Arndt.

Case PZSU16-002 postponed.

Unfinished Commission Business: None

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New Business:

1. 2016 Objective List update

An updated list was presented to Planning Commission members depicting items completed in 2016 to date.

Mr. Brown departed 7:00pm.

2. 2017 Objectives

Forms were distributed to members for input on updating zoning ordinance items in 2017. The list will be prioritized and presented for member approval.

3. Elections

Chairperson Hartmann requested nominations for Planning Commission officers.

Mr. Hilgendorf nominated Mr. Arndt for Planning Commission secretary; Vote unanimous.

Ms. Nowak nominated Mrs. Jarecki for Planning Commission vice chairperson; Vote unanimous.

Mr. Arndt nominated Mr. Hartmann for Planning Commission chairperson; Vote unanimous.

2017 Planning Commission officers:

Chairperson: Mr. Hartmann

Vice Chairperson: Mrs. Jarecki

Secretary: Mr. Arndt

4. Expiring terms:

- a. Willard Brown
- b. Jason Caverson
- c. Nora Corfis

Members with expiring terms agreed to continue for another term as Planning Commission representatives for their township.

Reports and Commission Member's Comments:

1. Otsego County Parks & Recreation report

Mrs. Jarecki, Otsego County Parks and Recreation Committee representative, stated the County Park's scheduled Halloween weekends were a success; the showers at the campground will be redone before next season; the monies received from the Building Healthy Communities Grant were used to purchase benches, a duo drinking fountain for people and pets, trash cans, signs and a split rail fence for the DNR property near the dog park, along with a wind screen for the tennis courts, landscape materials and additional recreational equipment; it was also determined the trees in front of the Community Center are dying and will need to be removed, the City will assist; and the meeting for November has been changed to November 7th at the Courthouse downtown.

Mr. Bauman stated Livingston Township was working on a recreational area on a tract of land in the Five Lakes area for resident usage and was pursuing grant monies to purchase.

Ms. Nowak stated Chester Township's Planning Commission was on an on-call basis.

Ms. Corfis stated Otsego Lake Township had approved their Master Plan and had submitted it for distribution.

Mr. Hilgendorf stated the University Center continued to work with the County on the agreement with Kirkland.

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Mrs. Jarecki stated Corwith Township was waiting to hear about the grant applied for.

Mr. Arndt stated because a new supervisor and trustee will be joining Bagley Township, their Master Plan has been put on hold for the new members to review.

Mr. Borton stated the County had balanced the budget for 2017, new windows and doors had been installed at the County building and Judge Morris will retire the end of the year which means the County will lose the District Court per State decision; court cases will be heard elsewhere. Judge Morris would still help out with Drug Court on a part time basis.

Mr. Schlaud stated business at Land Use Services was still busy and would probably remain busy through November.

2. Sign Regulation – Zoning Ordinance Review/Zoning Information

Chairperson Hartmann adjourned the meeting.

Adjournment: 7:35pm by Chairperson Hartmann

Ken Arndt; Secretary

Christine Boyak-Wohlfeil; Recording Secretary

**OTSEGO COUNTY
PLANNING COMMISSION**

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

Exhibit List

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

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

APPLICATION FOR SPECIAL USE PERMIT

Date: 8.17.2016 Parcel Number: 081 - 210 - 000 - 079-02

PROPERTY LOCATION: (REQUIRED)

Address: <u>68 Meecher Rd</u>		City: <u>Gaylord</u>	Zip Code: <u>49735</u>
Township: <u>Livingston</u>	Zoning District: <u>B2</u>	Section:	T ___ N/R ___ W

APPLICANT:

Name: <u>Mike Skowronski</u>		Owner/Agent/Other Interest <i>(circle one)</i>	
Address: <u>P.O. Box 2341</u>		City: <u>Gaylord</u>	State: <u>MI</u> Zip Code: <u>49734</u>
Phone: <u>(989) 448-8628</u>		Fax: <u>(989) 448-2109</u>	

PROPERTY OWNER: (If different from Applicant)

Name: <u>Laura Meekhof B+R Real Estate</u>		Phone: <u>816 458 7667</u>	
Address: <u>1640 OLSON NE</u>		City: <u>Grand Rapids</u>	State: <u>M.</u> Zip Code: <u>49503</u>

DESCRIPTION OF PROJECT AND PROPOSED USE:

- 1.) Sales for vehicles
- 2.) Repair garage

SIGNATURE OF APPLICANT:



DATE:

8.17.2016

***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:	Permit Number:	
Date Application Complete:	Fee:	Receipt Number:

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

APPLICATION FOR SITE PLAN REVIEW

APPLICANT:

Name: <u>Mike Skowronski</u>	Owner/Agent/Other Interest <i>(circle one)</i>
Address: <u>P.O. Box 2341 Gaylord, MI 49734</u>	
Phone: <u>(989) 448-8628</u>	Fax: <u>(989) 448-2109</u>

PROPERTY OWNER: (If different from Applicant)

Name: <u>Carl Meecher 13+R Real Estate</u>	
Address: <u>1640 OISON NR</u>	
Phone: <u>(616) 458 7667</u>	Fax: <u>(616) 458 1360</u>

PROPERTY LOCATION:

Township: <u>Livingston</u>	Section:	T ___ N/R ___ W	Zoning District: <u>B2</u>
Site Address: <u>68 Meecher Rd Gaylord, MI 49735</u>			
Parcel Number: <u>081 - 210 - 000 - 079 - 02</u>			
Description of Project and Proposed Use: 1.) Sales for vehicles 2.) Repair Garage			

Signature of Applicant: 	Date: <u>8.17.2016</u>
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*****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: Same as applicant
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: for approval, all existing

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: no areas of concern

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: no change to system

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

Yes ___ No ___ NA if "NA" explain: no change to utilities

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: _____

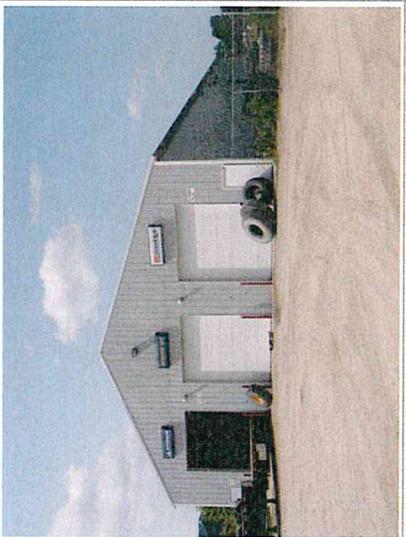
39. Seal of the registered engineer, architect, landscape architect, surveyor or planner who prepared the site plan.

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

40. Paid appropriate fees to Otsego County.

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

Grantor	Grantee	Sale Price	Sale Date	Inst. Type	Terms of Sale	Liber & Page	Verified By	Prcnt. Trans.
VANHOUTEN, KENNETH W TRUST	B&R REAL ESTATE LLC	276,000	10/29/2012	WD	Good	1306/375	Deed	100.0
Property Address								
68 MEECHER RD								
Owner's Name/Address								
B&R REAL ESTATE LLC								
1640 OLSON ST NE								
GRAND RAPIDS MI 49503								
Tax Description								
E 34 FT OF LOT 79 AND LOTS 80 - 84 WEST								
GAYLORD 98 SPLIT FROM 081-210-000-079-01								
COMB WITH 081-210 -000-081-01								
Comments/Influences								
<p>Class: 202 Commercial Str Zoning: B-2</p> <p>School: Gaylord Community</p> <p>P.R.E. 0%</p> <p>: 0.00</p> <p>2017 Est TCV 165,000 (Value Overridden)</p> <p>Improved <input type="checkbox"/> Vacant <input checked="" type="checkbox"/></p> <p>Public</p> <p>Improvements</p> <p>Dirt Road</p> <p>Gravel Road</p> <p>Paved Road</p> <p>Storm Sewer</p> <p>Sidewalk</p> <p>Water</p> <p>Sewer</p> <p>Electric</p> <p>Gas</p> <p>Curb</p> <p>Street Lights</p> <p>Standard Utilities</p> <p>Underground Utils.</p> <p>Topography of Site</p> <p>Level</p> <p>Rolling</p> <p>Low</p> <p>High</p> <p>Landscaped</p> <p>Swamp</p> <p>Wooded</p> <p>Pond</p> <p>Waterfront</p> <p>Ravine</p> <p>Wetland</p> <p>Flood Plain</p> <p>Who When What</p>		<p>Building Permit(s)</p> <p>06/08/2016 PB16-0351</p> <p>Building Value</p> <p>0</p> <p>Assessed Value</p> <p>82,500</p> <p>Year</p> <p>2017</p> <p>2016</p> <p>2015</p> <p>2014</p>	<p>Frontage</p> <p>434.00</p> <p>Depth</p> <p>132.00</p> <p>Actual Front Feet, 1.25 Total Acres</p> <p>1.250 Acres</p> <p>Total Acres</p> <p>1.25</p>	<p>Rate</p> <p>0 100</p> <p>0 100</p> <p>Total Est. Land Value =</p> <p>0</p> <p>0</p>	<p>Reason</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p>	<p>Board of Review</p> <p>Board of Review</p> <p>Board of Review</p> <p>Board of Review</p>	<p>Tribunal/Other</p> <p>Tribunal/Other</p> <p>Tribunal/Other</p> <p>Tribunal/Other</p>	<p>Taxable Value</p> <p>74,422C</p> <p>74,422C</p> <p>74,200S</p> <p>80,400S</p>



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

OTSEGO COUNTY
TREASURER'S OFFICE
Gaylord, Mich.,

11-28-12



LIBER 1306 PAGE 375

I hereby certify that according to our records all taxes returned to this office are paid for five years preceding the date of this instrument. This does not include taxes in the process of local collection, board of review, PRE denial or tax tribunal.

Deane Purciel, Deputy COUNTY TREASURER



OTSEGO COUNTY MICHIGAN
RECEIVED FOR RECORD
SUSAN DEFFEYTER, CLERK/REGISTER OF DEEDS
11/28/2012 2:43:21 PM



OTSEGO COUNTY
NOVEMBER 28, 2012
RECEIPT #32963

STATE OF MICHIGAN \$ 303.60-CO
REAL ESTATE \$ 2070.00-ST
TRANSFER TAX STAMP * 7348

WARRANTY DEED

(Statutory Form - Individuals)

The Grantor(s) **Kenneth W. VanHouten, a married man, Trustee of the Kenneth W. VanHouten Trust dated July 7, 1993**

whose address is **P.O. Box 1643, Gaylord, MI 49734**

conveys and warrants to **B&R Real Estate LLC**

RCVD NOV28'12 PM1:46

whose address is **1640 Olson NE, Grand Rapids, MI 49503**

the following described premises situated in the **Township of Livingston, County of Otsego, State of Michigan** to-wit:

The East 34 feet of Lot 79 and Lots 80, 81, 82, 83 and 84, West Gaylord, as recorded in Liber 1 of Plats, page 18, Otsego County Records.

Commonly known as: **137 Meecher Road, Gaylord, MI 49735**

Parcel I.D. Number: **081-210-000-079-02**

For the full consideration of **Two Hundred Seventy Six Thousand and 00/100 (\$276,000.00)** dollars
Subject to easements, restrictions and reservations of record, if any.

Dated: **October 29, 2012**

Kenneth W. VanHouten
Kenneth W. VanHouten, Trustee

State of Michigan)
County of Otsego)ss

The foregoing instrument was acknowledged before me on this **29th** day of **October, 2012**, by **Kenneth W. VanHouten, Trustee of the Kenneth W. VanHouten Trust dated July 7, 1993**

Terris S. Ledwick
Notary Public
Otsego County, Michigan
My Commission Expires:
Acting in the County of:

TERRIS S. LEDWICK
Notary Public, State of Michigan
County of Otsego
My Commission Expires Mar. 18, 2013
Acting in the County of Otsego

Drafted by: **Kenneth W. VanHouten, assisted by Otsego County Abstract Company**
P.O. Box 1643, Gaylord, MI 49734
When recorded return to: **Grantee(s)**
Send future tax bills to: **Grantee(s)**
Recording Fee: **\$15.00**
State Transfer Tax: **\$2,070.00**
County Transfer Tax: **\$303.60**

2373160

MEEKHOF TIRE SALES & SERVICE, INC.

1640 OLSON, N.E., GRAND RAPIDS, MI 49503 • (616) 458-7667

OTSEGO County

To whom it may concern

I Calvin Meekhof do give Ken VanHouten

And Mike Skowronski permission to work on

Special use Permitting for property at 68 Meecher

Cal Meekhof

616 901 7606

MICHELIN



**OTSEGO COUNTY
PLANNING COMMISSION**

**PUBLIC HEARING NOTICE
November 21, 2016**

The Otsego County Planning Commission will hold a public hearing on Monday, November 21, 2016 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:

Mike Skowronski, Snowbelt Motors owner, representing B&R Real Estate, property owner has requested a Special Use Permit for property located in Livingston Township at 68 Meecher Rd Gaylord, MI 49735. The proposed use of the property is to repair small engines, detail and sell vehicles. The property is located in a B2/General Business Zoning District. Auto repair garages or auto body shops, including wrecker service, provided that outdoor storage of vehicles under repair be confined to the rear yard and screened from view is a permitted use subject to special conditions in the B2 Zoning District.

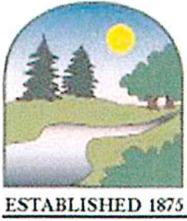
Parcel identification number: **081-210-000-079-02**
68 Meecher Rd
Gaylord, MI 49735

Legal Description:

E 34 FT OF LOT 79 AND LOTS 80 - 84 WEST GAYLORD SEC 32 T31N R3W
98 SPLIT FROM 081-210-000-079-01 COMBO WITH 081-210 -000-081-01

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

September 9, 2016

Livingston Township
PO Box 1848
Gaylord, MI 49734

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

If you require the applicant, Mike Skowronski, to be present at your meeting, you can notify him at:

Mike Skowronski – Snowbelt Motors
PO Box 2341
Gaylord, MI 49734
989.448.8628

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

Christine Boyak-Wohlfeil

From: Steve Dipzinski <steven.a.dipzinski@gmail.com>
Sent: Tuesday, October 11, 2016 8:26 PM
To: Christine Boyak-Wohlfeil; Vern Schlaud
Subject: Skowronski special use permit

The Livingston Township Planning Commission reviewed the special use permit for Mike Skowronski and he was present to take questions. We can't see any reason to deny this. The only issue that we talked about was fencing but we looked at 21.10.5 and the township is empowered to modify fence requirements. We don't see the need for a 6 foot fence, it would be counter productive to his business. There is already a fence on the south that was existing and we can't see putting one to the north. If you have any questions for us please contact me. Thank you.

Steve Dipzinski
Livingston Township Planning Commission Chairman

OWNERS WITHIN THREE HUNDRED FEET (300')

PARCEL ID	PROPERTY ADDRESS	OWNER NAME	ADDRESS	CITY	STATE	ZIP CODE	ZONING
101-032-000-025-01	1360 W MAIN ST	COMMUNITY FINANCIAL CREDIT UNION	PO BOX 8050	PLYMOUTH	MI	48170	N/A
080-033-300-025-08		CHALET PROPERTIES LLC	PO BOX 1673	GAYLORD	MI	49734	B-3
081-210-000-048-01/							
081-210-000-076-01	1148 WINIFRED RD	VANHOUTEN, KENNETH & DEBORAH	PO BOX 1643	GAYLORD	MI	49734	B-2
081-210-000-049-00	1129 ANNA DR	GLASSER, CLARE P ET UX TRUSTEE	313 E FELSHAW ST	GAYLORD	MI	49735	B-2
081-210-000-050-00/							
081-210-000-061-00/							
081-210-000-063-00/							
081-210-000-064-00	1109 ANNA DR	MERRY, PENNY R	515 N COURT AVE	GAYLORD	MI	49735	B-2
081-210-000-051-00/							
081-210-000-052-00/							
081-210-000-060-00/	1091 ANNA DR/ 1092 WINIFRED DR	MDP INVESTMENTS LLC	515 N COURT AVE	GAYLORD	MI	49735	B-2
081-210-000-062-00		KLEPADLO, MICHAEL J	8281 FINNEGAN RD	JOHANNESBURG	MI	49751	B-2
081-210-000-054-00	1033 ANNA DR	COOLEY FAMILY LLC	1785 ASHLEY LN	GAYLORD	MI	49734	B-2
081-210-000-055-00	118 MEECHER RD	BRINK-BRINK	930 BRIAR LN	GAYLORD	MI	49735	B-2
081-210-000-057-01	1016 WINIFRED RD	BRINK, MARVIN JOHN	4310 MEADOW RD	GAYLORD	MI	49735	B-2
081-210-000-059-00	1034 WINNIFRED RD						
081-210-000-077-01/							
101-104-000-685-00		HOSS LLC/ LABEL MANAGEMENT	405 S MISSION ST	MT PLEASANT	MI	48858	B-2
101-032-000-005-01	1290 W MAIN ST	TROMBLE BAY FARMS III	6310 MANASOTA KEY RD	ENGLEWOOD	FL	34223	N/A
101-032-000-010-00		REALTY INCOME PROPERTIES 29 LL	11995 EL CAMINO REAL	SAN DIEGO	CA	92130	N/A
101-104-000-640-00	1352 W MAIN ST	REALTY INCOME PROPERTIES 29 LL	7870 KNAPP RD	HOUGHTON LAKE	MI	48629	N/A
103-120-000-005-01	1125 TED DR #5	SCOTT, STAN & SUZANNE	6932 PHEASANT RUN	GAYLORD	MI	49735	N/A
103-120-000-006-00/							
103-120-000-015-00	1125 TED DR #6	KUIPERS, WESLEY JON & JOY	1654 WILKINSON RD	GAYLORD	MI	49735	N/A

Exhibit 10

103-120-000-007-00	1125 TED DR #7	DLUZNIEWSKI, GENE R & LUANNE M	1037 FIVE LAKES RD	GAYLORD	MI	49735	N/A
103-120-000-008-00/	1125 TED DR #8/ 1163						
103-120-000-016-00/	TED DR #16/ 1147 TED						
103-120-000-018-01/	DR #18/ 1147 TED DR	STOCKYARDS LLC/ SMITH, DAVID J/					
103-120-000-021-00	#21	DALE J SMITH BROKER LLC	PO BOX 309	GAYLORD	MI	49734	N/A
103-120-000-010-00	1163 TED DR #10	KUNTZ FRANCES TRUST	PO BOX 45	JOHANNESBURG	MI	49751	N/A
103-120-000-013-00	1163 TED DR #13	CHELOTTI, RICHARD F	PO BOX 1985	GAYLORD	MI	49734	N/A
103-120-000-023-00	1147 TED DR #23	FORCIER, NANCY A TRUST	1680 CALKINS DR	GAYLORD	MI	49735	N/A
103-120-000-024-00	1147 TED DR #24	JOHNSON, JAMES ALAN	1147 TED DR #24	GAYLORD	MI	49735	N/A
103-120-000-026-00	1177 TED DR #26	KNOTT, DOLORES A	PO BOX 1972	GAYLORD	MI	49734	N/A
103-120-000-029-00	1177 TED DR #29	SAURO, FERNANDO	1125 TED DR	GAYLORD	MI	49735	N/A
103-120-000-031-00	1177 TED DR #31	FRICK, CATHY	1177 TED DR #31	GAYLORD	MI	49735	N/A
103-120-000-032-00	1177 TED DR #32	TOLAR, SALLIE RAE	1584 MARTINDALE RD	GAYLORD	MI	49735	N/A
103-130-000-015-00	1084 MAIN ST W	GAYLORD RETAIL MANAGEMENT LLC	21 E LONG LAKE RE STE 101	BLOOMFIELD HILLS	MI	48304	N/A
103-130-000-135-00	1260 W MAIN ST	B&R COMMERCIAL REAL ESTATE LLC	1640 OLSON NE	GRAND RAPIDS	MI	49503	N/A

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



Otsego
COUNTY
 ESTABLISHED 1875 M I C H I G A N

Paid By:

SNOWBELT MOTORS/SKOWRONSKI, MIKE
 PO BOX 2341
 Gaylord, MI 49734

RECEIPT NUMBER

01310568

09/06/2016

Type	Record	Category	Description	Amount
Permit	PZSU16-003	ADMIN ZONING	SPECIAL USE PERMIT/PC	\$ 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**

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

GENERAL FINDINGS OF FACT

1. This is a proposal for a detailing/small engine repair garage with outside sales display. *Exhibit #1, Exhibit #5*
2. The property is located in a B2/General Business Zoning District. *Exhibit #2*
3. The proposed use is a permitted use subject to special conditions in a B2/General Business Zoning District. *Exhibit #3*
4. The property is currently under the ownership of the B&R Real Estate. *Exhibit #4*
5. Snowbelt Motors/Mike Skowronski is representing B&R Real Estate, property owners. *Exhibit #6*
6. The Public Hearing Notice was published in the Herald Times on November 4, 2016 *Exhibit #7*
7. The requirements of Article 27 of the Otsego County Zoning Ordinance have been met. *Exhibit #8, Exhibit #9*
8. All property owners within three hundred (300') feet were properly notified of the public hearing. *Exhibit #10*
9. A new address will be issued for a second business on the above parcel by the Otsego County Equalization Department. *Exhibit #*
10. The Planning Commission has the authority to approve a Special Land Use request after review and compliance with the Otsego County Zoning Ordinance. (Section 19.7) *Exhibit #3*
11. The required fees have been collected by Otsego County Land Use Services. *Exhibit #11*
12. The site plan requirements of Article 23 have been reviewed by Otsego County Land Use and all requirements pertaining to the proposed development have been addressed by the Applicant. *Exhibit #5, Exhibit #12, Exhibit #13*

**OTSEGO COUNTY
PLANNING COMMISSION**

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

SPECIFIC FINDINGS OF FACT

FINDINGS UNDER ARTICLE 11

ARTICLE 11 B2 GENERAL BUSINESS DISTRICT

INTENT

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

SECTION 11.2 PERMITTED USES SUBJECT TO SPECIAL CONDITIONS

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

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

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

11.2.3 Rifle or pistol ranges when within a completely enclosed building

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

11.2.5 Car wash...

FINDINGS UNDER ARTICLE 21/SECTION

SECTION 21.10 FENCES

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

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

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

21.10.2

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

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

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

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

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

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

SECTION 21.18 LANDSCAPING

21.18.1 PURPOSE

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

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 to exceed one to three (1:3) gradient with side slopes designed and planted to prevent erosion, and with a rounded surface a minimum of two (2) feet in width at the highest point of the berm, extending the length of the berm. Berm slopes shall be protected with sod, seed, shrubs or other form of natural ground cover.

21.18.3 Buffer Yards:

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

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

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

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

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

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

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

21.18.4 Roadside Greenbelt Buffers:

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

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

21.18.5 Screening of Unsightly Areas:

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

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

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

21.18.6 Parking Lot Screening:

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

Landscaping design standards:

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

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

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

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

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

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

Boundary Zoning District ↑	R-1	R-2	R-3	RR	FR	AR	B-1	B-2	B-3	MUZ M A I N S T R E E T	MUZ T O W N C E N T E R	HX H I G H W A Y I N T E R C H A N G E	I I N D U S T R I A L
	Proposed Development Zoning District												
R-1	N												
R-2	B	N											
R-3	C	B	N										
RR	C	C	B	N									
FR	C	C	B	B	N								
AR	C	C	C	C	C	N							
B-1	B	B	B	B	B	B	N						
B-2	C	C	B	C	C	C	B	N					
B-3	C	C	C	C	C	C	B	B	N				
MUZ – MAIN STREET	A	A	A	B	C	C	A	A	B	N			
MUZ – TOWN CENTER	A	A	A	B	C	C	A	A	C	A	N		
HIGHWAY INTERCHANGE	C	C	C	C	C	C	B	B	B	B	C	N	
I - INDUSTRIAL	E	E	E	E	D	D	D	C	C	E	E	C	N

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

SECTION 21.19 LIGHTING, OUTDOOR

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

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

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

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

21.19.1.2 That all light sources and light lenses are shielded,

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

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

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

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

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

21.19.5 Decorative lights during holiday seasons shall be allowed.

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

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

SECTION 21.27 PARKING

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

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

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

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

21.27.4 The storage of merchandise, motor vehicles for sale, trucks, or the repair of vehicles is prohibited on required off-street parking lots.

21.27.5 Residential off-street parking spaces shall consist of a driveway, parking strip, parking bay, garage, carport, or combination thereof.

21.27.6 The parking or storage of any commercial motor vehicle shall be prohibited in any [R1](#), [R2](#) or [RR](#) District, or in any residential area with lots of twenty thousand (20,000) square feet or less. (See definition of [COMMERCIAL MOTOR VEHICLE](#).)

- 21.27.7 For the purpose of computing the number of parking spaces required, the definition of FLOOR AREA, USABLE shall govern.
- 21.27.8 For those uses not specifically mentioned in the Off-street Parking Schedule, requirements for off-street parking facilities shall be in accord with a use which the Board of Appeals considers as being similar in type.
- 21.27.9 Entrance drives to the property and off-street parking area shall be no less than twenty-five (25) feet from a street intersection (measured from the road right-of-way) or from the boundary of a different Zoning District. A greater distance may be required by the Planning Commission if the lesser would cause a traffic issue.

21.27.10 Off-street Parking Schedule

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

MINIMUM PARKING SPACES REQUIRED

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

NOTES

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

21.27.11 Parking Area Design Standards

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***PARKING REQUIREMENTS MET**

SECTION 21.28 PERFORMANCE STANDARDS

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

21.28.1 Smoke, Dust, Dirt, and Fly Ash

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

21.28.2 Open Storage

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

21.28.3 Glare and Radioactive Materials

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

21.28.4 Fire and Explosive Hazards

The storage, utilization, or manufacture of materials or products ranging from combustible to moderate burning, as determined by the appropriate community fire protection authority, is permitted subject to compliance with all other

yard requirements, [Article 19](#), performance standards previously mentioned, and providing that the following conditions are met:

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

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

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

SECTION 21.38 SIGNS AND BILLBOARDS

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

21.38.1 Signs Permitted

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

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

21.38.1.3 Accessory Signs in B, HX and I Districts

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

1. Accessory Signs in B1, [B2](#), B3 and/or I Districts may be permitted at the rate of two (2) per use, except that at least one (1) sign shall be affixed to or be within two (2) feet of and be parallel with the wall of the main building. One (1) sign may be a freestanding or pylon sign.
2. Signs mounted on and parallel with the wall of the main building shall not exceed a total area of two and one half (2½) feet times the length of the mounting wall.
3. Freestanding signs intended for local or passerby traffic shall not exceed a height of twelve (12) feet measured from the average grade at the base of the sign to the top of the sign. No freestanding sign shall exceed an area of thirty-two (32) square feet, and no such sign shall be longer than three (3) times its width.
4. Pylon signs, designed and intended to attract traffic from a major expressway or highway, are approved but shall not exceed a height of thirty-five (35) feet and must be constructed and mounted by approval methods set forth in the State Construction Code provided they meet the Airport Zoning Ordinance standards.

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

1. Signs which direct traffic movement within a property, and which do not exceed four (4) square feet in area for each sign are permitted.
2. [One \(1\) free-standing identification sign for each street that the development faces.](#)
 - a. The free standing sign shall state only the name of the Shopping Center or multiple use development and Tenants located therein.
 - b. No freestanding sign face shall exceed an area of one hundred (100) square feet.
 - c. Freestanding signs shall not exceed a height of twenty five (25) feet measured from the average grade at the base of the sign to the top of the sign face. The structure supporting the sign shall not exceed a height of

thirty (30) feet measured from the average grade at the base of the structure. d. Tenants of the shopping center or the owner of outlots included within the development plan or PUD shall not be permitted individual free standing signs, except gas stations as noted below.

3. Businesses within the development or PUD shall be permitted exterior wall signs; the total area of the exterior wall signs shall not exceed twenty percent (20%) of the area of the largest wall.
4. All businesses may display window signs in ground level windows in addition to any wall signs. Window signs shall not cover more than twenty percent (20%) of the total window area.
5. An automobile service station located on an outlot or on an individual lot within the development or PUD may have one (1) free standing sign in addition to the free standing sign utilized for the development. The free standing sign shall be for the purpose of advertising gasoline prices and other services provided on the premises. The service station sign shall comply with the regulations for a single business on its own lot as noted in [Section 21.38.1.3\(A\)](#) above.

21.38.1.4 Non Accessory Signs and Billboards

Billboards, poster boards, and non-accessory signs may be permitted in B2, B3, & I Districts provided the area of the sign does not exceed an area of two hundred (200) square feet in B2 & B3 Districts and three hundred (300) square feet in I Districts. A non-accessory sign or billboard shall not measure longer than three (3) times its width.

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

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

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

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

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

21.38.2 Signs Prohibited

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

21.38.2.2 Signs with moving or revolving parts.

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

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

21.38.2.5 Signs utilizing vehicles, trucks, vans, or other wheeled devices, unless such signs are used for periods of less than seven (7) consecutive days in any ninety (90) day period, or unless such The height shall not exceed three (3) times the width.

signs have been approved by the Planning Commission as meeting a special purpose, need and/or as being appropriate for the particular use.

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

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

21.38.3 Signs Not Requiring a Zoning Permit

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

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

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

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

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

***EXISTING SIGNAGE**

SECTION 21.42 TRASH RECEPTACLES/DUMPSTERS

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

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

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

21.42.3 Temporary Commercial Construction Dumpsters are exempt from these regulations.

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

***DUMPSTER REQUIREMENT MET**

FINDINGS UNDER ARTICLE 19:

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

HAS – HAS NOT BEEN MET

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

HAS – HAS NOT BEEN MET

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

HAS – HAS NOT BEEN MET

- 19.7.4** The proposed special land use will be designed, constructed, operated, and maintained so as not to diminish the opportunity for the surrounding properties to be used and developed as zoned.
HAS – HAS NOT BEEN MET
- 19.7.5** The proposed special land use will not place demands on fire, police, or other public resources in excess of current capacity.
HAS – HAS NOT BEEN MET
- 19.7.6** The proposed special land use will be adequately served by public or private streets, water and sewer facilities, and refuse collection and disposal services.
HAS – HAS NOT BEEN MET
- 19.7.7** If the proposed special land use includes more than fifteen thousand (15,000) square feet of impervious surface, then the storm water management system employed by the use shall (i) preserve the natural drainage characteristics of the site and enhance the aesthetics of the site to the extent possible, (ii) employ storm water disposal through evaporation and infiltration when reasonably possible, (iii) shall not discharge storm water directly to wetlands or surface waters unless there is no other prudent or reasonably feasible means of discharge, (iv) shall not serve to increase the quantity no rate of discharge leaving the property based on 25-year storm criteria, (v) shall be designed using Best Management Practices identified by the DNR or its successor agency, and (vi) shall identify the party responsible for maintenance of the storm water management system.
HAS – HAS NOT BEEN MET
- 19.7.8** The proposed special land use complies with all specific standards required under this Ordinance applicable to it.
HAS – HAS NOT BEEN MET

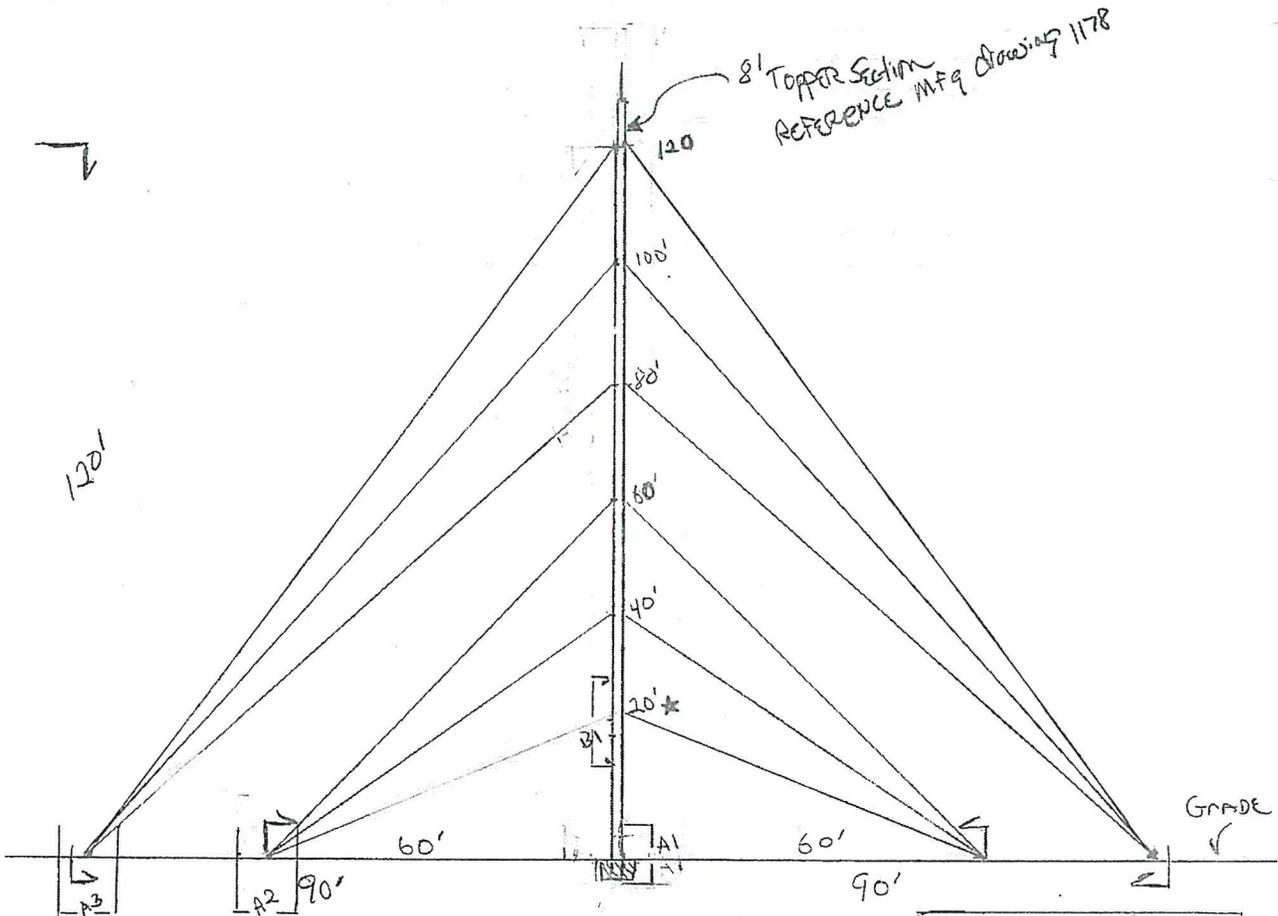
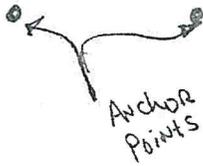
SECTION 19.8 - CONDITIONS

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

- 19.8.1 Be designed to protect natural resources, the health, safety, and welfare and the social and economic well being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed special land use, and the community as a whole.
- 19.8.2 Be related to the valid exercise of the police power, and purposes which are affected by the proposed special land use.
- 19.8.3 Be necessary to meet the intent and purpose of the zoning ordinance, be rated to the standards established in the ordinance for the special land use under consideration, and be necessary to insure compliance with those standards.



OVER HEAD VIEW



* If a 10' midsection is used as the base section the guy points on the tower will be approximately 7' higher

Note: The tower is guyed at all 3 Axis
 Note: The distance of the anchors from the tower shall not be less than 70% of the height of the guy wire on the tower

PG 1

CHERRY CAPITAL CONNECTION
 Typical Tower
 Installation
 Scale 1/2" = 10'

Cherry Capital Connection – Site plan additional information requested

1. Section 23.2.1 Site Plan review required for Special Land Use (see Article 19 and Section 21.46.2.11)
 - a. Section 23.2.1.1
 - i. **Cherry Capital Connection, LLC**
 - ii. **P.O.Box 866**
 - iii. **Elk Rapids, MI 49690**
 - iv. **231-264-9970**
 - b. Section 23.2.1.2
 - i. **Copy of lease provided**
 - c. Section 23.2.1.3
 - i. **Provided signed Agent Authorization**
 - d. Section 23.2.1.4
 - i. **Fleming Farm 4264 Martindale see Agent Authorization**
 - e. Section 23.2.1.5
 - i. **002-400-010-00**
 - f. Section 23.2.1.6
 - i. see section 23.2.1.1
 - g. Section 23.2.1.7
 - i. **Reference sealed construction documents**
 - ii. **CTM Engineering**
 - iii. **921 W. 11th st**
 - iv. **Suite 2W**
 - v. **Traverse City, MI 49684**
 - h. Section 23.2.1.8
 - i. **Fleming Farm Personal Wireless Services Telecommunications tower and Facility**
 - i. Section 23.2.1.9
 - i. **Construction of a 128-foot guy tower**
 - j. Section 23.2.1.10
 - i. **Vicinity Map Included**
 1. **Google Earth View**
 2. **Also Included a 1"-200' details of the site and parcels**
 - k. Section 23.2.1.11
 - i. **2.2 acres (the lease is for 2.2 acres in support of the tower on a 85 plus acre parcel)**
 - ii. **A site plan using a scale of 1" – 50' also included**
 - l. Section 23.2.1.12
 - i. **Agricultural**
 - m. Section 23.2.1.13
 - i. **Approximately 180 days from final permit approval.**
2. Section 23.2.2 leased space is 2.2 acres per article 17
 - a. Section 23.2.2.1
 - i. **Included**
 - b. Section 23.2.2.2
 - i. **Considered not required per Section 21.46.2.12**
 - c. Section 23.2.2.3
 - i. **Considered not required per Section 21.46.2.12**
 - d. Section 23.2.2.4
 - i. **See site plan**
 1. **Vegetation immediately around the tower is field grass and trees. Trees will be removed to create a clear canopy for the**

guy wires. There will be a 75 - 100 foot foliage (tree) cover/barrier between the field and the tower.

- e. Section 23.2.2.5
 - i. Considered not required per Section 21.46.2.12**
- f. Section 23.2.2.6
 - i. No permanent building proposed. A light weight garden shed 3 x 4 x 6 is attached or secured to the tower**
- g. Section 23.2.2.7
 - i. Proposed accessory structure (rubber maid tool shed)**
- h. Section 23.2.2.8
 - i. Included no impact on traffic (no occupancy – Dark operation)**
- i. Section 23.2.2.9
 - i. No streets, drives, curb cuts, or access easements required**
- j. Section 23.2.2.10
 - i. No proposed or existing curbing, barrier free access, carports, parking areas and fire lanes**
- k. Section 23.2.2.11
 - i. No loading or unloading areas required**
- l. Section 23.2.2.12
 - i. No sidewalks, walkways, bicycle paths or public area uses**
- m. Section 23.2.2.13
 - i. No water supply lines, wells, storm sewers, treatment systems**
- n. Section 23.2.2.14
 - i. Per electrical code a branch will be developed.**
 - ii. No existing power on 2.2 acre site**
 - iii. No existing utilities from feeder source to tower location**
 - 1. Miss Dig will verify**
- o. Section 23.2.2.15
 - i. No common Facilities**
- p. Section 23.2.2.16
 - i. No advertising features**
 - ii. Sign is attached to tower to indicated contact information**
- q. Section 23.2.2.17
 - i. No exterior lights**
- r. Section 23.2.2.18
 - i. No screening features added**
 - ii. The tower will be 100% surrounded by mature tree growth**
 - 1. Tree diameter on average is significantly greater than the tower diameter**
- s. Section 23.2.2.19
 - i. No buffering features added**
- t. Section 23.2.2.20
 - i. No trash no solid waste**
- u. Section 23.2.2.21
 - i. No storage facilities**
- v. Section 23.2.2.22
 - i. No site amenities**
- w. Section 23.2.2.23
 - i. No significant views or unique natural features**
- x. Section 23.2.2.24
 - i. Scale information provided**

- ii. **Arial view using google earth provided**
 - iii. **1"-200' provided of 85 acre parcel**
 - iv. **1"-50' provide of 2.2 acre area leased for tower site**
- y. Section 23.2.2.25 Sealed documents for site plan
 - i. **Per section 23.2.4.1 we are respectfully requesting that this requirement be waived. A three-foot hole 12 inches in diameter is the extent of the significant data. Per the check list most sections do not have any data. Requiring an architect of landscape architect appears to provide no useful purpose. The site is not being significantly changed. Personal wireless towers language has been recently added to zoning. We suggest that since this tower has a small footprint with no permanent structures that waiving a sealed site plan is a reasonable request.**
- z. Section 23.2.3
 - i. **Per section 23.2.4.1 we are respectfully requesting that this requirement be waived. A three-foot hole 12 inches in diameter is the extent of the significant data. Per the check list most sections do not have any data. Requiring an architect of landscape architect appears to provide no useful purpose. The site is not being significantly changed.**
- aa. Section 23.2.4
 - i. **see above comments**
- bb. Section 23.2.5
 - i. **Fee submitted with application**
- cc. Section 23.3
 - i. **Pre-Application conference has been done and continues**

Martindale Tower

Vicinity Map
4274 Martindale Rd.
Gaylord, MI 49735
Cherry Capital Connection LLC
P. O Box 866
Elk Rapids, MI 49629
Scale 1" = 2000"

Legend

 Tower Location

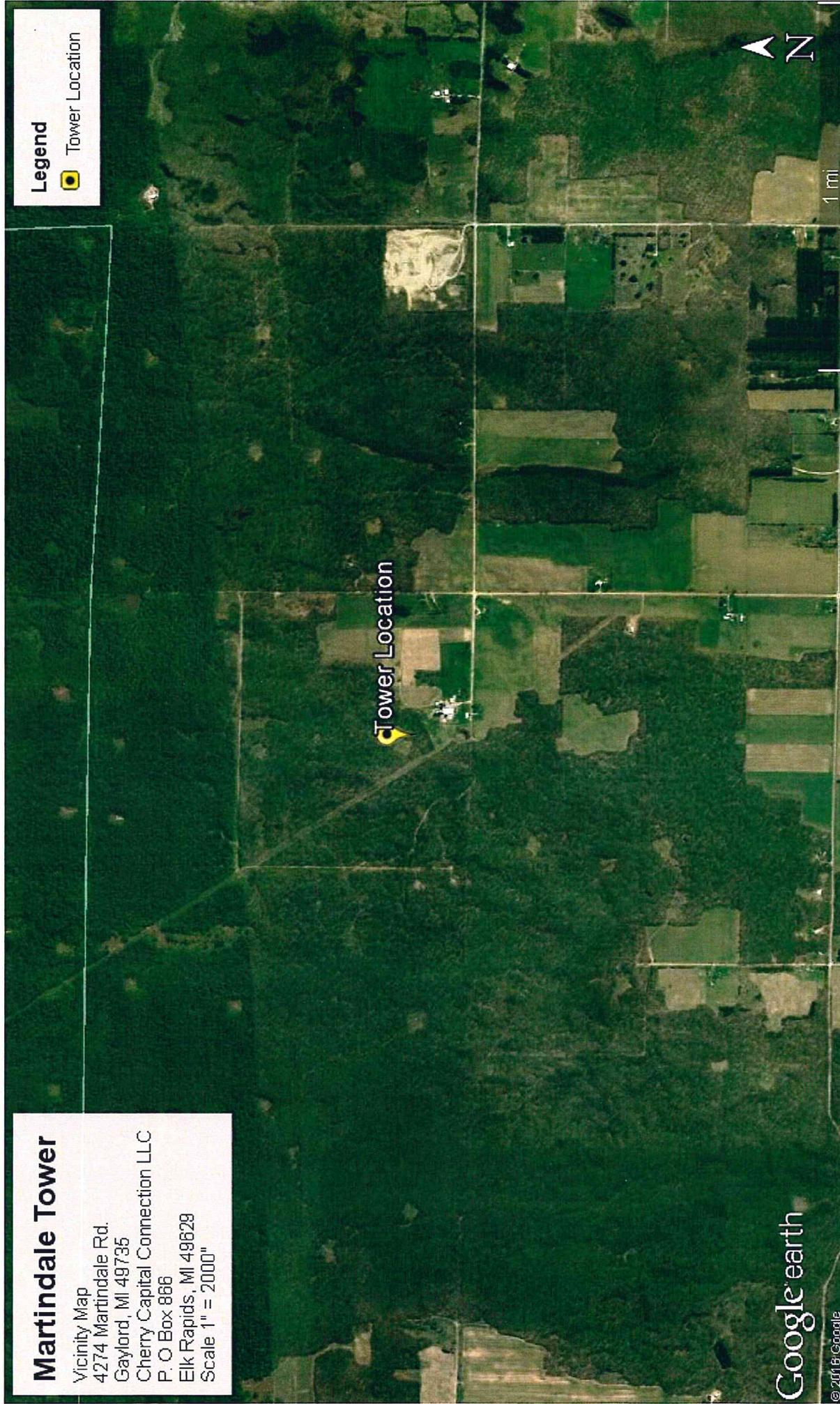
Tower Location

Google earth

© 2016 Google



1 mi



060-002-200-015-17

060-002-200-015-18

060-002-200-015-19
2750'

060-002-200-015-20

19380'

80 ACRES

WOODED AREA

170' PARTIAL
BOUNDARY OF PROPERTY
LEASED PROPERTY
REPORT
90000

COOP
FIELD

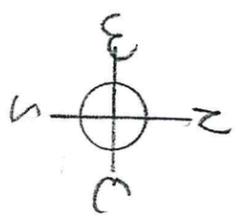
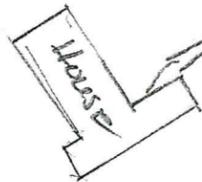
PROPERTY EAST
888'
TOWER
LOCATION

WEST PROPERTY
555'
UTILITY EXEMPT



MARTINDALE Rd.

060-011-08-005-01



060-002-100-005-04

Cherry Capital Bank
P.O. Box 2086
97108
Elk Rapids, MI 49629
231-264-9970
Applicant
Fleming, Shalee Anne
4264 Martindale Rd
Elk Rapids, MI
49629 2171395
Dinner

MARTINDALE TOWER
4274 MARTINDALE RD
Scale 1" = 200'
Parcel # 060-002-100-010-00
Applicant B. R. R. R.
Bride Daughter
231-264-9970

May 16, 2002

Last revised December 21, 2011

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acres is all the Michigan
we will ever have."*

Former Governor
William G. Milliken

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Extension,
Greening Michigan Institute,
Land Use Team

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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. 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 7).
4. If one use is permitted, others must be, also (page 8).
5. Can regulate but not prohibit (page 8).
6. Can regulate but not less strictly than the state (page 9).

Appendix A, on page 10, lists a few commonly believed things to be exempt from zoning, but they are subject to zoning. Appendix B, on page 10, reproduces the Michigan Supreme Court and Michigan Appeals Court guidelines to aid courts to determine if state statute preempts zoning. Appendix C, on page 11, reports the history of this *Land Use Series* updates over time.

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P.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 10, 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 NW 2d 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 NW 2d 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 NW 2d 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

- 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.) An exception is that this regulation can occur if zoning is for a designated “natural river.”¹⁷
- I. Local zoning cannot regulate surface coal mining and reclamation operations.¹⁸ (See also “mining” on page 12.) An exception is that this regulation can occur if zoning is for

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).

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)).)

¹⁷Section 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).

¹⁸Sec. 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.”

a designated natural river.¹⁹

J. State water pollution regulations occupy the field for both point²⁰ and nonpoint²¹ sources of pollution.

K. Regulations about farms/farming²² are severely restricted by the Right To Farm Act: 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.

Local zoning of agriculture cannot extend, revise or conflict with provisions of the Right to Farm Act or any generally accepted agricultural and management practices (GAAMPs)²³, including:

- i. Manure management and utilization.
- ii. Pesticide utilization and pest control.
- iii. Nutrient utilization.
- iv. Care of farm animals.
- v. Cranberry production.
- vi. Site selection and odor control for new and expanding livestock production facilities.
- vii. Irrigation water use.
- viii. Farm Markets²⁴

Basic rule of thumb is if the topic is covered in the Right to Farm Act or in a GAAMP, then that topic is off limits for local

²³(...continued)

agricultural and management practices (GAAMPs).

²⁴The 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 an 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 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)).

¹⁹Section 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).

²⁰Section 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.

²¹Section 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)).

²²Farm 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.)

²³Section 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 (continued...)

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

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.²⁵

- L. State fertilizer regulations occupy the field.²⁶
- 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.)²⁷
- N. State Fairgrounds are under the jurisdiction of the State Exposition and Fairgrounds Council, one in Detroit and one in the Upper Peninsula.²⁸
- O. Local zoning cannot regulate trails that have received Natural Resources Commission designation as a “Michigan trailway”²⁹ and

snowmobile trails which are subject to the Snowmobile Act.³⁰

- P. Local zoning cannot regulate any part of the Michigan State Police radio communication system.³¹
- 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.³²
- R. Local zoning cannot regulate U.S. nuclear power³³ facilities and military facilities.³⁴
- 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,

²⁵Section 4(7) of Act 93 of 1981, as amended (the Michigan Right to Farm Act, M.C.L. 286.474(7)).

²⁶Section 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).

²⁷Section 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)).

²⁸P.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.

²⁹Section 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 trailways part of the Natural Resources (continued...)

²⁹(...continued)

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)).

³⁰M.C.L. 324.82101 *et seq.* and *Chocolay Charter Township v Department of Natural Resources*, no. 246171 (Mich. App., October 28, 2003) (unpublished).

³¹P.A. 152 of 1929, as amended (the Michigan State Police Radio Broadcasting Stations Act, M.C.L. 28.281 *et seq.*).

³²Section 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).

³³Title 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.

³⁴Title 40, Chapter 12, Section 619(h) of the United States Code (40 USC Sec. 619(h)).

- if any, does have jurisdiction.)³⁵
- T. Public Schools under the jurisdiction of the Michigan superintendent of public instruction are not subject to local zoning.³⁶
 - U. Certain public colleges and universities are not subject to local zoning.³⁷

³⁵*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.

³⁶*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)).

³⁷Article 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); (continued...)

V. A municipality that adopts a zoning ordinance need not follow its own ordinance.³⁸ 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.³⁹

W. County buildings owned and built/located by a county board of commissioners is not subject to zoning⁴⁰ in so much as the county has the power to determine "the site of, remove, or to designate a new site for a county building," and to erect "the necessary buildings for jails, clerks' offices, and other county buildings...."⁴¹ 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

³⁷(...continued)

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).

³⁸*Morrison et al. v. City of East Lansing*, 255 Mich. App. 505 (2003).

³⁹Michigan Attorney General Opinion No. 6982 (1998).

⁴⁰*Pittsfield Charter Township v. Washtenaw County and City of Ann Arbor*, 468 Mich 702, 664 N.W.2d 193 (2003).

⁴¹*Herman v. County of Berrien* (Published No. 134097, June 18, 2008) Michigan Supreme Court.

subject to zoning.⁴²

- 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.⁴³
- Y. A local unit of government shall not enact or enforce an ordinance that regulates a large quantity water withdrawal⁴⁴ (more than an average of 100,000 gallons of water per day).

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).⁴⁵

- 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.⁴⁶ 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

⁴²*Herman v. County of Berrien* (Published No. 134097, June 18, 2008) Michigan Supreme Court.

⁴³Section 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).

⁴⁴Section 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 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.”

⁴⁵Section 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.

⁴⁶Title 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).

purpose).⁴⁷

- 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.⁴⁸ And such regulations (concerning hours of operation and haul routes) shall be reasonable in accommodating customary nonferrous metallic mineral mining operations.
- D. Local zoning can regulate only certain specific aspects of extraction (mining) of natural resources (e.g., gravel, sand and similar pits).⁴⁹ Zoning can not prevent extraction of natural resources unless “very serious consequences”⁵⁰ 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 Act⁵¹). 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.

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.⁵²
- B. In zoning districts where dwellings are permitted, the ordinance must also allow:
 - i. Mobile homes.⁵³
 - ii. State-licensed residential facilities for six or fewer persons.⁵⁴
 - iii. Home occupation for instruction in a craft or fine art (e.g., music lessons).⁵⁵
 - iv. “Family day-care home” and “group day-care home” (e.g., child daycare facilities) in counties and townships.⁵⁶ (Cities and villages can regulate these

⁵²Section 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).)

⁵³*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)).

⁵⁴Section 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).)

⁵⁵Section 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).)

⁵⁶Section 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).)

⁴⁷*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.).

⁴⁸Part 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)).

⁴⁹Section 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)).

⁵⁰See *Silva v Ada Township*, 416 Mich 153 (1982); *American Aggregates Corp v Highland Twp*, 151 Mich. App. 37; and MCL 125.3205(5).

⁵¹Part 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)).

- by special use permit.⁵⁷⁾
- 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.⁵⁸

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.⁵⁹ Also, sign regulation just for aesthetic purposes can be problematic.⁶⁰
- 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.⁶¹
- D. Adult entertainment or sexually oriented businesses can be regulated but not totally excluded.⁶²
- E. Zoning cannot prohibit satellite dishes⁶³ or cellular telephone towers⁶⁴, but it can regulate location (to a limited extent), design, co-location, etc.
- F. Television reception antennas, multichannel multipoint distribution service, or direct broadcast satellite services which are or smaller than one meter (39.37 inches), are subject to very restricted regulation by local municipalities. Local zoning must comply with the act, and the FCC rules concerning Over-the-Air Reception Devices. Those rules prohibits most zoning restrictions 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.⁶⁵

⁵⁷Section 206(5) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3206(5)).

⁵⁸Section 513 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3513).

⁵⁹U.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.

⁶⁰*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).

⁶¹Title 42, Chapter 21C of the United States Code, codification of Religious Land Use and Institutionalized Persons Act of 2000 (PL 106-274).

⁶²*Young v. American Mini Theaters, Inc.*, 427 US 50, 71, 96 S Ct 2440, 49 L Ed 2d 310 (1976).

⁶³Title 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)).

⁶⁴Title 47, Chapter 5, Subchapter III, Section 332(c)(7) of the United States Code (47 USC Sec. 332(c)(7)). In particular, as amended by H.R. 952 and H.R. 2834 of the 106th Congress, 1st session. (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.)

⁶⁵Section 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) on Over-the-Air Reception Devices ("OTARD").

See also U.S. Federal Communications Commission Information Sheet (Dec. 2007), (continued...)

G. Existing shooting ranges (gun clubs) can continue after zoning is changed to prohibit or further regulate the range.⁶⁶

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.⁶⁷
- B. Local zoning can not conflict with adopted airport zoning.⁶⁸

⁶⁵(...continued)

<http://www.fcc.gov/mb/facts/otard.html>, and http://www.hindmansanchez.com/docs/fcc_otard_rule_questions_and_answers_05240652.pdf.

⁶⁶Section 2a(1) of Act 269 of 1989, as amended (the Sport Shooting Ranges Act, M.C.L. 691.1542a(1)).

⁶⁷Section 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 administration of this part. The department shall cooperate in the enforcement of this part with local officials upon request.”

⁶⁸Section 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 (continued...)

C. Regulation of Great Lakes shoreline high-risk erosion areas is subject to approval and oversight by the Michigan Department of Environmental Quality.⁶⁹

D. Designated sand dunes protection is subject to approval and oversight by the Michigan Department of Environmental Quality.⁷⁰

E. State natural rivers protection is subject to approval and oversight by the Michigan Department of Natural Resources.⁷¹

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.⁷²

G. Local regulation of floodplains cannot be less strict than that of the state.⁷³

H. Local regulation of soil erosion and sedimentation cannot be less strict than that of the state (or of counties administering rules promulgated under

⁶⁸(...continued)

part of local zoning.)

⁶⁹Part 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).

⁷⁰Part 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).

⁷¹Part 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).

⁷²Part 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).

⁷³Part 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).

state statute).⁷⁴

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.

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

⁷⁴Part 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.*).

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."

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

Full Text Opinion:

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

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.⁷⁵ 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.⁷⁶

This was removed as a result of *Kyser v. Kasson Twp.*, July 15, 2010.⁷⁷

- July 14, 2011: Added nonferrous metallic mineral mining (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.
- x

⁷⁵*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).

⁷⁶Section 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).

⁷⁷Michigan Supreme Court (No. 136680, 278 Mich. App. 743, 755 N.W.2d 190, 2008 Mich. App. (2008), July 15, 2010)); *Kyser v. Kasson Twp.*