

# OTSEGO COUNTY PLANNING COMMISSION

September 21, 2020  
6:00 PM

**MEETING WILL BE HELD REMOTELY**

The Otsego County Planning Commission will hold a public hearing on Monday, September 21, 2020 at 6:00 pm. Due to the Coronavirus pandemic, this meeting will be held remotely.

To view and/or participate in this meeting:

- With computer or smart phone (for video and voice) access through clicking or copy and paste this link into a browser (like Google Chrome):

<https://us02web.zoom.us/j/86025819840?pwd=M0dWdWY5T0VWdXY1WlI0WmdYVnkyQT09>

**Meeting ID: 849 6518 3075**

**Password: 870499**

- With a phone (for voice only): dial 1.888.788.0099 or 1.877.853.5247 then wait for instructions and provide the meeting ID and password.

## AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF MINUTES: From July 20, 2020 meeting
5. CONSENT AGENDA
6. PUBLIC PARTICIPATION FOR ITEMS NOT ON THE AGENDA:  
(Please identify yourself for the record. All comments will be limited to two (2) minutes)
7. OTHER:  
Wolverine Power Cooperative – Sound Test Results
8. PUBLIC HEARINGS:
  1. **PZRZ20-001** *Georgia Pacific LLC, property owner, and Timothy Bills, representative of L&K Realty 2 LLC, applicant, are requesting a Rezone of property located in Bagley Township on Dickerson Rd and West Otsego Lake Dr Gaylord, MI 49735. The proposed purpose of the rezone is for consistency in adjoining land use. The property is currently zoned R2/General Residential with a request to be rezoned I/Industrial*

Parcel identification number: 010-017-400-005-03  
Dickerson Rd  
Gaylord, MI 49735

**Legal Description:**  
BEG @ S1/4 COR, TH N01°04'20"W 1321.69', TH S89°24'10"E 1395.1', TH S62°E 907.57', TH N88°43'E 468.36', TH S01°11'E 914.81', TH N81°34'30"W 128.38', TH NWLY ALG ARC OF 1440.0', RAD CURVE TO R 495.15', TH N61°52'25"W 991.88', TH WLY ALG ARC OF 954.93', RAD CURVE TO L 1950', TH N89°31'00"W 56.57' TO POB.  
SEC 17 T30N-R3W

    - a. Open Public Hearing
    - b. Case Summary
    - c. Public Comment (3-minute limit)
    - d. Close Public Hearing
    - e. Planning Commission Discussion
    - f. Motion
  2. **Section 2.2 Definitions – Otsego County Zoning Ordinance – Text Amendments**  
*Proposed text amendments to the above section pertaining to Tourist Homes*
    - a. Open Public Hearing
    - b. Case Summary
    - c. Public Comment (3-minute limit)
    - d. Close Public Hearing
    - e. Planning Commission Discussion
    - f. Motion

9. ADVERTISED CASES:

1. **PZRZ20-001** Georgia Pacific LLC, property owner, and Timothy Bills, representative of L&K Realty 2 LLC, applicant, are requesting a Rezone of property located in Bagley Township on Dickerson Rd and West Otsego Lake Dr Gaylord, MI 49735. The proposed purpose of the rezone is for consistency in adjoining land use. The property is currently zoned R2/General Residential with a request to be rezoned I/Industrial

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SEC 17 T30N-R3W*

2. **Section 2.2 Definitions** – Otsego County Zoning Ordinance – Text Amendments  
*Proposed text amendments to the above section pertaining to Tourist Homes*

10. UNFINISHED COMMISSION BUSINESS

11. NEW BUSINESS

12. REPORTS AND COMMISSION MEMBER'S COMMENTS:

1. Otsego County Parks & Recreation report:  
Judy Jarecki
2. Land Use Services  
Chris Churches:

13. ADJOURNMENT

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**Call to Order:** 6:00pm by Chairperson Hartmann

Pledge of Allegiance

Chairperson Hartmann welcomed the public attending remotely and explained they would be given an opportunity to speak during the public hearing and requested they give their name before speaking.

**Roll Call:**

Present: Mr. Hartmann, Mrs. Jarecki, Mr. Borton, Mr. Hilgendorf, Mr. Maxwell, Mr. Brown, Mr. Marlette, Mr. Scott, Mr. Caverson, Ms. Corfis

Absent: Mr. Bauman

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

Others Present: Rieth-Riley Construction Inc. representatives, Keegan Brennan, Todd Colberg, and Brad Shearer

Public Present Remotely: Five (5) residents remoted into the meeting.

**Approval of minutes from:** June 15, 2020

Chairperson Hartmann requested discussion on the minutes.

Mr. Brown stated on page six (6) under Otsego County Parks & Recreation report, Charlton Township was misspelled...*trees had been planted at the Groen and the ~~Charleston~~ Charlton Township Fire Department...*

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

Motion approved unanimously.

**Consent Agenda:** None

**Other:** None

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

Laura Justin, Bagley Township resident, discussed issues she had with allowing camper/trailers in the RR Zoning District; she was against allowing them and questioned the process and her options in the matter.

Mr. Churches explained the enforcement process.

Chairperson Hartmann stated a petition could be circulated and brought forward to the Zoning Department; the Planning Commission may consider a change in use.

Jill Wiley, Charlton Township resident, stated she was attending concerning short-term rentals; she was told the matter would be discussed later in the meeting.

With no further comments, Chairperson Hartmann moved on.

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## Public Hearing:

**PZ20-002** Rieth-Riley Construction Inc, owner, has requested a Special Use Permit/Site Plan Review for properties located in Elmira Township at 3006 Martindale Rd Elmira, MI 49797. The proposed use of the properties is to extend the permit for an existing mining operation. The properties are located in a FR/Forest Recreation Zoning District. A mining operation is a permitted use subject to special conditions in the FR Zoning District.

Parcel identification number: **060-001-100-005-03**  
**3006 Martindale Rd**  
**Elmira, MI 49730**

### Legal Description:

SE1/4 OF SE1/4 EXC THE EAST 66 FT & THE SOUTH + WEST 50 FT SEC 1 T31N R4W  
SUB TO EASEMENT FOR INGRESS, EGRESS & UTIL CONT 35 AC M/L 2000 OF 060-001-100-005-01

Parcel identification number: **060-001-100-005-04**  
**Martindale Rd**  
**Elmira, MI 49730**

### Legal Description:

N 1/2 OF SE 1/4 & E 66 FT & S AND W 50 FT OF SE 1/4 OF SE 1/4 SEC 1 T31N-R4W 08  
SPLIT OF 069-001-100-005-03

- a. Open Public Hearing
- b. Applicant Summary
- c. Public Comment (3-minute limit)
- d. Close Public Hearing
- e. Planning Commission Discussion
- f. Motion

Chairperson Hartmann stated the case before the Commission, opened the public hearing and requested comment from the applicant.

Public hearing opened: 6:11pm

Keegan Brennan, Rieth-Riley Construction corporate counsel, stated they were requesting a renewal for a five-year extension to their current mining special use permit. They were looking to expand the operation to the north (Phase II) within the next few years while continuing work on the current site (Phase I). Phase III would be for future operations. They had obtained a soil erosion permit that would be renewed each year on an annual basis. Mr. Brennan introduced his colleagues for questions, Todd Colberg and Brad Shearer, stating they were in charge of operations.

Chairperson Hartmann requested comment from them.

Mr. Colberg stated the mining operation has been in existence for twenty (20) years and they have been good neighbors during that time. He requested questions.

Mr. Marlette questioned the depth of the pit and if there was a precipice along the edge or a slope.

Mr. Colberg stated the pits were approximately twenty-five feet (25') deep with a berm all around the property; during restoration, a slope would be created.

Mr. Marlette questioned the probability of a child falling into the pit and getting hurt.

Mr. Colberg stated they were under MSHA (Mining Safety and Health Administration) rules and had to maintain a berm around the pit.

Mr. Brennan stated the probability was minimal; the area was heavily forested and the berms were sloped upwards of five to eight feet (5-8') so one needed to climb up to look out into the pit. They felt secure in the safety measures taken and they were also compliant with state rules.

Mr. Marlette questioned if there was ground water in the bottom of the pit.

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Mr. Colberg stated no.

Mr. Brown questioned if there were residential properties near the pit.

Mr. Colberg stated there were but were some distance away.

Chairperson Hartmann stated the mining operation was in Elmira Township and in the Elmira Planning Commission's opinion, they were good neighbors.

Chairperson Hartmann requested comment from the public attending remotely; no further public comment.

Mr. Churches stated he had received a phone call from a neighboring property owner who stated he supported the application but requested the restoration plan be followed and they restore some of Phase I before moving on to Phase II.

Mr. Brennan stated as they moved north into Phase II, restoration to the south would ensue. It would be awhile before they would move into Phase II as they were still mining in Phase I but the property would not be left as is.

Chairperson Hartmann closed the public hearing.

*Public hearing closed: 6:18pm*

## Advertised Case:

**PZ20-002** Rieth-Riley Construction Inc, owner, has requested a Special Use Permit/Site Plan Review for properties located in Elmira Township at 3006 Martindale Rd Elmira, MI 49797. The proposed use of the properties is to extend the permit for an existing mining operation. The properties are located in a FR/Forest Recreation Zoning District. A mining operation is a permitted use subject to special conditions in the FR Zoning District.

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SUB TO EASEMENT FOR INGRESS, EGRESS & UTIL CONT 35 AC M/L 2000 OF 060-001-100-005-01

Parcel identification number: **060-001-100-005-04**  
**Martindale Rd**  
**Elmira, MI 49730**

### Legal Description:

N 1/2 OF SE 1/4 & E 66 FT & S AND W 50 FT OF SE 1/4 OF SE 1/4 SEC 1 T31N-R4W 08  
SPLIT OF 069-001-100-005-03

With no further input, Chairperson Hartmann made the following motion:

Chairperson Hartmann made a motion to approve the General Findings of Fact as presented in Exhibit 12; Seconded by Mr. Hilgendorf.

Motion approved unanimously. *SEE ATTACHMENT 1*

Chairperson Hartmann read aloud the standards of Article 19.7.1 – 19.7.7; all standards having been met he made the following motion:

Chairperson Hartmann made a motion to approve the Specific Findings of Fact under Article 19 as presented in Exhibit 13; Seconded by Mr. Brown.

Motion approved unanimously. *SEE ATTACHMENT 2*

Chairperson Hartmann made the following motion and requested a roll call vote:

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Chairperson Hartmann made a motion to approve special use permit PZSU20-002 to extend the existing mining operation on parcel numbers 060-001-100-005-03 and 060-001-100-005-04 for another five (5) years; Seconded by Mr. Caverson.

Roll Call:

Yes: 10

No: 0

Absent: 1

Motion passes.

Case PZSU20-002 is extended for five (5) years, expiring July 20, 2025.

**Unfinished Commission Business:** None

**New Business:**

Chairperson Hartmann stated the commission had some new business before them and requested comment from Mr. Churches.

**1. Proposed definition for 'BED & BREAKFAST'**

Mr. Churches stated short term rentals had been brought to the Commission's attention previously regarding regulation and it seemed the Commission's stance was to regulate them as they currently were in the Zoning Ordinance; a residential use. A recent issue with short term rentals out at Little Bear Lake had been brought to Zoning's attention. There was a particular property involved in the complaint and he had discussed the issue with both parties stating it was a permitted residential use but because the issue could possibly be argued both ways, he had contacted the County attorney to get his opinion on the best way to handle the situation. Mr. Churches stated he had been interpreting the use as a Bed & Breakfast but because of some of the verbiage in the definition, the use could be argued. The County attorney stated if the intent was to interpret the use as a Bed & Breakfast, the definition should be made clearer to dispel any confusion. He was presenting the proposed definition to the Commission instead of having a committee review it first because it was only a small change to the definition. It would be sent to townships for input after review.

Chairperson Hartmann questioned if the complaints were mainly noise and if this was concerning one single address.

Mr. Churches stated there were a variety of complaints; noise, boating regulations, trespassing, garbage, etc. but most of which were not zoning issues. These issues typically occurred after hours or over the weekend so if we did respond, it would be after the fact and likely no violation would be found. The complaints did seem to be isolated to one particular property; he had spoken with the owner, Jill Wiley, and she stated she had visited the property shortly after the complaint and did everything in her control to curb the problem. There did seem to be a neighbor dispute going on as well.

The owner, Jill Wiley, remoted in for comment.

Jill Wiley, Little Bear Lake home owner, stated she's owned the property for three (3) years and it has always been a rental. The first time a complaint was made, was this past Fourth of July yet it did seem like there had been more talk behind the scenes concerning her property. She felt there was an issue with a neighbor because their family had owned the property prior. She did not want to upset neighboring property owners but she did not feel they were doing anything wrong and since then, they had updated their website and added stricter criteria to their requirements.

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Mr. Churches stated Mrs. Wiley had reached out to him as he had not been sure what property was in question; addresses had not been specific. He said she had been very cooperative and had done everything asked of her.

Mr. Brown questioned if that was the only complaint on Little Bear Lake and if Mr. Churches had spoken to the Charlton Township Supervisor.

Mr. Churches stated he had gotten many calls but had not gotten specific addresses, only areas so he was unable to determine how many different properties were actually in question. He had not talked with the Charlton Supervisor since last year.

Mr. Brown stated the Township Board had questioned him at their last meeting as to whether he had been alerted to any issues concerning Little Bear Lake; they were wanting to come before the Charlton Township Planning Commission to discuss the issue.

Chairperson Hartmann stated Mr. Brown should consider himself alerted.

Ms. Corfis stated she was having a difficult time correlating the definition of a 'Bed & Breakfast' and a short-term rental. The definition states '*rooms in excess of those used by the family*', meaning a family is on site, which infers there's some sort of oversight on a daily basis and typically a breakfast is served. As rewritten, there is no one on site and everyone fend for themselves; they did not seem related. She questioned why not just define bed and breakfast and short-term rental separately?

Mr. Churches stated as worded previously the family would be on site; as proposed, owners would not need to be. Defining short-term rentals would entail timelines between short-term versus long-term and multiple doors may be opened the Commission may not want opened.

Mr. Brown stated he agreed a breakfast is typically expected at a Bed & Breakfast, someone on site cooks for you.

Mr. Churches stated on the website Air B&B, the B&B stands for bed and breakfast; it was not stated a breakfast was necessarily served.

Mr. Marlette stated he agreed with Ms. Corfis, a Bed & Breakfast serves a cooked breakfast in conjunction with your stay. The definition presented sounded more like a short-term rental.

Mr. Maxwell stated the reality of these rentals is they are currently being treated as a Bed & Breakfast without an owner on site; a definition for a short-term rental would have to be a complete definition of the use and could possibly open doors to future litigation. The question is, does the Commission want to adapt the definition to how a Bed & Breakfast has evolved or remain tied to the out dated version of a B&B.

Ms. Corfis stated it seemed the whole issue of short-term rentals was being skirted by changing the definition of a Bed & Breakfast.

Mr. Caverson stated the rental market created an influx of income for multiple businesses in the area, not just for the property owners. Regulating the renter market would cause a loss in tourism; he did not think the County wanted to be landlords of the landlords.

Chairperson Hartmann questioned if the definition could read 'Bed & Breakfast/Residential Rentals.

Mr. Churches stated he would need to discuss it with the attorney; it could possibly affect long-term rentals as well. Currently Bed & Breakfasts are allowed in the RR, FR and AR Zoning Districts. We don't want residential rentals disallowed in other zoning districts.

Mr. Borton stated he has been working in short-term rentals for over sixteen (16) years and during that time he had not had any complaints; the key is having a good relationship with your

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neighbors. Every problem that comes up does not need an ordinance in place to solve it; there are other entities to handle these issues such as the Sheriff's Department. There are thousands of these short-term rentals throughout northern Michigan. They are a lot of work but the majority of these are run correctly otherwise there would be a multitude of complaints. It is a huge boost to our economy and a major tax revenue to the State. He agreed with the County attorney to tweak the existing definition instead of creating possible problems.

Vice Chairperson Jarecki questioned the term 'dwelling' stating that term basically implied someone was living there.

Mr. Churches stated 'dwelling' was defined in the Ordinance and was referenced by the County attorney as a residential use in the RR, FR, and AR Zoning Districts as a permitted use.

Ms. Corfis questioned if Mr. Borton advertised his rentals as a Bed & Breakfast.

Mr. Borton stated he did not but he also did not advertise them as short-term rentals. He called them vacation rentals.

Mr. Marlette questioned if there was a time limit on a Bed & Breakfast stay.

Mr. Borton stated the State of Michigan set a time limit, anything beyond a month is considered a full time rental. A 'use tax' is *not* paid if a person stays for thirty (30) or more days; a twenty-nine (29) day stay or less and taxes are paid on every penny.

Mr. Marlette questioned if the complaints coming in were mostly law enforcement issues.

Mr. Churches stated it was mainly noise, boating violations, well or septic issues, not so much zoning problems. Zoning assists any complainants by directing them to the department capable of helping such as the Sheriff's Department, the DNR, the Health Department and so forth.

Mr. Churches stated the term 'Tourist Home' was also in the Ordinance and referenced back to the Bed & Breakfast definition. A Tourist Home may be more along the line of what was being discussed. He could leave the Bed & Breakfast definition as is and add a separate definition for Tourist Home; they were allowed in the same districts as a Bed & Breakfast.

Chairperson Hartmann agreed it was a good option. He suggested defining the term Tourist Home and sending it out to townships for further input.

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

### **1. Otsego County Parks & Recreation report/Judy Jarecki**

Mrs. Jarecki stated the Pigeon River was busier than ever and attributed it to Covid; the County Park was busy as well – the electrical update was working out well, no issues reported – due to the high water levels and compacted soil, some campsites were flooding, additional soil would be brought in to try and remedy the problem – the relocated ranger station was also having issues with water in the crawlspace, this would be taken care of in October – the fireworks show was successful; Ironstone Springs had received a donation from the Guardian Gals, it would be used for fencing; the Mark Mellon Triathlon was scheduled to take place on August 16<sup>th</sup>, precautions would be put in place; the Community Center gym floor had been installed and looked good but the building needed cleaning - things had not been covered prior to the installation and there was sawdust everywhere – they were looking into their contract to see who was responsible for cleaning up; the new Parks & Rec Director, Tom Pratt, was doing a good job.

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## 2. Land Use Services report

Chris Churches

Mr. Churches stated the Michaywe' PUD case would be on August's agenda along with the Rezone for the Georgia Pacific parcel.

Mr. Churches requested the committee for 'Article 18 Lots on Water' meet to discuss some proposed language to the section. He would send out the proposed section to members for review prior to the meeting. The list of members are as follows:

- Mr. Hartmann
- Mrs. Jarecki
- Mr. Marlette
- Ms. Corfis
- Mr. Stults

He requested a meeting be scheduled for the committee for 'Solar Panels' as well. Those members are as listed:

- Mr. Hartmann
- Mrs. Jarecki
- Mr. Scott
- Mr. Hilgendorf
- Mr. Brown
- Mr. Marlette

Chairperson Hartmann requested those members remain after the meeting to schedule meeting dates.

Mr. Borton stated the Board of Commissioners' meetings were now open to the public and were being held at the Alpine Center.

With nothing further, Chairperson Hartmann adjourned the meeting.

**Adjournment:** 6:53pm by Chairperson Hartmann

Pete Maxwell; Secretary

Christine Boyak-Wohlfeil; Recording Secretary

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*ATTACHMENT #1:*

## OTSEGO COUNTY PLANNING COMMISSION

PZSU20-002  
Special Use Permit/Site Plan Review  
060-001-100-005-03 / 060-001-100-005-04

### GENERAL FINDINGS OF FACT

1. This is a proposal for a five (5) year extension of an existing mining operation permit PSUP15-002. *Exhibit #1, Exhibit #5, Exhibit #6*
2. The properties are located in a FR/Forest Recreation Zoning District. *Exhibit #2*
3. The proposed use is a permitted use subject to special conditions in a FR/Forest Recreation Zoning District. *Exhibit #3*
4. The properties are currently under the ownership of Rieth-Riley Construction Inc. *Exhibit #4*
5. The Public Hearing Notice was published in the Herald Times on July 3, 2020 *Exhibit #7*
6. The requirements of Article 27 of the Otsego County Zoning Ordinance have been met. *Exhibit #8, Exhibit #9*
7. All property owners within three hundred (300') feet were properly notified of the public hearing. *Exhibit #10*
8. 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*
9. The required fees have been collected by Otsego County Land Use Services. *Exhibit #11*
10. The site plan requirements of Article 23 have been reviewed by Otsego County Land Use and all requirements pertaining to the proposed use have been addressed by the Applicant. *Exhibit #5, Exhibit #6, Exhibit #12, Exhibit #13*

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ATTACHMENT #2:

## OTSEGO COUNTY PLANNING COMMISSION

PZSU20-002

Special Use Permit/Site Plan Review  
060-001-100-005-03 / 060-001-100-005-04

### SPECIFIC FINDINGS OF FACT

#### FINDINGS UNDER ARTICLE 8/SECTION 8.2

##### ARTICLE 8 FR FORESTRY RECREATION DISTRICT

##### SECTION 8.2 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.]

**8.2.16** Surface mining of gravel, sand, clay, topsoil or marl [See [Article 21.25](#) for criteria]

**\*\*\*Permitted Use Subject to Special Conditions**

#### FINDINGS UNDER ARTICLE 21 /SECTION 21.25

##### SECTION 21.25 MINING, GRAVEL, SAND, CLAY, TOP SOIL, and MARL

Amended 4.9.2013

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

The Michigan Zoning Enabling Act, Act 110 of 2006, may allow this Use in other Zoning Districts:

##### 21.25.1 Site Development Requirements/Restrictions:

The following Site Development Requirements shall be followed:

**21.25.1.1** The site size shall be a minimum of ten (10) acres.

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

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

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

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

**21.25.1.2** The area permitted for mining shall be marked with stakes or other markers as approved by the zoning administrator at all corners before the operation commences, and shall be maintained until the reclamation is approved in writing by the zoning administrator.

**21.25.1.3** Sufficient native topsoil shall be left on the site as a ready resource to be used in reclamation work following excavation/extraction activity, unless an alternative or replacement plan is approved by the Planning Commission.

**21.25.1.4** Physical isolation from residential properties shall be considered in locating development facilities. Topography, vegetation, screening devices and earth stockpiles may be used to accomplish this.

**21.25.1.5** If necessary to protect the welfare of surrounding properties the access routes serving the site may be specified by the Planning Commission with input from the Otsego County Road Commission.

**21.25.1.6** All structures, equipment and machinery shall be considered temporary and shall be removed upon completion of the mining, excavation, extraction or filling. Items not related to the operation shall not be stored at the site.

**21.25.1.7** Interior access roads, parking lots, haul road loading and unloading areas shall be maintained so as to limit the nuisance caused by windblown dust.

**21.25.1.8** The operation of mechanical equipment of any kind may be limited by the day(s) and/or hours by the Planning Commission.

**21.25.1.9** Processing may be limited to only the materials extracted from the site. If the Operator intends to bring in off-site materials, Planning Commission approval is required.

Exhibit 13

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**21.25.1.10** Air pollution, noise and vibration factors shall be controlled within the limits governed by State and/or Federal regulations applicable to the facility.

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

### **21.25.2 Reclamation:**

#### **INTENT**

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

**21.25.2.1** Develop a reclamation plan that is consistent with the site capability, the planned land use and the landowner's conservation objectives. Include the practices necessary to reclaim and stabilize the mined areas to prevent further degradation of soil, water, air, plant and animal resources.

**21.25.2.2** Dust control. Control the generation of particulate matter and fugitive dust during removal and replacement of soil and other materials. Detail the practices and activities necessary for dust control in the plans and specifications.

**21.25.2.3** Properly identify areas for preservation including those containing trees, vegetation, historic structures, stream corridors, natural springs or other important features.

**21.25.2.4** Remove trees, logs, brush, rubbish and other debris from disturbed areas that will interfere with reconstruction and reclamation operations. Dispose of these undesirable materials so they will not create a resource problem or interfere with reclamation activities and the planned land use.

**21.25.2.5** Shape the land surface to provide adequate surface drainage and to blend into the surrounding topography. Use erosion control practices to reduce slope lengths where sheet and rill erosion will exceed acceptable levels.

**21.25.2.6** Use sediment trapping practices such as filter strips, riparian forest buffers, contour buffer strips, sediment basins or similar practices to trap sediment before it leaves the project site. Establish drainage ways with sufficient capacity and stability to carry concentrated runoff from the reclaimed area into receiving streams without causing erosion.

**21.25.2.7** Do site preparation, planting and seeding at a time and in a manner to ensure survival and growth of the selected species. In the plans and specifications, identify the criteria for successful establishment of vegetation such as minimum percent ground/canopy cover, percent survival and irrigation for initial establishment or stand density. Apply soil amendments and or plant nutrients as appropriate, according to the requirements of NRCS Conservation Practice Standard Nutrient Management (590). If the recommended fertilizer rate exceeds the criteria in NRCS Conservation Practice Standard Nutrient Management (590), use appropriate mitigating practices to reduce the risk of nutrient losses from the site. Use vegetation adapted to the site that will accomplish the desired purpose. Preference shall be given to native species in order to reduce the introduction of invasive plant species; provide management of existing invasive species; and minimize the economic, ecological, and human health impacts that invasive species may cause. If native plant materials are not adaptable or proven effective for the plant use, then non-native species may be used. Refer to the Field Office Technical Guide, Section II, Invasive Plant Species, for plant materials identified as invasive species.

**21.25.2.8** Identify in the plans and specifications the species, rates of seeding or planting, minimum quality of planting stock, such as PLS or stem caliper, and method of establishment. Use only viable, high quality seed or planting stock. Use local NRCS criteria for seedbed preparation, seeding rates, planting dates, depths and methods.

### **21.25.3 Restore The Quality of Soils to Their Pre-Mining Level:**

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

**21.25.3.2** Remove all upper soil horizons from the project area that are suitable for reconstruction before operations commence.

**21.25.3.3** Separate soils identified with high electrical conductivity, calcium carbonate, sodium or other restrictive properties, and treat if practicable.

**21.25.3.4** Removal of overburden material for use as topsoil. Selected overburden materials can be substituted for or added to the A and B horizons if field observations and/or chemical and physical laboratory analyses demonstrate that the material, or a mixture of overburden and original topsoil, is suited to restoring the capability and productivity of the original A and B horizon material. Analyze overburden materials for pH, sulfide content, organic matter, nitrogen, phosphorus, potassium, sodium absorption ratio, electrical conductivity, texture and available water holding capacity. If the overburden material is determined to be suitable for topsoil, remove and separate from other materials and replace according to the requirements for topsoil placement.

**21.25.3.5** Storage of soil materials. Stockpile soil materials to be used as topsoil until they are needed for reclamation. Locate stockpiles to protect against wind and water erosion, dust generation, unnecessary compaction and contamination by noxious weeds, invasive species or other undesirable materials.

**21.25.3.6** Replacement of soil material. When placing cover materials, treat graded areas to eliminate slippage surfaces and promote root penetration before spreading topsoil. Spread topsoil so the position and thickness of each horizon is equivalent to the undisturbed soil without causing excess compaction the moist bulk density and soil strength of the reconstructed soil must support plant growth at a level equivalent to that of a similar layer in undisturbed soil.

# Otsego County Planning Commission

## Proposed Minutes for July 20, 2020

**21.25.3.7** Reclaim the site to maintain or improve visual quality based on the scenic quality of the reclaimed site as well as the function of the site for the end land use. Plan the reclamation to be compatible with the topography and land cover of the adjacent landscape. Focus on areas of high public visibility, and those offering direct or indirect human and wildlife benefits.

**21.25.3.8** Grade and shape spoil piles and borrow areas to blend with the adjacent landscape topography to the extent practicable.

**21.25.3.9** Develop a planting plan that mimics the species, arrangement, spacing and density of plants growing on adjacent landscapes. Choose native species of erosion control vegetation and other plant materials where practical. Arrange plantings to screen views, delineate open space, act as windbreaks, serve as parkland, wildlife habitat or protect stream corridors.

### **21.25.4 Plans and Specifications:**

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

### **21.25.5 Application Procedure:**

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

**21.25.5.1** Name and address of owner(s) of land where mining, excavation, extraction or filling are proposed to take place.

**21.25.5.2** Name, address and telephone number of person, firm, or corporation who will be conducting the actual operation. This person, firm or corporation shall be referred to as operator.

**21.25.5.3** A current Survey and legal description of the site where the proposed operation is to take place.

**21.25.5.4** A site plan complying with all requirements of [Article 20](#) of the Otsego County Zoning Ordinance in addition to showing all of the following:

#### **a. The proposed mining area:**

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

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

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

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

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

**c. Required screening of the site shall be in compliance with standards of [Section 21.18](#) of the Otsego County Zoning Ordinance.**

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

**d. The proposed ingress and egress at the site and route(s) to be used to access the site when not located on a primary road. The route(s) for ingress and egress when not located on a primary road shall have written approval from the Otsego County Road Commission.**

**The operator shall be responsible for all road damage to public roads caused as a result of the operation.**

**e. The type and location of any proposed accessory uses. The Planning Commission may approve vehicle maintenance, sorting, crushing, concrete mixing, asphalt batching and other uses as accessory uses subject to conditions placed upon the accessory uses.**

### **21.25.6 Operational Plan Including the Following:**

**21.25.6.1** The Operational plan shall be in written form.

**21.25.6.2** The written plan shall indicate the proposed size, depths, methods of operation, and type of material(s) to be mined, excavated, extracted or filled.

**21.25.6.3** The written plan shall indicate the phases of operation and ending date for each phase.

**21.25.6.4** The written plan shall indicate the method by which the operation shall be secured from entry during hours of non-operation.

**21.25.6.5** The written plan shall indicate the proposed hours and days of operation.

### **21.25.7 Reclamation Plan:**

**21.25.7.1** A written detailed reclamation plan meeting all of the requirements of [21.25.2](#), [21.25.3](#) shall be submitted with the application and operational plan. The submitted reclamation plan shall include photographs of the site prior to commencement of the proposed operation.

**21.25.7.2** The written reclamation plan shall be approved by Planning Commission and may have additional conditions placed upon it prior to final approval.

# Otsego County Planning Commission

## Proposed Minutes for July 20, 2020

**21.25.7.3** The approved site plan and/or reclamation plan may be revised at any time by mutual consent of the operator and the Planning Commission to adjust to changed conditions, technology or to correct an oversight. Any costs to amend the plan(s) are to be borne by the initiating party. The Planning Commission may require the modification of the approved Site plan and/or reclamation plan when:

- a. Modification of the plan is necessary so that it will conform to existing laws.
- b. It is found that the previously approved plan is clearly impractical to implement and maintain.
- c. The approved plan is obviously not accomplishing the intent of the Ordinance.
- d. Any modification shall be subject to all provisions of [Article 19](#) and [Article 23](#).

### **21.25.8 Approval Process:**

**21.25.8.1** All approvals shall be made in accordance with the process prescribed in [Article 19 PERMITTED USES SUBJECT TO SPECIAL CONDITIONS](#).

### **21.25.9 Performance Guarantees:**

After a special use permit application has been approved, but before the permit is issued, the applicant shall file with the Otsego County Clerk, a performance guarantee in the form of a cash deposit, certified check, irrevocable letter of credit, or surety bond acceptable to the Planning Commission and conditioned on faithful performance of all requirements under [Section 21.25](#) and the permit.

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

- a. One-third ( $\frac{1}{3}$ ) of the cash deposit after completion of one-third ( $\frac{1}{3}$ ) of the rehabilitation plan;
- b. Two-thirds ( $\frac{2}{3}$ ) of the cash deposit after completion of two-thirds ( $\frac{2}{3}$ ) of the rehabilitation plan;
- c. The balance at the completion of the rehabilitation plan. Any irrevocable letter of credit or surety bond shall be returned to the applicant upon completion of the rehabilitation plan.

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

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

### **21.25.10 Inspection:**

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

### **21.25.11 Certificate of Completion:**

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

**21.25.11.2** All evidence of the operation has been removed from the site.

**21.25.11.3** All required grading of the site has been completed.

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

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

# Otsego County Planning Commission

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## Proposed Minutes for July 20, 2020

### **21.25.12 Evidence of Continuing Use:**

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

### **21.25.13 Transference of a Special Use Permit:**

**21.25.13.1** Permits for surface mining shall be issued to the operator. If an operator disposes of his interest in an extraction area prior to final reclamation by sale, lease, assignment, termination of lease, or otherwise, the Planning Commission may release the operator from the duties imposed upon him by this Ordinance, as to the operation, but only if the successor, operator, or property owner assumes the obligations of the former operator with reference to the reclamation activities. At that time the Special Use Permit may be transferred.

### **21.25.14 Permit Extension:**

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

### **21.25.15 Permit Expiration:**

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

Proposed

# Otsego County Planning Commission

## Proposed Minutes for July 20, 2020

### 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 ensure 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 related to the standards established in the ordinance for the special land use under consideration, and be necessary to insure compliance with those standards.

\*\*\*Chairperson Hartmann made a motion to approve special use permit PZSU20-002 to extend the existing mining operation on parcel numbers 060-001-100-005-03 and 060-001-100-005-04 for another five (5) years; Seconded by Mr. Caverson.

Roll Call:

Yes: 10  
No: 0  
Absent: 1

Motion passes.



OTSEGO COUNTY LAND USE SERVICES, PLANNING AND ZONING DEPARTMENT

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**MEMORANDUM**

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**TO:** BAGLEY TOWNSHIP PLANNING COMMISSION

**FROM:** CHRIS CHURCHES  
DIRECTOR OF PLANNING & ZONING, CAPITAL PROJECTS & GRANTS  
OTSEGO COUNTY

**SUBJECT:** RE-ZONE OF FORMER GEORGIA PACIFIC PROPERTY

**DATE:** 3/9/2020

Bagley Township Planning Commission,

Otsego County Land Use has received a request to rezone a parcel located on the former 870 acre Georgia Pacific property. As I am sure most have heard, the property was recently purchased by Michigan Lumber & Wood Fiber, Inc. out of Manton, Michigan, with the intent of redeveloping the property into a wood processing facility. The purchase agreement between Georgia Pacific and Michigan Lumber & Wood Fiber, Inc. is contingent upon the rezone of this parcel. The parcel in question is approximately 53 acres in size and is currently zoned R-2 General Residential. The property is located on the North West side of the intersection of Dickerson Road and West Otsego Lake Drive. This is the only parcel of the former 870 acre Georgia Pacific property zoned R-2. The remaining roughly 820 acres is zoned Industrial. Michigan Lumber & Wood Fiber is requesting this parcel be re-zoned from General Residential (R-2) to Industrial (I).

Currently, the Future Land Use map shows this parcel as remaining residential for future use. However, while consistency with the Master Plan and Future Land Use Map is typically the main factor in determining the compatibility of the re-zone request, other criteria may also be used in determining the suitability of the request. These include:

1. Compatibility of the proposed zoning district with the surrounding area.
2. Similarity of use characteristics with other similarly zoned parcels. This is often measured in terms of traffic volumes, peak traffic periods, density considerations, etc.

3. Suitability of the property to be used as currently zoned.

The property is bound by West Otsego Lake Drive to the South and is adjacent to parcels zoned for uses similar to that which is proposed to the North and East. The parcel located to the West is zoned R-2 but is occupied by the Northland Sportsman's Club, who's operation is unlikely to be affected by the proposed re-zone or any future industrial use of the property. Re-zoning the parcel to Industrial would be consistent with the remaining 820 acres once occupied by Georgia Pacific. In addition, this property is vastly different in character to most other similarly residential zoned parcels in Otsego County. Most all other residentially zoned parcels are located in areas with much lower traffic volumes, and are adjacent to other residential and/or lower density use districts. This parcel is surrounded by industrial uses on its North and East sides, and has an active firearm shooting range on it's West side. This makes it highly undesirable and arguably unsuitable for use as it is currently zoned. Given the above facts, Otsego County Land Use Services recommends the re-zone of the property in question from General Residential (R-2) to Industrial (I) as proposed.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Churches", written in a cursive style.

Christopher Churches  
Director of Planning & Zoning, Capital Projects & Grants

**OTSEGO COUNTY  
PLANNING COMMISSION**

**PZRZ20-001  
REZONE  
010-017-400-005-03**

***Exhibit List***

- Exhibit #1:* Application for case PZRZ20-001 submitted by Applicant
- Exhibit #2:* Otsego County Zoning Map Effective Date March 20, 2010/Amended June 25, 2019
- Exhibit #3:* Otsego County Zoning Ordinance Effective March 20, 2010/Amended September 24, 2019
- Exhibit #4:* Copy of Otsego County Equalization Department record cards/Quit Claim 441/151
- Exhibit #5:* Site Plan
- Exhibit #6:* Statement of Consistency
- Exhibit #7:* Purchase Agreement dated October 11, 2019
- Exhibit #8:* Public Hearing Notice
- Exhibit #9:* Letter to Bagley Township Planning Commission dated March 11, 2020
- Exhibit #10:* Response from Bagley Township Planning Commission dated August 24, 2020 – Bagley Twp Board...*pending*
- Exhibit #11:* Map and list of parties notified
- Exhibit #12:* Receipt #01319759
- Exhibit #13:* Finding of Fact/PZRZ20-001
- Exhibit #14:* Future Land Use Map
- Exhibit #15:* Map of Current Businesses submitted by Applicant
- Exhibit #16:* Land Use Proposal submitted by Applicant

# OTSEGO COUNTY LAND USE SERVICES

1322 HAYES ROAD

GAYLORD MI 49735

PHONE: 989.731.7400 \* FAX: 989.731.7419

[www.otsegocountymi.gov](http://www.otsegocountymi.gov)

## REQUEST TO REZONE APPLICATION

**APPLICANT INFORMATION:**

Name: L & K Realty 2, LLC		Owner/Agent/Other <small>(Circle One)</small>
Address: PO Box 39, Fairview, Michigan, 48621		
Phone: 989-848-2100	Fax:	

**PROPERTY OWNER INFORMATION:** *(If Different from Applicant)*

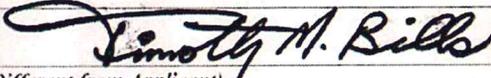
Name: GEORGIA-PACIFIC LLC		
Address: 133 Peachtree St, Atlanta, Georgia, 30303		
Phone:	Fax:	

**PROPERTY INFORMATION:**

Address: See property legal description attached		
Parcel Number: 010 - 017 - 400 - 005 - 03		
Acres: 51.35	Current Zoning District: Bagley Township <i>RD General Residential</i>	Current Use: Vacant
Requested Zoning: Industrial	Future Land Use Designation: I	

**ATTACHMENTS:** *Please submit the following items with the application*

- A Site Plan drawn to scale showing the following:
  - the entire parcel to be rezoned
  - adjacent roads and/or easements
  - existing and proposed curb cuts
  - existing improvements
  - existing and proposed utilities
  - adjacent uses and zoning districts
  - any unique natural features such as lakes, rivers, streams, wetlands, steep slopes...
- A copy of the deed(s) and an accurate legal description(s) of the parcel(s) to be rezoned.
- A statement of the consistency of the proposed rezone with the existing and future surrounding land uses and the anticipated impacts to the surrounding area with specific regard to traffic, infrastructure, environment, noise, public safety and visual considerations.

Signature of Applicant: 	Date: 2/20/20
Signature of Owner: <i>(If Different from Applicant)</i>	Date:

*\*\*\*Optional:* I hereby grant permission for members of the Township Planning Commission, Township Board, Otsego County Planning Commission and Zoning Administrator to enter the above described property for the purposes of gathering information related to the application.

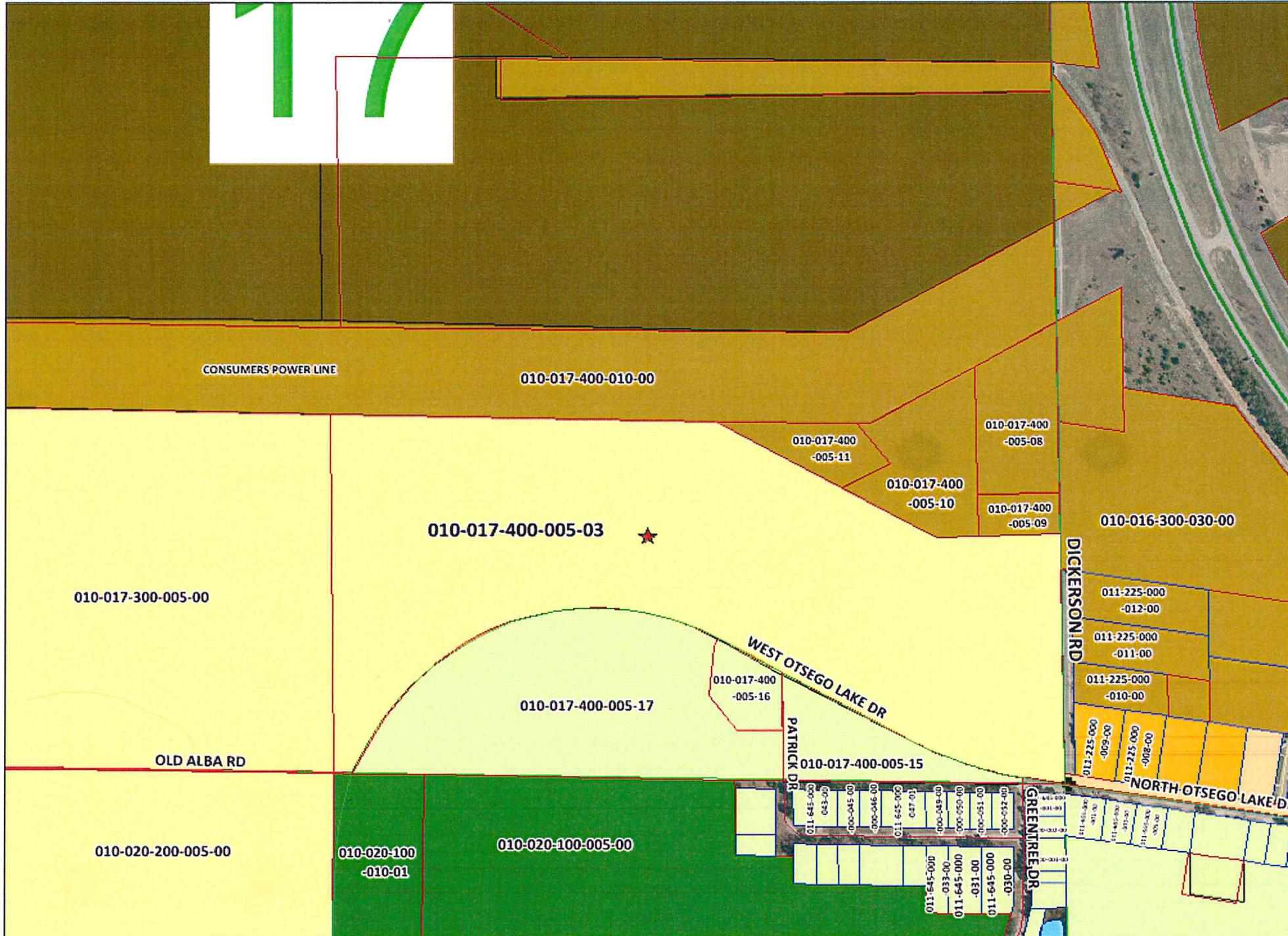
*\*\*\*Note to Applicant:* This permission is optional and failure to grant permission will not affect any decision on the applicant.

Signature of Property Owner:	Date:
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\*\*\*OFFICE USE ONLY\*\*\*

Date Application Received:	Permit No: <i>PRZ00-001</i>	Fee: <i>\$760</i>	Receipt Number: <i>01319759</i>
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PZRZ20-001 GEORGIA PACIFIC REZONE 010-017-400-005-03



**OTSEGO COUNTY ZONING MAP**  
**LEGEND**

- R-1 RESIDENTIAL
- R-2 GENERAL RESIDENTIAL
- R-3 RESIDENTIAL ESTATES
- RR RECREATION RESIDENTIAL
- FR FORESTRY RECREATION
- AR AGRICULTURAL RESOURCE
- B-1 LOCAL BUSINESS
- B-2 GENERAL BUSINESS
- B-3 BUSINESS, LIGHT MANUFACTURING
- I INDUSTRY
- HX HIGHWAY INTERCHANGE
- MUZ MAIN MULTIPLE USE ZONING MAIN STREET
- MUZ TWN CN MULTIPLE USE ZONING TOWN CENTER
- PUD PLANNED UNIT DEVELOPMENT
- STATE
- N/A

Parcel Number: 69-010-017-400-005-03

Jurisdiction: BAGLEY TOWNSHIP

County: OTSEGO

Printed on

03/05/2020

Grantor	Grantee	Sale Price	Sale Date	Inst. Type	Terms of Sale	Liber & Page	Verified By	Prcnt. Trans.			
Property Address		Class: 302 IND VACANT	Zoning: R-2	Building Permit(s)		Date	Number	Status			
Owner's Name/Address		School: Gaylord Community									
GEORGIA-PACIFIC CORPORATION PO BOX 105681 ATLANTA GA 30348-5681		P.R.E. 0%									
Tax Description		2020 Est TCV 137,000(Value Overridden)									
BEG @ S1/4 COR, TH N01°04'20"W 1321.69', TH S89°24'10"E 1395.1', TH S62°E 907.57', TH N88°43'E 468.36', TH S01°11'E 914.81', TH N81°34'30"W 128.38', TH NWLY ALG ARC OF 1440.0', RAD CURVE TO R 495.15', TH N61°52'25"W 991.88', TH WLY ALG ARC OF 954.93', RAD CURVE TO L 1950', TH N89°31'00"W 56.57' TO POB. SEC 17, T30N-R3W.		Improved	X	Vacant	Land Value Estimates for Land Table C-IOT.COMMERCIAL & INDUSTRIAL						
Comments/Influences		Public Improvements		* Factors *							
		Dirt Road		Description	Frontage	Depth	Front	Depth	Rate %Adj.	Reason	Value
		Gravel Road		RES			51.350	Acres	1,500	100	
		Paved Road		Flat Value:	51.35 Total Acres		Total Est. Land Value =		214,004		
		Storm Sewer									
		Sidewalk									
		Water Sewer									
		Electric Gas									
		Curb									
		Street Lights									
		Standard Utilities									
		Underground Utils.									
		Topography of Site									
		Level									
		Rolling									
		Low									
		High									
		Landscaped									
		Swamp									
		Wooded									
		Pond									
		Waterfront									
		Ravine									
		Wetland									
		Flood Plain									
		Year	Land Value	Building Value	Assessed Value	Board of Review	Tribunal/Other	Taxable Value			
Who	When	What	2020	68,500	0	68,500		68,500S			
			2019	68,500	0	68,500		68,500S			
			2018	68,500	0	68,500		68,500S			
			2017	68,500	0	68,500		68,500S			

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

Convey(s) and warrant(s) to Georgia Pacific Corporation, A Georgia Corporation

whose address is P.O. Box 558, Gaylord, Michigan 49735

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

Beginning at the South 1/4 post of Section 17, Town 30 North, Range 3 West, thence North 1 degree 04' 20" West 1321.69 feet, thence South 89 degrees 24' 10" East 1395.1 feet, thence South 62 degrees 00' East 907.57 feet, thence North 88 degrees 43' East 468.36 feet, thence South 1 degree 11' East 914.81 feet, thence North 81 degrees 34' 30" West 128.38 feet, thence Northwesterly along the arc of a 1440.0 foot radius curve to the right, 495.15 feet, thence North 61 degrees 52' 25" West 991.88 feet, thence westerly along the arc of a 954.93 foot radius curve to the left, 1950.0 feet, thence North 89 degrees 31' West 56.57 feet to the place of beginning, being a part of the South 1/2 of the Southeast 1/4, of Section 17, Town 30 North, Range 3 West.

This conveyance does not include oil, gas and mineral rights: Seller(s) reserves all oil, gas and mineral rights unto themselves with rights of ingress and egress to explore for and remove same.

for the full consideration of \$1.00 or other valuable consideration  
subject to restrictions, reservations and easements of record.

STATE OF MICHIGAN } RECORDED 18th DAY OF  
COUNTY OF OTSEGO } Dec A.D., 19 89 AT 11:45  
9 M.  
Audis J. Hancock  
REGISTER OF DEEDS

Dated this 8th day of December 19 89

Witnesses:

Signed and Sealed:

Susan J. Moden  
Susan J. Moden  
Annaliese M Ciszewski  
Annaliese M. Ciszewski

Dale J. Smith (L.S.)  
Marlene A. Smith (L.S.)

STATE OF MICHIGAN }  
COUNTY OF Otsego } ss.

The foregoing instrument was acknowledged before me this 8th day of December 19 89  
by Dale J. Smith and Marlene A. Smith

My commission expires ANNALIESE M. CISZEWSKI, NOTARY PUBLIC  
OTSEGO COUNTY, STATE OF MICHIGAN  
MY COMMISSION EXPIRES 12-7-92  
Annaliese M Ciszewski  
Annaliese M. Ciszewski  
Notary Public Otsego County, Michigan

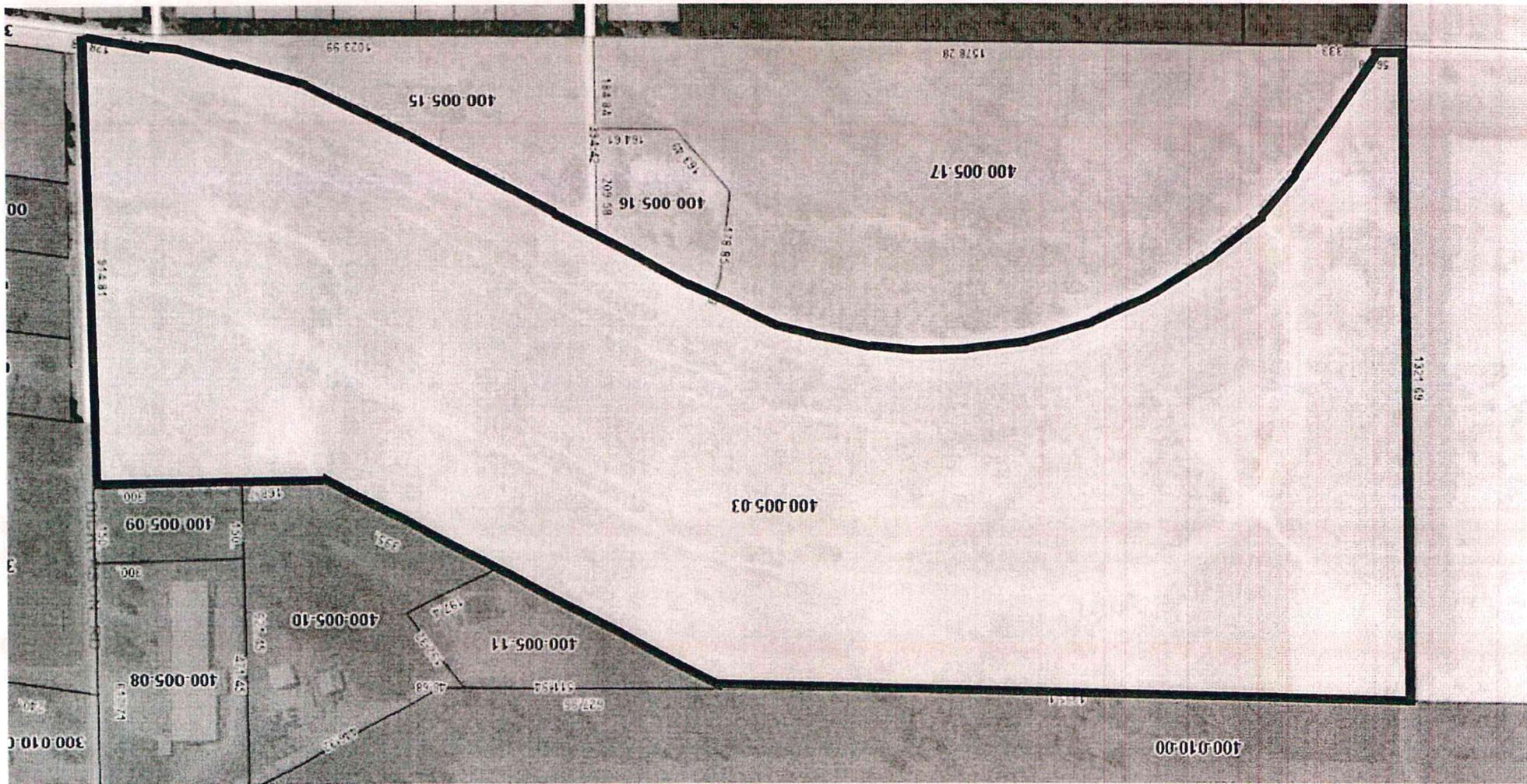
Instrument Susan J. Moden for  
Drafted by Alpine Title Company (89-4542) Business Address P.O.Box 597, Gaylord, MI 49735

OTSEGO COUNTY  
TREASURER'S OFFICE }  
Gaylord, Mich. } Dec 18, 1989  
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 collection.  
Evan Packer COUNTY TREASURER

City Treasurer's Certificate

Recording Fee \$5.00+\$1.00  
State Transfer Tax

When recorded return to Grantee  
Send subsequent tax bills  
Exhibit 4



## EXHIBIT A

### LEGAL DESCRIPTION FOR PROPERTY

The land referred to herein below is situated in the Township of Bagley, County of Otsego, State of Michigan, and is described as follows:

A parcel of land in the Southeast 1/4 of Section 17, Town 30 North, Range 3 West, described as follows: Beginning at the South 1/4 corner of said Section; thence North 00 degrees 59'47" West, on the North-South 1/4 line of said Section, 1321.87 feet to a previously surveyed South Consumers Property line; thence South 89 degrees 20'02" East, on said previously surveyed South Consumers Property line, 1394.99 feet; thence South 61 degrees 55'43" East 907.57 feet; thence North 88 degrees 47'17" East 468.54 feet to the East line of said Section; thence South 01 degree 06'02" East, on said East section line, 914.81 feet to the Southeast corner of said Section and the centerline of Old Alba Road; thence North 81 degrees 30'13" West, on said centerline, 128.38 feet to a point on a 1440.00 feet radius curve to the right, having a chord bearing of North 71 degrees 39'11" West 492.71 feet; thence along the arc of said curve, and on said centerline, 495.15 feet; thence North 61 degrees 48'08" West, on said centerline, 752.50 feet to a point on a 954.93 feet radius curve to the left, having a chord bearing of South 69 degrees 27'22" West 1435.73 feet; thence along the arc of said curve, and on said centerline, 1624.73 feet to the South line of said Section and said centerline; thence North 89 degrees 25'56" West, on said South section line and said centerline, 56.47 feet to the point of beginning.

February 20, 2020

STATEMENT OF PROPOSED REZONING

PARCEL 010-017-400-005-03

This applicant respectfully requests a rezoning from R-2 (General Residential) to I (Industrial) for the following reasons:

1. To make the zoning of this undeveloped parcel consistent with zoning of adjacent parcels to the north and north-east of the property.
2. To satisfy due diligence between transferring parties.
3. To eliminate ambiguity as to parcel's future use, with consideration to adjacent parcels current zoning and development.
4. The size and location of the parcel is suitable for commercial development given its proximity to other businesses, infrastructure, and current traffic conditions on Dickerson Road and West Otsego Lake Drive.
5. Parcel already contains three disconnected natural gas extraction sites as well as access roads for Consumer's Energy Company, the owner of the adjacent parcel to north.

At present time, there are no specific development plans for this parcel. Any future development of the land would be completed in adherence to Bagley Township and Otsego County ordinances and with proper permits.

Sincerely,

Timothy Bills  
L&K Realty 2, LLC

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of this 11<sup>th</sup> day of October, 2019, by and between **GEORGIA-PACIFIC LLC**, a Delaware limited liability company, having an address of 133 Peachtree Street, Atlanta, Georgia 30303 ("Seller"), and **L&K REALTY 2, LLC**, a Michigan limited liability company, having an address of P.O. Box 97, 2094 Weaver Road, Fairview, Michigan 48621 ("Buyer").

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by Seller and Buyer, Seller and Buyer agree as follows:

### 1. Conveyance.

Upon the terms and conditions herein set forth, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller and take title to that certain real property located in Otsego County, Michigan and being more particularly described on Exhibit A attached hereto and made a part hereof (the "Land"), together with all of Seller's right, title and interest in and to any and all buildings and other improvements located thereon (the "Improvements"), and subject to Section 10, all rights, privileges and easements appurtenant thereto, (the Land, together with the Improvements and rights, privileges and easements being hereinafter collectively referred to as the "Property").

### 2. Purchase Price and Payment.

The total purchase price for the Property (the "Purchase Price") shall equal the sum of **ONE HUNDRED AND NO/100 DOLLARS (\$100.00)** to be paid in cash or other immediately available funds to Seller at Closing. Within three (3) business days of the Effective Date, Buyer will deposit with Calloway Title and Escrow, LLC, whose address is 4170 Ashford-Dunwoody Road, Suite 285, Atlanta, Georgia 30319, Attention: Catherine Lindley (the "Title Company"), in escrow, the sum of Fifty and No/100 Dollars (\$50.00) as earnest money (said sum referred to herein as the "Earnest Money") to be applied as partial payment of the Purchase Price at Closing, or otherwise paid to Seller or refunded to Buyer as set forth herein. In the event Buyer fails to pay the Earnest Money to the Title Company within the time period specified in this Section 2, then Seller shall have the sole option to immediately terminate this Agreement upon notice to Buyer, at which time this Agreement shall be null and void and of no further force or effect and neither party shall have any rights or obligations to the other except those which expressly survive termination hereof. Notwithstanding anything to the contrary set forth herein, for income tax reporting purposes, any and all interest earned on any sum deposited with the Title Company hereunder shall be deemed income attributable to Buyer.

### 3. Limitation on Representations and Warranties; Assumption and Release.

(a) Any documents, title commitments, title exceptions, assessments, surveys, plats, plans, reports or studies (collectively, "Review Documents") made available to Buyer or Buyer's Affiliates by Seller or Seller's Affiliates are provided as information only. Buyer shall not rely upon Seller's or Seller's Affiliates' provision of any Review Documents in lieu of conducting its own due diligence. Except for any express representations and warranties

contained in Section 18, Seller has not made, does not make, and has not authorized anyone else to make any representation as to: (i) the accuracy, reliability or completeness of any of the Review Documents; (ii) the availability of railroad, water, sewer, electrical, gas or other utility services; (iii) the Environmental Condition of the Property; (iv) the habitability, merchantability or fitness for a particular purpose of all or any portion of the Property; (v) the number of acres contained in the Property or whether any portion of such Property is able to be developed; (vi) the zoning, subdivision or land use laws or requirements applicable to the Property or the conformance of the Property with any such zoning, subdivision or land use laws or requirements; or (vii) any other matter or thing affecting or relating to the Property, any buildings or other improvements located on the Property, the condition of any of them, or this Agreement. Subject to any express representations and warranties of Seller contained in Section 18, upon the conveyance of the Property to Buyer, Buyer shall accept the Property in its present environmental and physical condition on an "AS-IS," "WHERE-IS," **WITH ALL FAULTS AND DEFECTS** basis regardless of how such faults and defects were caused or created (whether by Seller's or Seller's Affiliates' negligence, actions or fault or otherwise), and acknowledges that: (y) without this acceptance, this sale would not have been made and (z) Seller, nor Seller's Affiliates, shall be under any obligation whatsoever to undertake any improvement, repair, modification, alterations, removal, remediation or other work of any kind with respect to all or any portion of the Property.

(b) Buyer expressly assumes any and all liability related to any Environmental Conditions and any Hazardous Materials, and Buyer, for itself and Buyer's Affiliates, waives, relinquishes, releases and holds harmless the Released Parties from any and all Losses/Claims arising out of or related to the Environmental Condition of the Property.

(c) Buyer expressly acknowledges that in entering into this Agreement, Buyer is not relying on any representations or warranties from or by Seller or Seller's Affiliates. Instead, Buyer is responsible for, has conducted or shall conduct such due diligence as it deems necessary to protect its interest in purchasing the Property and in evaluating its liability in doing so. Buyer has examined and inspected or shall fully examine and inspect the Property and become thoroughly familiar with the title, physical and Environmental Condition, status and suitability of the Property.

(d) Upon the Closing, except as otherwise expressly provided in Section 18 or the Deed delivered by Seller to Buyer at Closing, Buyer shall assume the risk that adverse matters, including, without limitation, adverse physical, zoning and Environmental Conditions, may not have been revealed by Buyer's due diligence investigations; and Buyer, upon Closing, for itself, and Buyer's Affiliates, shall, except as otherwise expressly provided in Section 18 or the Deed delivered by Seller to Buyer at Closing, be deemed to have forever waived, relinquished, released and agreed to hold harmless Seller and Seller's Affiliates (collectively, the "**Released Parties**"), and Buyer hereby forever waives, relinquishes, releases and agrees to indemnify and hold harmless the Released Parties, upon Closing, from and against any and all Losses/Claims, which Buyer or Buyer's Affiliates, a Governmental Body or any other person or entity might have asserted or alleged or might hereafter assert or allege against any of the Released Parties at any time by reason of, or arising out of, any latent or patent construction defects or physical conditions, violations (or alleged violations) of, or liability (or alleged liability) under any

applicable Environmental Law or other Legal Requirement or Order, and any and all other acts, omissions, events, circumstances or matters regarding the Property regardless of how caused or created. By initialing below, Buyer hereby specifically acknowledges that Buyer has carefully reviewed this subsection and discussed its import with legal counsel and that the provisions of this subsection are a material part of this Agreement.

BUYER'S INITIALS TB

(e) The provisions of this Section 3 are intended to be for the benefit of, and shall be enforceable by, Seller and each of the other Released Parties and are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such person or entity may have by contract or otherwise (if any). The obligations of Buyer under this Section 3 shall not be terminated or modified in such a manner as to adversely affect any Released Party to whom this Section 3 applies without the consent of the affected Released Party, it being expressly agreed that the Released Parties to whom this Section 3 applies shall be third party beneficiaries of this Section 3. The parties acknowledge and agree that the provisions set forth in Section 3 are a material inducement for Seller to enter into this Agreement and that Seller would not enter into this Agreement were it not for the inclusion of these provisions.

BUYER'S INITIALS TB

(f) The provisions contained in this Section 3 shall expressly survive Closing and delivery and recording of the Deed or the termination for any reason of this Agreement.

4. Rezoning; Restrictive Covenants.

(a) As soon as reasonably practicable after the Effective Date, Buyer, at Buyer's sole cost and expense, shall commence the process to rezone the Land from its current residential zoning status to an industrial/manufacturing zoning status as set forth in the Otsego County Zoning Ordinance (the "Rezoning"). Buyer shall be responsible for leading the Rezoning effort, which activities shall include, without limitation, the preparation of any applications or submittals. Seller agrees to cooperate with Buyer in the Rezoning process, provide information as appropriate and to sign any documents associated with the Rezoning that require the current owner to sign. Buyer shall not submit any written material related to the Rezoning without allowing Seller to review and provide comments to said submittal. The Rezoning shall be deemed to be completed when all required approvals from the applicable governmental agencies have been received and there are no further public comment or appeals periods outstanding (the "Rezoning Completion").

(b) In the event the Rezoning Completion has not occurred by the date that is one (1) year from the Effective Date, (the "Outside Date") this Agreement shall automatically terminate and the Deposit, less Twenty-Five and No/100 Dollars (\$25.00) which shall be delivered to Seller as consideration for entering into this Agreement and for Buyer's right to examine and test the Property during the Review Period, shall be returned to Buyer, and except as expressly provided to the contrary in this Agreement, Seller and Buyer shall have no further

rights, duties, obligations or liabilities under this Agreement. Notwithstanding the foregoing, in the event the Rezoning is not completed by the Outside Date, the parties may mutually agree to extend the Outside Date.

(c) At Closing, the Deed or other appropriate recordable document shall reflect the following restrictive covenants: (i) the Land may not be rezoned or utilized for any purpose other than industrial purposes; (ii) there shall be no use of the groundwater from or on the Land for drinking water purposes; (iii) the Land and the Improvements may not be used, occupied or leased for any school, day care center, playground or any similar use by or for children; and (iv) there shall be no drilling for groundwater and no wells may be installed on the Property for drinking water purposes (collectively, the "Restrictive Covenants"). The foregoing Restrictive Covenants shall not be deemed to prohibit or prevent the Property from being connected to any city or municipal source of potable water.

(d) Buyer further agrees that the Restrictive Covenants are an integral part of the consideration for the sale of the Property and shall be maintained by Buyer, its successors, assigns and any third party to whom Buyer may seek to transfer or convey any interest in the Property. In the event Buyer or any of its successors or assigns breaches any of the Restrictive Covenants, Seller and any entity related to Seller, in addition to such damage remedies as Seller may have, may pursue any other remedies available to it in law or equity including, without limitation, specific performance or other injunctive relief. Buyer agrees to indemnify Seller and the other Released Parties against, and hold Seller and the other Released Parties harmless from, any and all losses, costs, claims, expenses (including attorneys' fees and court costs), suits, actions, judgments, fines, penalties or damages arising out of or resulting from Buyer's breach of the Restrictive Covenants. The provisions contained in this Section 4 shall expressly survive Closing and delivery and recording of the Deed.

## **5. Due Diligence/Review Period.**

(a) Buyer shall have until the date which is ninety (90) days after the Effective Date (the "Review Period") to examine and test the Property, including, without limitation, to conduct land, soil, engineering, zoning, environmental, wetlands and feasibility studies, and Seller grants permission to Buyer, its agents and independent contractor(s) to enter upon the Property for the sole purposes enumerated in this Section 5(a). All such work and studies shall be at the sole cost and expense of Buyer and shall be nondestructive and shall not be invasive or involve subsurface investigations of the Property, except with the prior written consent of the Seller, which consent shall be granted or withheld in Seller's sole discretion. With respect to any such invasive or subsurface testing as Seller may approve, Buyer shall notify Seller at least five (5) business days in advance of any proposed soil or groundwater testing or any other invasive sampling, and shall conduct only such testing as may be approved by Seller in its sole discretion and with such conditions as Seller may require, including, but not limited to, requiring (i) an employee or representative of Seller be present for such testing and (ii) that Seller's representative be permitted to take split samples of any samples taken by Buyer's representative. Upon completion of tests, studies and entry pursuant to this Section 5(a), Buyer shall restore the Property to substantially the same condition which existed prior to any such tests, studies or

entry. Buyer shall provide to Seller a copy of any environmental site assessment obtained by Buyer, promptly after the same is made available to Buyer. Buyer shall keep the Property free from liens relating to or arising out of any tests, studies or entry by Buyer or its agents and independent contractors pursuant to this Section 5(a). Buyer agrees to abide by any safety rules or rules of conduct imposed by Seller with respect to Buyer's access.

(b) Prior to Buyer or any of Buyer's agents, contractors or representatives (collectively, "Buyer's Designees") entering onto the Property to conduct the inspections and tests described in Section 5(a), Buyer shall obtain and maintain, and shall cause each of Buyer's Designees to maintain (and shall deliver to Seller sufficient evidence thereof), general liability insurance, from an insurer reasonably acceptable to Seller, in the amount of at least Two Million Dollars (\$2,000,000.00) combined single limit for personal injury and property damage per occurrence, which insurance shall provide coverage against any claim for personal injury or death or property damage caused by Buyer or any of Buyer's Designees in connection with such inspections or tests and Seller shall be named as an additional insured by virtue of an additional insured endorsement.

(c) Buyer hereby agrees that Buyer shall be completely responsible for all acts and omissions of itself and all of Buyer's Designees in exercising the rights and privileges granted in Section 5(a), and Buyer hereby indemnifies Seller and the other Released Parties and agrees to pay, indemnify, protect, defend (with counsel reasonably acceptable to Seller) and hold Seller and the other Released Parties free and harmless from and against any and all Losses/Claims (including, without limitation, the cost and expense of removing or bonding any liens affecting the Property) ever suffered or incurred by Seller or the other Released Parties by reason of the exercise of the rights and privileges granted to Buyer in Section 5(a) or the breach of Buyer's covenants to restore the Property contained in Section 5(a). The indemnity contained in this Section 5(c) shall expressly survive Closing and delivery and recording of the Deed or the termination of this Agreement for any reason.

(d) In the event Buyer determines for any reason, in Buyer's sole discretion, that the Property is not suitable for Buyer's intended purposes, then no later than 5:00 P.M. (Atlanta, Georgia time) on the last day of the Outside Date, Buyer may provide to Seller written notice of Buyer's intention not to purchase the Property, in which event this Agreement shall be terminated and the Earnest Money, less One Hundred and No/100 Dollars (\$100.00) which shall be delivered to Seller as consideration for entering into this Agreement, shall be returned to Buyer, and except as expressly provided to the contrary in this Agreement, Seller and Buyer shall have no further rights, duties, obligations or liabilities under this Agreement. In such, within ten (10) days after expiration of the Outside Date, as applicable, Buyer shall return to Seller all of the Review Documents and deliver to Seller copies of all plans, analyses, reports and other written information concerning the Property which were obtained by Buyer during its review of the Property, and this obligation shall survive any termination of this Agreement.

## 6. Title and Survey.

(a) Buyer acknowledges receipt of a copy of a commitment for an owner's policy of title insurance for the Property from the Title Company dated December 10, 2018 and

July 9, 2019<sup>1</sup> (the "**Title Commitments**"). During the Review Period, Buyer may obtain (i) an ALTA/ACSM land title survey of the Property (the "**Survey**"), certified to Buyer, Seller and Title Company, prepared by a registered land surveyor in the State of Michigan and (ii) updates to the Title Commitments from the Title Company. Seller shall permit representatives of Buyer to enter upon the Property for the purpose of preparing such Survey and shall otherwise reasonably cooperate with Buyer in the preparation of the Survey. Within three (3) days of receipt of the Survey, but in no event later than the delivery of the Title Objections to Seller, Buyer shall provide a copy of same to Seller.

(b) No later than ten (10) days prior to the expiration of the Review Period, Buyer may furnish to Seller a written statement of objections to any material and adverse matter affecting the title to the Property as disclosed in the Title Commitment or the Survey (such objections set forth in any such statement are collectively referred to herein as the "**Title Objections**"). All matters as disclosed in the Title Commitment or the Survey which are not timely raised as Title Objections in the manner set forth above shall be deemed to constitute Permitted Exceptions. Within five (5) business days after Seller's receipt of Buyer's Title Objections, if any, Seller may notify Buyer as to which Title Objections Seller is willing to attempt to cure, remove, or cause the Title Company to commit to insure over, prior to Closing; provided, however, that Seller shall have no obligation to cure, remove or cause the Title Company to commit to insure over any of Buyer's Title Objections, except for any monetary liens created by Seller, which Seller shall be obligated to cure or cause the Title Company to insure over prior to, and as a condition of, Closing (such obligation to cure or insure over monetary liens created by Seller being referred to herein as a "**Seller's Mandatory Cure Obligation**"). Seller's failure to timely respond to any of Buyer's Title Objections, if any, shall be deemed to be Seller's election not to attempt to cure, remove or cause the Title Company to commit to insure over such Title Objections, subject to Seller's Mandatory Cure Obligation. If Seller elects to attempt to cure, remove or cause the Title Company to commit to insure over any Title Objections, Seller shall have until the Closing to do so, and Seller may use proceeds paid at Closing by Buyer for such purpose. If Seller notifies Buyer (or is deemed to have notified Buyer) of its election not to attempt to cure, remove or cause the Title Company to commit to insure over any of the Title Objections as set forth above, then Buyer may elect to either: (i) terminate this Agreement by providing written notice of such termination to Seller on or before the expiration of the Review Period, whereupon the Earnest Money, less Fifty and No/100 Dollars (\$50.00) which shall be delivered to Seller as consideration for entering into this Agreement, shall be returned to Buyer and, except as expressly provided to the contrary in this Agreement, Seller and Buyer shall have no further rights, duties, obligations or liabilities under this Agreement; or (ii) waive such Title Objections and proceed to Closing without a reduction in the Purchase Price, in which case such Title Objections shall become Permitted Exceptions. Buyer's failure to provide written notice to Seller of such election prior to the expiration of the Review Period shall be deemed to be an election by Buyer to waive the Title Objections as provided in clause (ii) above. In the event Seller, in its sole discretion, elects to attempt to cure, remove or cause the Title Company to commit to cure some or all of Buyer's Title Objections as set forth above, but fails to do so by Closing, Buyer's sole and exclusive remedy for such failure shall be to elect by written notice given to Seller not later than Closing, one of the two remedies

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<sup>1</sup> Confirming date of most recent commitment for this Parcel

set forth above in clauses (i) and (ii) of this Section 6(b). Buyer's failure to provide written notice to Seller of such election prior to Closing shall be deemed to be an election by Buyer to waive such Title Objections as provided in clause (ii) above, in which case such Title Objections shall be deemed Permitted Exceptions.

(c) At any time after the expiration of the Review Period but before the expiration of the Outside Date, Buyer may, at its cost and expense, obtain updates to either or both of the Title Commitment and the Survey, and, to the extent any new material and adverse matters affecting title to the Property which were not previously revealed in the Title Commitment or the Survey are shown thereon, Buyer may object to the same on or before the earlier of the Closing Date and five (5) days after receipt of the version of the Title Commitment or Survey first revealing the same, and such objections shall be deemed to be Title Objections. Buyer's failure to object within such time frame shall be deemed to be a waiver of Buyer's right to object to the same, and after such failure, any such new matters shall be deemed Permitted Exceptions. Seller and Buyer shall have the same rights with respect to such Title Objections as set forth in Section 6(b), except that Seller and Buyer shall have until the Closing to make the elections set forth in Section 6(b). In the event Seller, in its sole discretion, elects to attempt to cure, remove or cause the Title Company to commit to cure some or all of such new Title Objections, Seller may extend the Closing Date by up to thirty (30) days for such purpose.

7. **Deed.**

Seller agrees to convey the Property to Buyer at the Closing by a covenant deed in the form of Exhibit C attached hereto and incorporated herein by this reference (the "**Deed**"), free and clear of all liens and other encumbrances, and covenanting against Seller's acts, except the following permitted exceptions (collectively, the "**Permitted Exceptions**"):

(a) all the matters listed in Exhibit D attached hereto and incorporated by this reference;

(b) such matters as would be disclosed by a current and accurate survey and inspection of the Property;

(c) existing zoning, subdivision and Environmental Laws and ordinances;

(d) taxes or assessments for the year of Closing, which are not yet due and payable; and

(e) all matters which become Permitted Exceptions pursuant to Section 6 hereof.

8. **Closing.**

The consummation of the purchase and sale transaction contemplated herein (the "**Closing**") shall take place at the office of the Title Company on the date which is the later of (i) ten (10) days after the expiration of the Review Period or (ii) ten (10) days after the Rezoning Completion occurs (the "**Closing Date**"). Notwithstanding the foregoing, there shall be no requirement that Seller and Buyer physically meet for the Closing, and all documents and funds

to be delivered at the Closing shall be delivered into escrow with the Title Company, unless the parties hereto agree otherwise.

**9. Apportionment of Taxes and Other Closing Costs.**

(a) All real estate taxes and assessments, both general and special, relating to the Property for the tax year in which the Closing occurs shall be prorated on the calendar year basis as of 11:59 PM of the day before the day of Closing; such that Seller shall be responsible for all expenses allocable to the Property for all periods prior to the day of Closing, and Buyer shall be responsible for all expenses allocable to the Property for all periods from and after the day of Closing. Real estate taxes and special assessments shall be prorated based upon the amount of said taxes for the year in which the Closing occurs if said amount is known at the time of the Closing; and if said amount is not known at the time of Closing, then such taxes shall be prorated on the basis of current applicable tax or millage rates and the most recent assessed value of the Property after making a fair and reasonable allocation of such assessment between such Property and any other property covered by such assessment.

(b) At Closing, Buyer shall pay the following: (i) the costs of the title examination and the costs of updates to the Title Commitment; (ii) any and all premiums, fees and costs relating to an owner's policy of title insurance; (iii) any and all premiums, fees and costs relating to a lender's title insurance policy; (iv) any endorsements to the lender's or owner's policies of title insurance; (v) the costs and expenses, if any, of its due diligence and investigation of the Property; (vi) all costs of recording the Deed and any mortgage placed on the Property; and (vii) the costs of the Survey. At Closing, Seller shall pay any state, county and city excise, transfer, deed and stamp taxes applicable to the sale of the Property. Buyer and Seller shall equally split all escrow fees. Each party shall pay its own attorneys' fees and expenses in connection with this Agreement. All other costs shall be paid by the party incurring such costs. Buyer shall be responsible for payment of, and shall indemnify and hold Seller harmless from, any and all rollback or change in use or classification taxes of the Property, assessments, penalties and interest, or similar such taxes, assessments, penalties and interest, or any portion thereof, after Closing, and such obligation shall expressly survive the Closing.

**10. Utilities/Certain Permits.**

Seller shall terminate any utility services provided to the Property, if any, on or before Closing, and Seller shall be responsible for all utilities provided to the Property for the period prior to Closing. Buyer shall be responsible for obtaining its own accounts, and for all charges, for all utility services to be provided to the Property from and after Closing. This Section 10 shall survive Closing and delivery and recording of the Deed.

**11. Condemnation and Casualty Loss.**

If, prior to Closing, the value of the Property is materially impaired by fire or other casualty, or exercise of eminent domain powers, Buyer or Seller may terminate this Agreement by giving written notice to the other party prior to Closing, in which case the Earnest Money shall be refunded to Buyer, all rights and obligations of the parties shall expire and this Agreement shall become null and void, except for obligations which expressly survive

termination. If this Agreement is not terminated in the event of condemnation proceedings, Seller will assign all of its interest in and to any condemnation award to Buyer at Closing. If this Agreement is not terminated in the event of a fire or other casualty, Seller will assign all of the proceeds of any insurance, if any, with respect to such loss to Buyer at Closing less any expenses incurred to obtain the same.

**12. Broker's Commission.**

(a) All negotiations relative to this Agreement and the purchase and sale of the Property as contemplated by and provided for in this Agreement have been conducted by and between Seller and Buyer without the intervention of any person or other party as agent or broker, with the exception of Jones Lang LaSalle Brokerage, Inc., who has acted as agent for Seller ("Seller's Broker"). Seller, Buyer and Seller's Broker warrant and represent to each other that, other than with regard to Seller's Broker by Seller, Seller and Buyer have not entered into any agreement or arrangement and have not received services from any broker or broker's employees or independent contractors which would give rise to any claim of lien or lien against the Property, and there are and will be no broker's commissions or fees payable in connection with this Agreement or the purchase and sale of the Property by reason of their respective dealings, negotiations or communications except a commission payable to Seller's Broker pursuant to a separate, written agreement (the "Commission"). Seller's Broker agrees that, notwithstanding anything to the contrary contained in this Agreement, if the purchase and sale of the Property is not consummated in accordance with this Agreement, regardless of the reason or the party at fault, and regardless of whether such failure results from the misconduct, bad faith act or breach or default of a party under this Agreement, no commission, fee or other charge shall have been earned by or be payable to Seller's Broker, and neither Seller nor Buyer shall be obligated or liable to Seller's Broker for any commission, fee or other charge of any kind in regard to this Agreement or the purchase and sale of the Property. If the purchase and sale of the Property is consummated in accordance with this Agreement, payment of the Commission shall constitute full and complete payment and satisfaction of any and all commissions, fees, charges and claims of Seller's Broker and such party's agents, employees, representatives and affiliates arising from, in connection with or with respect to this Agreement and the purchase and sale of the Property. Seller's Broker acknowledges that such party is executing this Agreement for the sole purpose of setting forth such party's rights to the payment of a commission or fee in connection with the purchase and sale of the Property and such party's covenants as contained in this Section 12. Seller's Broker agrees that such party has no other rights with respect to the payment of a commission or fee in connection with this Agreement or the purchase and sale of the Property, except as specifically set forth in this Section 12. Seller, Buyer and Seller's Broker shall and do each hereby indemnify, defend and hold harmless each of the others from and against any and all liabilities, damages, losses, costs and expenses (including attorneys' fees and expenses) in any manner arising out of, by reason of or in connection with the claims, demands, actions and judgments of any and all brokers, agents and other intermediaries alleging a commission, fee or other payment to be owing by reason of a breach of such party of its representation set forth above

(b) Seller's Broker agrees to provide at Closing a sworn affidavit with respect to the payment of the compensation due Broker at Closing in connection with the transactions contemplated by this Agreement and waiving and releasing any and all lien rights under the laws

of the State of Michigan, if any, with respect to the Property, and running in favor of Buyer, Seller, and Buyer's title insurer.

**13. Default.**

(a) **Buyer Default.** If Buyer fails to perform any material obligation under this Agreement, Seller shall terminate this Agreement by notice to Buyer and Title Company, whereupon this Agreement shall be of no further force or effect, except for those obligations that expressly survive termination hereof, and the Title Company shall pay the Earnest Money to Seller, as full and agreed upon liquidated damages, consideration for the execution of this Agreement and in full settlement of all claims whereupon the parties hereto shall be relieved of all obligations hereunder. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT SELLER'S DAMAGES IN THE EVENT OF SUCH A BREACH OF THIS AGREEMENT BY BUYER WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT THE AMOUNT OF THE EARNEST MONEY IS THE PARTIES' BEST AND MOST ACCURATE ESTIMATE OF THE DAMAGES SELLER WOULD SUFFER IN THE EVENT THE TRANSACTION PROVIDED FOR IN THIS AGREEMENT FAILS TO CLOSE DUE TO BUYER'S DEFAULT, AND THAT SUCH ESTIMATE IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT.

(b) **Seller Default.** If the Closing does not occur due to Seller's failure or refusal to perform its obligations hereunder for any reason other than Buyer's default hereunder, or if Seller otherwise fails to perform its obligations under this Agreement, then Buyer, as Buyer's sole and exclusive remedy, shall terminate this Agreement by notice to Seller and the Title Company in which case: (i) the Title Company shall return the Deposit to Buyer, (ii) Seller shall reimburse to Buyer for Buyer's reasonable, actual documented third-party out-of-pocket costs incurred in connection with this Agreement and the transaction contemplated hereby up to a maximum aggregate amount of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00), and (iii) this Agreement shall be of no further force or effect except for obligations which expressly survive termination. Buyer agrees that the foregoing remedy shall be the sole and exclusive remedy available to Buyer in the event of a default by Seller, and Buyer hereby waives any and all other rights, in equity and at law (including, without limitation, the right to specific performance or any consequential or other damages), which it might otherwise have against Seller in connection with any such default.

(c) Nothing in this Section 13 shall limit a party's right to enforce any indemnification made in its favor as provided in this Agreement.

**14. Notices.**

Any notice required or permitted to be given hereunder shall be in writing, sent to the recipient by nationally-recognized overnight delivery service or U.S. registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

If to Seller      Georgia-Pacific LLC

133 Peachtree Street, N.E.  
Atlanta, Georgia 30303  
Attention: Global Corporate Real Estate Department  
Time Zone: Eastern

With a copy to: Georgia-Pacific LLC  
133 Peachtree Street, N.E.  
Atlanta, Georgia 30303  
Attention: Law Department – Real Estate  
Time Zone: Eastern

If to Buyer: L&K Realty 2, LLC  
P.O. Box 97  
2094 Weaver Road  
Fairview, Michigan 48621  
Time Zone: Eastern

With a copy to: Kuiper Kraemer PC  
180 Monroe Ave NW  
Suite 400  
Grand Rapids, MI 49503  
Attn: Holly A. Jackson  
Time Zone: Eastern

For all purposes hereunder, any such notice shall be deemed to have been properly given on the earliest of (a) the same day it is deposited with a nationally-recognized overnight delivery service with all charges prepaid in full or (b) three (3) business days after depositing the same with the U.S. Postal Service, with postage fully prepaid.

**15. Assignment.**

Buyer shall not, without Seller's prior written consent, which may be granted or withheld in Seller's sole discretion, assign or transfer Buyer's rights or obligations hereunder to any person, firm, partnership, corporation or other entity, whether by operation of law or otherwise. In the event Seller consents to any assignment of Buyer's rights under this Agreement, such assignment shall not relieve Buyer of any of its obligations hereunder, whether accruing before or after the effective date of such assignment, and Buyer shall remain jointly and severally liable with such approved assignee for any and all of Buyer's obligations under this Agreement regardless of when the same accrued. Any purported or attempted assignment in breach of the provisions contained in this Section shall be void *ab initio*, and shall constitute an immediate event of default by Buyer hereunder.

**16. Exchange.**

Either or both of Seller and Buyer may assign its rights and obligations under this Agreement to a qualified intermediary in order to effectuate a like-kind exchange of property under Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"). The other

party agrees to assist and cooperate with the exchanging party in such exchange at no additional cost, expense or liability to the cooperating party and the cooperating party further agrees to execute any and all documents as are reasonably necessary in connection with the exchange. No party's obligations hereunder shall be contingent upon the successful achievement of a like-kind exchange under Section 1031 of the Code, no party shall incur any liability in addition to that imposed under this Agreement as a result of cooperating with an exchanging party, and no party shall be relieved of liability under this Agreement on account of any assignment made in order to effectuate an exchange.

**17. Closing Documents.**

At the Closing, the Seller shall execute and deliver to Buyer, through escrow with the Title Company, the following: (a) the Deed, (b) a Bill of Sale, in the form of, and on the terms and conditions set forth in, that attached hereto as Exhibit E, conveying Seller's interest in the Personal Property, (c) a non-foreign affidavit as required under the Code in the form of Exhibit F attached hereto and incorporated herein by this reference, and such accurate statement or affidavit as may be required for purposes of any applicable Michigan withholding tax law, (d) a transfer tax document, if necessary, under Michigan law, (e) a Seller's Affidavit, in the form of, and on the terms and conditions set forth in, that attached hereto as Exhibit G, with respect to the Property, and (f) a closing statement between Seller and Buyer setting forth the Purchase Price and all adjustments thereto (the "Closing Statement"). At the Closing, the Buyer shall execute and deliver to Seller, through escrow with the Title Company, the following: (w) a transfer tax document, if necessary, under Michigan law, (x) such evidence of Buyer's authority to purchase the Property as reasonably required by the Title Company, (y) permit transfer(s) documents described in Section 10, if necessary, and (z) the Closing Statement.

**18. Seller's Representations and Warranties.**

Seller hereby represents and warrants to Buyer as follows:

(a) **Organization and Good Standing.** Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware.

(b) **Authority.** All action on the part of Seller necessary for the authorization, execution, delivery, and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby have been taken.

(c) **Enforceability.** This Agreement is a legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws from time to time in effect that affect creditors' rights generally and by legal and equitable limitations on the availability of specific remedies.

**19. Representations and Warranties of Buyer.**

Buyer hereby represents and warrants to Seller as follows:

(a) **Authority.** All action on the part of Buyer necessary for the authorization, execution, delivery, and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby have been taken.

(b) **Enforceability.** This Agreement is a legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws from time to time in effect that affect creditors' rights generally and by legal and equitable limitations on the availability of specific remedies.

(c) **Funds.** Buyer has sufficient available funds to pay the Purchase Price at Closing and to close the transactions contemplated by this Agreement.

## 20. **Conditions of Seller's Obligations.**

Seller's obligation to consummate the purchase and sale of the Property on the Closing Date shall be subject to the satisfaction or performance of the following terms and conditions, any one or more of which may be waived in writing by Seller, in whole or in part, on or as of the Closing Date:

(a) The representations and warranties of Buyer in this Agreement (and the substantive facts contained in any representations and warranties limited to Seller's knowledge and belief) shall be true and correct, and certified by Buyer to Seller as such, on and as of the Closing Date, in the same manner and with the same effect as though such representations and warranties had been made on and as of the Closing Date; and;

(b) The Rezoning Completion shall have occurred; and

(c) Seller shall not have terminated this Agreement pursuant to an express right so to terminate set forth in this Agreement.

If any of the foregoing conditions have not been satisfied or performed or waived in writing by Seller on or as of the Closing Date, Seller shall have the right, at Seller's option, either: (i) to terminate this Agreement by giving written notice to Buyer on or before the Closing Date, in which event all rights and obligations of Seller and Buyer under this Agreement shall expire, and this Agreement shall become null and void; or (ii) if such failure of condition constitutes a breach of representation or warranty by Buyer, constitutes a failure by Buyer to perform any of the terms, covenants, conditions, agreements, requirements, restrictions or provisions of this Agreement, or otherwise constitutes a default by Buyer under this Agreement, to exercise such rights and remedies as may be provided for in Section 13 of this Agreement.

## 21. **Conditions of Buyer's Obligations.**

Buyer's obligation to consummate the purchase and sale of the Property on the Closing Date shall be subject to the satisfaction or performance of the following terms and conditions, any one or more of which may be waived in writing by Buyer, in whole or in part, on or as of the Closing Date:

(a) The representations and warranties of Seller in this Agreement (and the substantive facts contained in any representations and warranties limited to Seller's knowledge and belief) shall be true and correct, and certified by Seller to Buyer as such, on and as of the Closing Date, in the same manner and with the same effect as though such representations and warranties had been made on and as of the Closing Date; and

(b) The Rezoning Completion shall have occurred; and

(c) Buyer shall not have terminated this Agreement pursuant to an express right so to terminate set forth in this Agreement.

If any of the foregoing conditions have not been satisfied or performed or waived in writing by Buyer on or as of the Closing Date, Buyer shall have the right, at Buyer's option, either: (i) to terminate this Agreement by giving written notice to Seller on or before the Closing Date, in which event all rights and obligations of Seller and Buyer under this Agreement shall expire, and this Agreement shall become null and void; or (ii) if such failure of condition constitutes a breach of representation or warranty by Seller, constitutes a failure by Seller to perform any of the terms, covenants, conditions, agreements, requirements, restrictions or provisions of this Agreement, or otherwise constitutes a default by Seller under this Agreement, to exercise such rights and remedies as may be provided for in Section 13 of this Agreement. In either of such events, the Earnest Money shall be refunded to Buyer immediately upon request.

## **22. Complete Agreement.**

This Agreement contains the entire agreement of the parties hereto with respect to the matters contained herein and supersedes any and all prior and contemporaneous discussions, negotiations and agreements (whether oral or written) with respect to the matters contained herein. There are no representations, inducements or other provisions other than those expressed in writing in this Agreement (if any). Any amendments, modifications, changes, additions, or deletions hereto must be in writing and signed by all parties hereto.

## **23. Times is of the Essence; Dates.**

Time is of the essence of this Agreement. Anywhere a date certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement. If any date set forth in this Agreement shall fall on, or any time period set forth in this Agreement shall expire on, a day which is a Saturday, Sunday or federal or state holiday, such date shall automatically be extended to, and the expiration of such time period shall automatically be extended to, the next day which is not a Saturday, Sunday or federal or state holiday. The final day of any time period under this Agreement or any deadline under this Agreement shall be the specified day or date, and shall include the period of time through and including such specified day or date. All references to the "Effective Date" shall be deemed to refer to the later of the date of Buyer's or Seller's execution of this Agreement, as indicated below their respective executions of this Agreement. Any day which is not a Saturday, Sunday or federal or state holiday is herein sometimes called a "Business Day".

## **24. Covenant Not to Record.**

Buyer shall not record this Agreement or any memorandum hereof in any public records of any jurisdiction, and any violation of this covenant shall be deemed to be an immediate default of Buyer hereunder.

**25. Miscellaneous.**

Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders. Article and Section headings are inserted for convenience only and do not form a part of the substantive provisions of this Agreement. Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned. Capitalized terms used in this Agreement shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Except as otherwise provided in Section 3(e) of this Agreement, the provisions of this Agreement are not intended to benefit any third party who is not a party hereto. If any provision of this Agreement, or the application thereof to any person, entity, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void in any respect, the remainder of this Agreement and such provisions as applied to other persons, entities, places and circumstances shall remain in full force and effect. Notwithstanding any decisional law to the contrary, this Agreement may be executed by exchange of signed counterparts of this Agreement with all exhibits attached by facsimile or e-mailed PDF followed by delivery of the originals and shall be considered executed and binding upon receipt of the fax or e-mailed PDF of such signed counterpart of the last party to sign this Agreement. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State in which the Property is located, without reference to such State's choice of law rules. Except as expressly set forth herein, this Agreement shall not survive the Closing, and shall instead merge into the Deed executed and delivered by Seller to Buyer at the Closing.

**26. Binding Effect.**

Submission of drafts of this Agreement (or mark-ups of drafts) by one party to another shall not be deemed to be an offer to purchase or sell (as the case may be), and this Agreement shall be binding, if at all, only at such time as both Seller and Buyer have signed and delivered to the other at least one (1) counterpart of this Agreement with all exhibits attached. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**27. Waiver of Special Damages.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR AT LAW OR IN EQUITY, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR

PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, LOSS OF DATA, LOSS OF USE, DIMINUTION IN VALUE, AND BUSINESS INTERRUPTION) HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, ARISING FROM OR RELATING TO ANY CLAIM MADE UNDER THIS AGREEMENT. THE FOREGOING WILL NOT, OF ITSELF, LIMIT EITHER PARTY'S OBLIGATIONS WITH RESPECT TO PAYMENT OF DAMAGES OF ANY KIND INCLUDED IN AN AWARD OR SETTLEMENT OF A THIRD-PARTY CLAIM UNDER ANY INDEMNITY IN THIS AGREEMENT.

**28. Title Insurance Remedy.**

With respect to any claim which would be related to any warranty contained in the Deed, Buyer shall first use its commercially reasonable efforts to recover any losses pertaining to such claim from any title insurance policy issued to Buyer with respect to the Property and shall diligently prosecute such claim (and the satisfaction thereof) with the insurer in lieu of pursuing a claim against any such warranty contained in the Deed. This Section 28 shall expressly survive Closing and delivery and recording of the Deed.

**29. Confidentiality; Exclusivity.**

(a) Buyer agrees that until the Closing, except as otherwise provided herein or required by law or required as part of the Rezoning process and except for the exercise by Buyer of any remedy hereunder, Buyer shall (i) keep confidential this Agreement, the transaction described herein, any Review Documents and other information regarding the Seller, the Seller's Affiliates or any of the Property supplied by Seller to Buyer, (ii) not disclose any such documents and information to anyone other than Buyer's agents, employees, contractors, consultants, or attorneys, lenders (if any) and title company personnel, with a need to know such information in connection with Buyer's review and investigation of the Property, provided that Buyer shall inform all persons receiving such information from Buyer of the confidentiality requirement and, to the extent within Buyer's control, cause such confidence to be maintained, and (iii) upon the termination of this Agreement prior to the Closing, return to Seller promptly upon request all copies of documents and materials supplied by Seller. Disclosure of information by Buyer shall not be prohibited if that disclosure is of information that is or becomes a matter of public record or public knowledge as a result of the Closing of this transaction or from sources other than Buyer or its agents, employees, contractors, consultants, or attorneys.

(b) During the period commencing on the Effective Date and ending on the earlier of: (i) the Closing Date or (ii) the termination, for any reason, of this Agreement, (the "Exclusivity Period"), Seller's Corporate Real Estate Department will not (i) solicit any offers, inquiries or proposals from, (ii) provide any nonpublic information to, or (iii) enter into any agreements with any third party relating to the sale or other disposition of the Property or any material portion thereof. Notwithstanding the foregoing, Seller shall not be prohibited from entering into or continuing any discussions, negotiations or agreements with any public utility or other entities having eminent domain rights.

**30. Right to Counsel; No Presumption Against Drafter.**

BUYER EXPRESSLY ACKNOWLEDGES AND AGREES THAT BUYER HAS HAD AMPLE OPPORTUNITY TO EMPLOY COUNSEL TO REPRESENT BUYER IN CONNECTION WITH THE NEGOTIATION OF THIS AGREEMENT AND THE CLOSING CONTEMPLATED HEREIN. BUYER MAY OR MAY NOT EMPLOY COUNSEL AT ITS ELECTION. FURTHERMORE, BUYER ACKNOWLEDGES THAT SELLER'S IN-HOUSE COUNSEL (AND OUTSIDE COUNSEL, WHERE APPLICABLE) REPRESENT SELLER'S INTERESTS ONLY, THAT NO ATTORNEY-CLIENT RELATIONSHIP HAS BEEN CREATED BETWEEN BUYER AND SUCH COUNSEL, AND SUCH COUNSEL HAS NO FIDUCIARY DUTY TO BUYER. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party drafting this document.

BUYER HEREBY ACKNOWLEDGES IT HAS READ THE PROVISIONS OF THIS SECTION 30 AND BY ITS INITIALS BELOW AGREES TO BE BOUND BY ITS TERMS.

BUYER'S INITIALS:  \_\_\_\_\_

**31. Mineral Leases.**

Buyer hereby acknowledges and agrees that the Property may be subject to one or more oil, gas and/or other types of mineral leases (the "Mineral Leases"), which may or may not be of record; that prior owner(s) may have retained all right, title and interest in and to said Mineral Leases and royalties due thereunder; and that said Mineral Leases shall be deemed to be Permitted Exceptions. Furthermore, prior owners may have reserved the right to execute and deliver new oil, gas and/or other mineral leases affecting the Property in the future. Buyer, for itself and Buyer's Affiliates, hereby waives any claims against the Released Parties arising out of or relating to any prior reservations of the Mineral Leases.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year indicated next to their signatures.

**SELLER:**

**GEORGIA-PACIFIC LLC**, a Delaware limited liability company

By: \_\_\_\_\_

Name: Michael E. Cruz

Title: Vice President – Real Estate

Date \_\_\_\_\_, 2019

**BUYER:**

**L&K REALTY 2, LLC**, a Michigan limited liability company

By: \_\_\_\_\_

Name: Timothy M. Bills

Title: Manager

Date: October 11, 2019

**OTSEGO COUNTY  
PLANNING COMMISSION  
PUBLIC HEARING NOTICE  
September 21, 2020**

The Otsego County Planning Commission will hold two (2) public hearings on Monday, September 21, 2020 at 6:00 pm. Due to the Coronavirus pandemic, this meeting will be held remotely:

To view and/or participate in this meeting:

- With computer or smart phone (for video and voice) access through clicking or copy and paste this link into a browser (like Google Chrome):

<https://us02web.zoom.us/j/86381159130?pwd=TGdUbVd4Ty9JWkpHZzc5QnR2VlN1Zz09>

Meeting ID: 849 6518 3075

Password: 870499

- With a phone (for voice only): dial 1.888.788.0099 or 1.877.853.5247 then wait for instructions and provide the meeting ID and password.

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

1. **Georgia Pacific LLC**, property owner, and Timothy Bills, representative of L&K Realty 2 LLC, applicant, are requesting a Rezone of property located in Bagley Township on Dickerson Rd and West Otsego Lake Dr Gaylord, MI 49735. The proposed purpose of the rezone is for consistency in adjoining land use. The property is currently zoned R2/General Residential with a request to be rezoned I/Industrial

Parcel identification number:

**010-017-400-005-03**

**Dickerson Rd**

**Gaylord, MI 49735**

**Legal Description:**

BEG @ S1/4 COR, TH N01°04'20"W 1321.69', TH S89°24'10"E 1395.1', TH S62°E 907.57', TH N88°43'E 468.36', TH S01°11'E 914.81', TH N81°34'30"W 128.38', TH NWLY ALG ARC OF 1440.0', RAD CURVE TO R 495.15', TH N61°52'25"W 991.88', TH WLY ALG ARC OF 954.93', RAD CURVE TO L 1950', TH N89°31'00"W 56.57' TO POB.  
SEC 17 T30N-R3W

2. **Section 2.2 Definitions – Otsego County Zoning Ordinance – Text Amendments**  
*Proposed text amendments to the above section pertaining to Tourist Homes*

**Proposed amendments can be viewed on the Otsego County Zoning website below:**

<https://www.otsegoctyymi.gov/county-government-2/land-use-services/planning-zoning/>

All citizens are welcome to participate in 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 participate in this meeting should contact the Director of Land Use Services at 989.731.7400.



**Department of  
Land Use Services**  
1322 Hayes Rd • Gaylord, MI 49735  
Phone: 989.731.7400 • Fax: 989.731.7419  
[www.otsego-county-mi.gov](http://www.otsego-county-mi.gov)

March 11, 2020

Bagley Township  
PO Box 52  
Gaylord, MI 49734

**RE: Parcel Rezone**

Pursuant to Article 27 of the Otsego County Zoning Ordinance/Township Participation in County Zoning, the application for the Rezone of a single (1) parcel is being forwarded.

If you require the applicant to be present at your meeting, he can be notified at the following:

**Applicant:**

Timothy Bills  
c/o L&K Realty2 LLC  
PO Box 39  
Fairview, MI 48621  
989.848.2100

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

Sincerely,

Chris Churches  
Planning & Zoning Director

cbw

encl

## Bagley Township Planning Commission Agenda/Minutes for 08/24/2020

### 1 Call to Order

Called to order at 6:01

### 2 Approval of Minutes from June Meeting

Wally moves to approved, Larry Seconded, motion passed unanimously

### 3 Presentation to the Board by Dale Smith on history of property of parcel number 010-017-400-005-03 subject to PZRZ20-001

Mid 70's acquired by Dale and his partner. At that time platted for a residential with approximately 30 homesites. Gas line went through center was put through the lot. Georgia Pacific then bought the property due to toxic plume. Dale bought the Commerce Park across the street which has its own central water system in the county. When doing the development it was stated that there needed to always be a buffer zone, including restrictions on hours and nothing that could be a potential contamination on Otsego Lake

### 4 Public Hearing for PZRZ20-001 Rezone of parcel 010-017-400-005-03, which includes public comment

Todd Siddell commented on how the master plan includes gradients to go from Industrial to Residential districts. He wants to have a buffer with small business across the street from Industrial to Residential. He implied that he would prefer to have more of a buffer from Industrial to Residential by going through the

Holly Jackson, the lawyer for Mr. Bills, wanted to talk about the environmental issues for the property. She wanted to make sure that it was clear that the DEQ (EGLE) has no further contamination that would require remediation at this point. When asked by Larry she stated that there is no further contamination on the site, but due to Georgia Pacific's restrictions to have no residences or day cares on the property. There are no current concerns for the property from EGLE and it.

Brian asked about the buffer, Todd commented that it would be 25-50 per what is allowed via the county. It would include some trees, but would depend on the area. Todd stated that they would follow the county zoning restrictions.

Wally stated that there issues from when Commerce Park was developed it was a huge detriment to the area and caused him to move because it was so loud. Todd stated that the county zoning has changed drastically since that time and the zoning.

Property owner that lives across the street that she already has enough issues with vandalism and has had a car go through her yard and doesn't want anymore traffic as it is busy enough.

Dale stated that the property along the road has a consumers easement and can't be developed with foliage due to it.

Patricia Holmes-White her parents were the original owners and developers of the property. When it was currently developed it was zoned as a buffer across the water an

Rob stated that there are plenty of industrial parks, including the Gaylord Industrial Park which is basically vacant at this point, and including Commerce Park and that there had been a promise of the buffer from the railway and the expressway that isn't there and that there isn't any developing along the west side of the lake except for a small store and the golf course. He supports keeping it industrial to protect the lake and as a trained biologist he used the example of Oscoda and Van Etna that they were told it would be okay, that there were no problems and plumes tend to follow elevation and do tricky things.

Lois Dean was involved with the Commerce Park rezone and was promised that there would be a 25 ft buffer which does not exist and wants the property to stay zoned. She asked where the plume currently is. Michelle Noirot stated she has been told that it currently is around the intersection of McCoy and Old 27 and moving northeast.

A resident across the street stated that she is getting more lime in her water since Commerce Park went

Bill Raymond lives across the street from the property in question. He thinks it should happen and be rezoned.

Ed Harris lives across the street that the water table is really high in his area and there is standing water in the neighborhood due to the high water. He is concerned that any pollution would get into the lake immediately. He was emotional about his statement that Otsego Lake should not be sacrificed for private gain as it is a natural gem that draws people to the area. Noise is already an issue from Commerce Park.

Dale asked if sewer and water is going into the project. They are evaluating the current position, but it is not finalized at this point.

David Parcell stated that the power company cleared 30 ft of trees a few years ago and since then the sound in the area is incredibly loud at this point and if they take out the trees in the property in question it will lose the trees forever and it won't go back.

Larry asked Dave about the Planning Commission and stated that the property was set as residential to give a buffer between the Industrial properties because it was what the people wanted. He also stated that he has gone to the County Commissioners meetings regularly and it has been stated that the plume is heading to the northeast of the property. He stated that he

think the property should stay residential. He asked if there had been conversations about putting sewer and water to the property and they stated he had not.

Larry motioned and Brian seconded the motion to oppose the rezoning due to the very strong opposition to the local residents, noise issues and a complete lack of an adequate buffer to the residential neighborhood across the street and most importantly because it does not match with our Future Land Use Map.

The vote was unanimous to oppose the rezoning of Parcel 010-017-400-005-03

5 Public Hearing for Tourist Home Definition, which includes public comment

Peter motioned to accept the updated for Tourist Homes, Celeste seconded.

The motion was approved unanimously.

6 Public Hearing for Article 18 Edits regarding "Lots Near Water", which includes public comment

We postponed a vote on the edit to have more time to consider it.

7 Public Comment

Called for Public Comment at 7:17, hearing none we closed it at 7:18

8 Adjourn

Meeting was adjourned at 7:19

## Christine Boyak-Wohlfeil

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**From:** Peter Maxwell <peterlmaxwell@gmail.com>  
**Sent:** Tuesday, May 26, 2020 6:50 PM  
**To:** Wild Walley Loney; Celeste Szymanski; bgoebel@chartermi.net; larpo@charter.net  
**Cc:** Michelle Noirot; Christopher Churches; Christine Boyak-Wohlfeil  
**Subject:** Bagley Township Planning Commission Meeting 05/26/2020 Tentative Minutes

[EXTERNAL SENDER, Use Caution when viewing, confirm legitimacy before clicking any links or opening any attachments]

Meeting called to order at 06:00

Members Present-Peter Maxwell, Brian Goebel, Larry Beckett, Celeste Szymanski

Members Absent-Wally Loney (arrived at 6:27)

Others Present, Michelle Noirot, Tim Bills, Holly Jackson, Jessica Dropiewski

Agenda Item 1, PZR220-001, Rezone, 010-017-400-005-03

Went over documents

Brian and Larry asked what the future uses were intended. Holly Jackson said that the deal was contingent and Georgia Pacific would not sell the land without the property being rezoned. They both feel that the property's properties more match Industrial than R-2.

Larry and Brian both expressed that they felt that the cart was being put ahead of the horse.

Holly said that they do currently own the other 800 acres, but they will not finalize the sale of the property they are being asked to be rezoned.

Tim and Brian had a discussion about who was being used on the land currently, including people dropping trash and couches.

Brian and Larry expressed that they would like to see the deed restrictions that were alluded to by Holly.

Peter explained that we can't take there word that there are deed restrictions on the property. He also mentioned that it does not match the future land use.

Tim asked what the township would like the property to be in the future? He did also offered to buy the property and give it to the township which Larry said we didn't really want to do.

Holly said that she would entertain having green space, but could not commit to anything.

Peter expressed that we have misgivings to change a property straight from R-2 to Industrial without having a plan for the future use of the property.

Larry wants to have a plan before approving anything.

Michelle asked for a clarification to that it had to go to Industrial for the agreement, which Holly thinks so.

We had a discussion that we really don't want to go straight to Industrial, but would most likely be more amenable to going through a rezoning in B-1, B-2 or B-3.

Holly said that she can go back to Georgia-Pacific to see if they had restrictions on the use for the future to see if they would accept less than Industrial.

She asked if we can table the case until they can talk to Georgia Pacific and see if they would accept less than an industrial classification.

Peter put forth a motion to table the motion so that the applicant can amend the application after consulting with Georgia Pacific and contingent on their sending the deed restrictions to the township and board.

Motion passed unanimously.

Meeting was opened for public comment at 6:40, hearing none, it was closed.

Meeting was adjourned at 6:41

**PZRZ20-001 GEORGIA PACIFIC LLC - 010-017-400-005-03 BAGLEY TOWNSHIP**

OWNERS WITHIN THREE HUNDRED FEET (300')									
Parcel Number	Property Address	Owner	Mailing Address				Record Acres	Property Class	Zoning Code
010-017-400-005-03		GEORGIA PACIFIC CORPORATION	133 PEACHTREE ST	ATLANTA	GA	30303	51.35	302	R2
010-016-300-030-00	2757 DICKERSON RD	TIER FIVE DISTRIBUTION LLC	2105 SHERIDAN AVE	SPRINGFIELD	OH	45505	14.07	201	B-3
010-017-300-005-00	1592 OLD ALBA RD	NORTHLAND SPORTSMEN'S CLUB	PO BOX 34	GAYLORD	MI	49734-0034	40.61	708	R-2
010-017-400-005-08/ 010-017-400-005-09	2758 DICKERSON RD	CITIZENS BANK	328 S SAGINAW ST	FLINT	MI	48502	3.76/ 1.04	301/ 302	B-3/ B-3
010-017-400-005-10	2620 DICKERSON RD	NORTH CENTRAL PRODUCTION, INC	PO BOX 1133	GAYLORD	MI	49734-5133	4.37	201	B-3
010-017-400-005-11		JANUARY RENTAL CO INC	954 BUSINESS PARK DR STE 4	TRAVERSE CITY	MI	49686-8683	1.81	201	B-3
010-017-400-005-15/ 010-017-400-005-17		RAYMOND, WILLIAM J	4572 PINEHURST AVE	GAYLORD	MI	49735-9469	3.63/ 15.81	402/ 402	RR/ RR
010-017-400-005-16	2986 PATRICK DR	MALEPORT, GARY & CAROL	4857 E 6 MILE RD	SAULT SAINTE MARIE	MI	49783-9514	1.51	401	RR
010-017-400-010-00		CONSUMERS ENERGY COMPANY DNR MICHIGAN DEPARTMENT OF TREASURY	ONE ENERGY PLAZA	JACKSON	MI	49201-2357	39.96	302	B-3
010-020-100-005-00			PO BOX 30722	LANSING	MI	48909	35.90	713	FR
010-020-100-010-01		STATE OF MICHIGAN	101 E GRAND RIVER 7800 PASSIONFLOWER DR	LANSING	MI	48906-4348	9.34	702	FR
010-020-200-005-00		HOLMES, RICHARD W II & NANCY S		SARASOTA	FL	34241-1002	41.54	402	R-2
011-225-000-008-00/ 011-225-000-009-00		FULTS, DANIEL A & JULIE L	2196 RAMONA TRL	GAYLORD	MI	49735-9015	0.89/ 1.00	202/ 202	B-2/ B-2
011-225-000-010-00/ 011-225-000-011-00		SNOWRIDGE ENTERPRISES LLC	2017 DICKERSON RD	GAYLORD	MI	49735-7452	1.18/ 1.87	202/ 201	B-3/ B-3
011-225-000-012-00	2801 DICKERSON RD	HH&K DEVELOPMENT LLC	PO BOX 1073	GAYLORD	MI	49734-5073	1.88	201	B-3
011-645-000-001-00/ 011-645-000-002-00/ 011-665-000-001-00	975 NORTH OTSEGO LAKE DR	RUTTKAMP, JAMES M & MELISSA N	6600 BECKETT RD	GAYLORD	MI	49735	0.23/ 0.23/ 0.48	402/ 402/	RR/ RR/ RR
011-645-000-003-00	3043 GREENTREE DR	BLAKE - BLAKE	3043 GREENTREE DR	GAYLORD	MI	49735-8011	0.34	401	RR
011-645-000-030-00	1041 PATRICK DR	PARSELL, DAVID B	1041 PATRICK DR	GAYLORD	MI	49735	0.68	401	RR
011-645-000-031-00	1061 PATRICK DR	SEVERS, JANET L	1061 PATRICK DR	GAYLORD	MI	49735	0.68	401	RR

011-645-000-033-00/ 011-645-000-049-00	1065 PATRICK DR	BENSON, PIRIE & JANICE A	1065 PATRICK DR	GAYLORD	MI	49735	0.44/ 0.24	401/ 402	RR/ RR
011-645-000-043-00	1174 PATRICK DR	KENT PROPERTIES LLC	616 CLASSIC DR	GAYLORD	MI	49735	0.49	401	RR
011-645-000-045-00/ 011-645-000-052-00		WHITE - HOLMES	8207 TERRA GRANDE AVE	SPRINGFIELD	VA	22153-3537	0.23/ 0.24	402/ 402	RR/ RR
011-645-000-046-00	1078 PATRICK DR	DRABEK, RYAN	1078 PATRICK DR	GAYLORD	MI	49735	0.24	401	RR
011-645-000-047-01	1074 PATRICK DR	RITTLEY, MELINDA M	1074 PATRICK DR	GAYLORD	MI	49735-9508	0.48	401	RR
011-645-000-050-00/ 011-645-000-051-00	1050 PATRICK DR	KEEFE, JOHN T & DEBORAH M	1050 PATRICK DR	GAYLORD	MI	49735	0.25/ 0.24	402/ 401	RR/ RR
011-665-000-003-00	967 NORTH OTSEGO LAKE DR	OWENS, GERALD L & GRETCHEN	967 NORTH OTSEGO LAKE DR	GAYLORD	MI	49735	0.38	401	RR
011-665-000-005-00	945 NORTH OTSEGO LAKE DR	DEAN, BERNARD A & LOIS I	945 NORTH OTSEGO LAKE DR	GAYLORD	MI	49735	0.39	401	RR

Exhibit 11

PZRZ20-001 GEORGIA PACIFIC REZONE 010-017-400-005-03



- 010-017-400-005-03
- 010-016-300-030-00
- 010-017-300-005-00
- 010-017-400-005-08
- 010-017-400-005-09
- 010-017-400-005-10
- 010-017-400-005-11
- 010-017-400-005-15
- 010-017-400-005-16
- 010-017-400-005-17
- 010-017-400-010-00
- 010-020-100-005-00
- 010-020-100-010-01
- 010-020-200-005-00
- 011-225-000-008-00
- 011-225-000-009-00
- 011-225-000-010-00
- 011-225-000-011-00
- 011-225-000-012-00
- 011-645-000-001-00
- 011-645-000-002-00
- 011-645-000-003-00
- 011-645-000-030-00
- 011-645-000-031-00
- 011-645-000-033-00
- 011-645-000-043-00
- 011-645-000-045-00
- 011-645-000-046-00
- 011-645-000-047-01
- 011-645-000-049-00
- 011-645-000-050-00
- 011-645-000-051-00
- 011-645-000-052-00
- 011-665-000-001-00
- 011-665-000-003-00

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**  
 M I C H I G A N  
 ESTABLISHED 1875

**Paid By:**  
 DROPIEWSKI, JESSIKA

RECEIPT NUMBER

**01319759**

03/02/2020

Type	Record	Category	Description	Amount
Permit	PZRZ20-001	ADMIN ZONING	REZONE	\$ 700.00

<b>Total</b>	<b>\$ 700.00</b>
Cash	
Check	
Credit	\$ 700.00
Transferred	
<b>Tendered</b>	<b>\$ 700.00</b>
<b>Change</b>	<b>\$ 0.00</b>
<b>To Overpayment</b>	<b>\$ 0.00</b>

**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**

**PZRZ20-001  
REZONE  
010-017-400-005-03**

**FINDING OF FACT**

1. This is a proposal for a rezone of one (1) parcel located in Bagley Township on Dickerson Rd Gaylord, MI 49735. *Exhibit #1, Exhibit #5*
2. The property is located in a R2/General Residential Zoning District. *Exhibit #2*
3. The proposed rezone is to an I/Industrial Zoning District. *Exhibit #1*
4. The purpose of the rezone is to allow consistency in adjoining land uses. *Exhibit #6*
5. The proposed property is 51.35 acres. *Exhibit #4*
6. The proposed property is currently under the ownership of Georgia Pacific Corporation. *Exhibit #4*
7. The proposed property will be purchased by applicant upon approval of rezone. *Exhibit #7*
8. Current properties under applicant's ownership are zoned I/Industrial. *Exhibit #2*
9. Properties along the Dickerson Rd corridor are zoned B2/General Business, B3/Business, Light Manufacturing and I/Industrial. *Exhibit #2*
10. The Public Hearing Notice was published in the Herald Times on..., 2020. *Exhibit #8*
11. The requirements of Article 27 of the Otsego County Zoning Ordinance have been met. *Exhibit #9, Exhibit #10*
12. All property owners within three hundred (300') feet were properly notified of the public hearing. *Exhibit #11*
13. The Future Land Use Map depicts this area as a Medium Density Residential Zoning District. *Exhibit #14*
14. Approval of the proposed rezone would be consistent with the properties along this corridor but inconsistent with the current Otsego County Future Land Use Map. *Exhibit #2, Exhibit #14*
15. The Planning Commission has the authority to recommend a *Rezone* request after review and compatibility with the Otsego County Zoning Ordinance. (Section 25.7) *Exhibit #3, Exhibit #14*
16. The required fees have been collected by Otsego County Land Use Services. *Exhibit #12*
17. The Future Land Use Map may be updated at any time.

## FINDINGS UNDER ARTICLE 13/I INDUSTRIAL DISTRICT

### ARTICLE 13 I INDUSTRIAL DISTRICT

Amended 4.23.2019

#### INTENT AND REQUIRED CONDITIONS

The I Industrial District is designed to accommodate wholesale activities, warehouses, major repair operations, manufacturing and other industrial operations, subject to certain performance requirements relative to their impact on the community and adjacent non-industrial districts.

Whenever an industrial use permitted in this Article requires the use of a storage area or operational activity which is not within the confines of an enclosed building, then adequate greenbelt, screening devices, and/or buffer walls are required. [See [Article 21.10](#) and [21.18](#)]

The height of industrial structures and uses shall be related to building setbacks. For each foot of building height above twenty feet (20'), the minimum yard setbacks shall be increased by one foot (1') when adjacent to non-industrial districts. Building height shall not exceed thirty-five feet (35').

Any industrial activity which produces glare, noise, vibrations, smoke, dust, odors and similar or related nuisances, shall confine these nuisances to the industrial district and must conform to State and Federal environmental regulations. Industrial operations involving the manufacture, processing, or packaging of materials which are inherently dangerous or hazardous due to flammability, toxicity, radioactivity, explosiveness, shall require special review by the Planning Commission after a hearing, and any approval shall be contingent upon a showing by the applicant industry that no dangerous, noxious or nuisance conditions will impact any adjacent premises. Whenever there is evidence that municipal treatment plants, or any river, wetland, or groundwater, lake, or other water in the County may be damaged, polluted, or otherwise adversely affected by industrial chemicals, environmental contamination prevention measures, spill containment procedures, surety bonds and other financial guarantees to correct damages, may be required by the County.

#### SECTION 13.1 PRINCIPAL USES PERMITTED

13.1.1 All principal uses permitted in the [B3](#) Business, Light Manufacturing District

13.1.2 Contractors' yards, equipment storage, and materials handling operations

13.1.3 Major utility service yards and buildings, either public or private

13.1.4 Repair operations and/or maintenance activities for vehicles of any kind, including farm implements, conveyors, and other equipment or machinery

13.1.5 Concrete and asphalt manufacturing and distribution

13.1.6 Grain elevators (commercial)

13.1.7 Meat and poultry processing plants

13.1.8 Manufacturing facilities within an enclosed building, and excluding uses listed in [Section 13.2](#)

13.1.9 Auto body shop including wrecker service

13.1.10 Wireless Telecommunications Towers and Facilities one hundred seventy-nine feet (179') or less in height without lights [Permit criteria includes [Article 21.46](#)]

13.1.11 WTG Building-Mounted: Permitted as an accessory use to an allowed Principal Use [See [Article 21.46](#)]

13.1.12 WTG Small: Permitted as an accessory use to an allowed Principal Use

13.1.13 WTG Medium: Permitted as an Accessory Use to an allowed Principal Use

## SECTION 13.2 PERMITTED USES SUBJECT TO SPECIAL CONDITIONS

Under such conditions as the Planning Commission finds the use as not being injurious to the I Industrial District and environs and not contrary to the spirit and purpose of this Ordinance, and subject further to the conditions herein imposed as well as the conditional use standards of [Article 19](#), the following uses may be permitted:

- 13.2.1 All uses subject to special conditions in the [B3](#) Business, Light Manufacturing District.
- 13.2.2 Metal plating, buffing and polishing subject to appropriate measures to control any type of process to prevent noxious results, particularly potential acid spills and waste from plating operations.
- 13.2.3 Manufactured gas, bottled gas and related fuel services or fuel production activities, except the uses specifically exempted by the Michigan Zoning Enabling Act (Public Act 110 of 2006) Petroleum storage tanks, bottled gas or storage tanks for any flammable liquid and production or refining plants for petroleum products when not closer than one thousand feet (1000') from any residential district or residence and three hundred feet (300') from any other district, unless exempt under Act 110 of 2006
- 13.2.4 Junk yards and places so called for the storage, dismantling, wrecking and disposing of junk, and for refuse material or industrial, agricultural and automotive vehicles, upon findings that the use will operate in a reasonable manner and all harmful effects of open storage, smoke, dust, glare, noise, fire and explosive hazards are confined to the premises and are in accord with all other local and state laws - There shall be provided a completely obscuring wall not to be less than eight feet (8') in height as measured from the grade at the property line. Junk yards shall not be located closer than two hundred feet (200') from the boundary of any other zoning district. [Permit criteria includes [Article 21.3](#)]  
Such use shall not be closer than forty feet (40') from any lot line. There shall be no outdoor storage of materials, equipment, structures or debris of any kind anywhere outside the designated storage area.
- 13.2.5 Painting, varnishing and undercoating shops when set back at least seventy-five feet (75') from any adjacent residential district and when conducted within a completely enclosed building
- 13.2.6 Heavy manufacturing (assembly, processing or cleaning of heavy bulky durable goods requiring heavy trucks or rail transport; drop forging, heavy stamping, punch pressing, plating, hammering or other similar processing activities)
- 13.2.7 Surface mining of gravel, sand, clay, topsoil or marl [See [Article 21.25](#) for criteria]
- 13.2.8 Manufacturing of explosives, corrosive and other dangerous chemical substances
- 13.2.9 Metal and wood-stripping establishments
- 13.2.10 Airports and landing strips
- 13.2.11 Detention Facilities
- 13.2.12 Power company generation plants
- 13.2.13 Printing and publishing plants
- 13.2.14 Research and development laboratories
- 13.2.15 Chemical processing and metallurgic manufacturing
- 13.2.16 Industrial Laundries
- 13.2.17 Medical Laboratories
- 13.2.18 Wireless Telecommunications Towers and Facilities over one hundred seventy-nine feet (179') in height [Permit criteria includes [Article 21.46](#)]
- 13.2.19 Unlisted property uses if authorized under [Article 21.44](#)
- 13.2.20 Personal Wireless Services Telecommunications Towers and Facilities one hundred fifty feet (150') or less in height, self-supporting (lattice) or guyed [Permit criteria includes [Article 21.46](#)]

**\*\*\* USES IN ADJOINING PROPERTIES ARE COMPATIBLE WITH USES IN AN INDUSTRIAL ZONING DISTRICT**

## FINDINGS UNDER ARTICLE 25

### ARTICLE 25 ADMINISTRATION AND ENFORCEMENT

#### SECTION 25.7 CHANGES AND AMENDMENTS

The County may from time to time, on recommendation from the Planning Commission, or on petition, amend, supplement or change the District boundaries or the regulations, herein, or subsequently established herein, pursuant to the authority and procedure established in Public Act 110 of 2006 as amended. The notices for all public hearings before the planning commission or County Board of Commissioners concerning proposed zoning ordinance amendments (zoning text or map amendments) shall comply with all of the following applicable provisions:

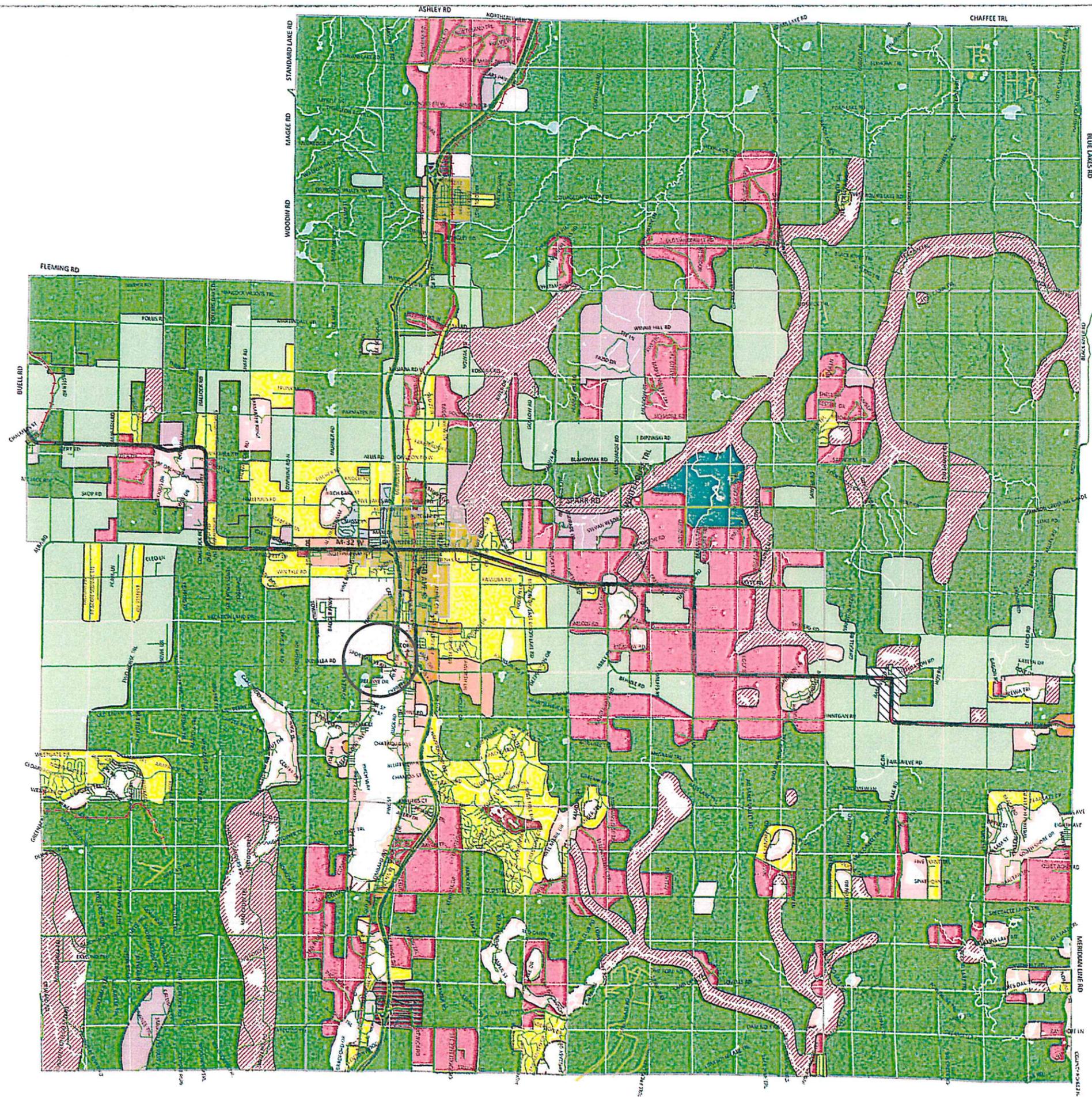
**A. For a proposed amendment to the text of the zoning ordinance, the notice shall comply with all of the following:**

1. The content of the notice shall include all of the following information
  - a. A description of the nature of the proposed zoning ordinance amendment.
  - b. The time, date, and place the proposed zoning ordinance will be considered.
  - c. The places and times at which the proposed zoning ordinance amendment may be examined.
  - d. The address where and the deadline when written comments will be received concerning the proposed zoning ordinance amendment.

**B. For a proposed zoning ordinance amendment rezoning an individual property or ten (10) or fewer adjacent properties, the notice shall comply with all of the following:**

1. The content of the notice shall include all of the following information:
  - a. A description of the nature of the proposed zoning ordinance amendment.
  - b. A description of the property or properties proposed for rezoning. The notice shall include a listing of all existing street addresses within the property or properties. Street addresses, however, do not need to be created and listed if no such addresses currently exist within the property or properties. If there are no street addresses, other means of identification may be used, such as using tax parcel identification numbers or including a map showing the location of the property or properties.
  - c. The time, date, and place the proposed zoning ordinance will be considered.
  - d. The places and times at which the proposed zoning ordinance amendment may be examined.
  - e. The address where and the deadline when written comments will be received concerning the proposed zoning ordinance amendment.
2. The notice shall be published in a newspaper of general circulation within the County not less than fifteen (15) days before the scheduled public hearing.
3. The notice shall be sent by first-class mail or personal delivery to the owners of the property or properties proposed for rezoning not less than fifteen (15) days before the scheduled public hearing.
4. The notice shall also be sent first-class mail or personal delivery to all persons to whom real property is assessed within three hundred (300) feet of the property or properties proposed for rezoning and to the occupants of all structures within three hundred (300) feet of the property or properties proposed for rezoning not less than fifteen (15) days before the scheduled public hearing, regardless of whether the property or occupant is located in the County. If the name of the occupant is not known, the term "occupant" may be used in making notification under this subsection.
5. The notice shall be given by first-class mail to each electric, gas, and pipeline public utility Company, each telecommunication service provider, each railroad operating within the district or zone affected, and the airport manager of each airport, that registers its name and mailing address with the County clerk for the purpose of receiving the notice of public hearing.

**\*\*\*THE PLANNING COMMISSION HAS THE AUTHORITY TO APPROVE A REZONE IF COMPATIBILITY IS FOUND WITH THE ZONING ORDINANCE AND FUTURE LAND USE MAP – FUTURE LAND USE MAP MAY BE UPDATED ANY TIME**



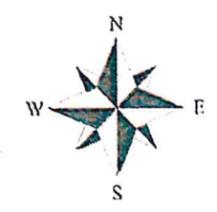
# OTSEGO COUNTY FUTURE LAND USE

## LEGEND

- Interstate
- State
- County/ City
- Trails
- Railroads
- Rivers
- Lakes
- Municipal Boundaries
- Section

## FUTURE LAND USE

- Agriculture
- Forest
- Environmental Protection
- Government and Institution
- Industrial
- Large Commercial
- Highway Interchange Commercial
- Retail / Business / Office (Mixed Uses)
- Town Centers (Mixed Use)
- Recreation
- Residential Recreational
- Low Density Residential
- Medium Density Residential
- High Density Residential (Mixed Residential)





1. Northern Industrial Supply
2. Crossfit Gym
3. NU Works!  
Northeast Consortium
4. Dynamic Physical Therapy
5. Affordable Auto Repair
6. Foundation Building Materials
7. Kraft Power Corporation
8. Family Pet Cremation Center
9. N/A
10. N& J Auto Diesel Repair
11. Tri-State Forest Products
12. Gaylord Machine & Fab



**OTSEGO COUNTY  
PLANNING COMMISSION  
PUBLIC HEARING NOTICE  
September 21, 2020**

The Otsego County Planning Commission will hold two (2) public hearings on Monday, September 21, 2020 at 6:00 pm. Due to the Coronavirus pandemic, this meeting will be held remotely:

To view and/or participate in this meeting:

- With computer or smart phone (for video and voice) access through clicking or copy and paste this link into a browser (like Google Chrome):

<https://us02web.zoom.us/j/86381159130?pwd=TGdUbVd4Ty9JWkpHZzc5QnR2VIN1Zz09>

Meeting ID: 849 6518 3075

Password: 870499

- With a phone (for voice only): dial 1.888.788.0099 or 1.877.853.5247 then wait for instructions and provide the meeting ID and password.

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

1. Georgia Pacific LLC, property owner, and Timothy Bills, representative of L&K Realty 2 LLC, applicant, are requesting a Rezone of property located in Bagley Township on Dickerson Rd and West Otsego Lake Dr Gaylord, MI 49735. The proposed purpose of the rezone is for consistency in adjoining land use. The property is currently zoned R2/General Residential with a request to be rezoned I/Industrial

Parcel identification number:

**010-017-400-005-03**

**Dickerson Rd**

**Gaylord, MI 49735**

**Legal Description:**

BEG @ S1/4 COR, TH N01°04'20"W 1321.69', TH S89°24'10"E 1395.1', TH S62°E 907.57', TH N88°43'E 468.36', TH S01°11'E 914.81', TH N81°34'30"W 128.38', TH NWLY ALG ARC OF 1440.0', RAD CURVE TO R 495.15', TH N61°52'25"W 991.88', TH WLY ALG ARC OF 954.93', RAD CURVE TO L 1950', TH N89°31'00"W 56.57' TO POB.  
SEC 17 T30N-R3W

2. **Section 2.2 Definitions** – *Otsego County Zoning Ordinance – Text Amendments*  
*Proposed text amendments to the above section pertaining to Tourist Homes*

**Proposed amendments can be viewed on the Otsego County Zoning website below:**

<https://www.otsegoctymi.gov/county-government-2/land-use-services/planning-zoning/>

All citizens are welcome to participate in 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 participate in this meeting should contact the Director of Land Use Services at 989.731.7400.



OTSEGO COUNTY LAND USE SERVICES, PLANNING AND ZONING DEPARTMENT

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**MEMORANDUM**

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**TO: OTSEGO COUNTY TOWNSHIPS**

**FROM: CHRIS CHURCHES, DIRECTOR OF PLANNING & ZONING, CAPITAL PROJECTS & GRANTS, OTSEGO COUNTY**

**SUBJECT: TOURIST HOME DEFINITION**

**DATE: 7/21/2020**

Otsego County Townships,

Enclosed is a proposed text amendment to the Otsego County Zoning Ordinance. The amendment adds a definition to the term "Tourist Home" under Article 2 of the Ordinance. Prior to the proposed amendment, the definition of Tourist Home referred to the definition of Bed and Breakfast. This resulted in conflicting interpretations of the use in certain districts, specifically that a dwelling must be occupied to be used as a Tourist Home. The proposed amendment would clarify this in that it would permit a dwelling to be used as a Tourist Home regardless of family occupancy.

As always, please do not hesitate to reach out with any questions or concerns.

Sincerely,

Christopher Churches  
Director of Planning & Zoning, Capital Projects & Grants

**\*\*\*AMENDMENT CHANGES / ADDITIONS ARE UNDERLINED WITH RED TEXT**

**\*\*\*AMENDMENT DELETIONS ARE STRUCK**

## **ARTICLE 2 CONSTRUCTION OF LANGUAGE AND DEFINITIONS**

Amended 5.20.2020

### **SECTION 2.1 CONSTRUCTION OF LANGUAGE**

The following rules of construction apply to the text of this Ordinance:

**2.1.1** The particular shall control the general.

**2.1.2** In case of a difference of meaning or implication between the text of this Ordinance and any caption or illustration, the text shall control.

**2.1.3** Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.

**2.1.4** A "building" or "structure" includes any part thereof.

**2.1.5** The phrase "used for" includes "arranged for", "designed for", "intended for", "maintained for", or "occupied for".

**2.1.6** The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

**2.1.7** Terms not herein defined shall have the meaning customarily assigned to them.

**2.1.8** The term "including" means "including but not limited to." It is a term which introduces examples but does not limit the provision to only those examples.

**2.1.9** Terms referring to the Michigan Department of Natural Resources (DNR) shall be understood to refer to the Michigan Department of Environmental Quality (DEQ) where appropriate.

**2.1.10** Reference to Soil Erosion and Sedimentation Control as Part 91 of PA 451 shall be understood to mean MCLA Sections 324.9101 through 324.9123 of the Natural Resources and Environmental Protection Act of 1994.

### **SECTION 2.2 DEFINITIONS**

**ACCESSORY STRUCTURE:** A building, the use of which is incidental to that of the main building, or main use, and which is located on the same lot. Total square footage of accessory structures which includes all levels and any attic area will be used to determine compliance with the lot coverage requirement in Article 17.

**ACCESSORY USE:** A use incidental to the principal use of a building or property as defined or limited by the provisions of this Ordinance.

**ADULT ENTERTAINMENT USE:** Any use of land, whether vacant or combined with structures or vehicles thereon by which said property is devoted to displaying or exhibiting material for entertainment, a significant portion of which includes matter or actions depicting, describing, or presenting "specified sexual activities: or "specified anatomical areas."

Adult entertainment uses shall include:

Adult book or video establishment: An establishment having a substantial or significant portion of its stock in trade books, magazines or other publications, video recordings and films which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," or an establishment with a segment or section devoted to the sale, rent or display of such material.

Adult cabaret: A nightclub, theater or other establishment which features live performances by topless and/or bottomless dancers, "go-go" dancers, exotic dancers, or similar entertainers, where a significant portion of such performances show, depict, or describe "specified sexual activities" or "specified anatomical areas."

Adult motel: A motel wherein matter, actions or other displays are presented which contain a significant portion depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

Adult motion picture arcade: Any place where the public is invited or permitted wherein coin - or slug/token-operated or electronically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images and where a significant portion of images so displayed depict, describe or relate to "specified sexual activities" or "specified anatomical areas."

Adult motion picture arcade: Any place where the public is invited or permitted wherein coin - or slug/token-operated or electronically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images and where a significant portion of images so displayed depict, describe or relate to "specified sexual activities" or "specified anatomical areas."

Adult motion picture theater: An enclosed building or open-air site with any size seating capacity used for presenting motion pictures distinguished or characterized by an emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

Adult sexual encounter center: Any business, agency, or person who, for any form of consideration or gratuity, provides a place where three (3) or more persons, not all members of the same family, may congregate, assemble, or associate for the purpose of engaging in "specified sexual activities" or conduct involving "specified anatomical areas."

Adult entertainment use is further defined by these terms:

Specified anatomical areas: Less than completely covered human genitals, pubic regions, buttocks, and the areola or nipple of female breasts - Also, human male genitals in a discernibly turgid state, even if completely and opaquely covered

Specified sexual activities: Human genitals in a state of sexual stimulation or arousal, acts of human masturbation, sexual intercourse or sodomy, and fondling or other erotic touching of human genitals, pubic regions, buttocks or female breast.

**AGRICULTURE OR AGRICULTURAL USE:** Cultivating or using land for the production of crops for the use of animals or humans including, farming, dairying, pasturage, horticulture, floriculture, viticulture, and animal and poultry husbandry. An agricultural building does not include a building used for retail trade.

**ALTERATIONS:** Any change, addition, or modification in construction or type of occupancy, or in the structural members of a building, such as walls or partitions, columns, beams or girders, the consummated act of which may be referred to herein as "altered" or "reconstructed".

**ANTENNA:** An exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

**ANEMOMETER:** An instrument for measuring and recording the speed of the wind.

**ANEMOMETER TOWER:** A structure, including all accessory facilities, temporarily erected, on which an anemometer is mounted for the purposes of documenting whether a site has wind resources sufficient for the operation of a wind turbine generator.

**APARTMENTS:** [See [DWELLING, MULTIPLE FAMILY](#)]

**AUTO REPAIR GARAGE:** A place where the following auto services may be carried out: general repair, engine rebuilding, collision service, painting, undercoating, and rust proofing. The sale of engine fuels and lubricants may be included.

**BASEMENT:** That portion of a building which is partly or wholly below grade, but so located that the vertical distance from the average grade to the floor is greater than the vertical distance from the average

grade to the ceiling. If the vertical distance from the grade to the ceiling is over five feet (5'), such basement shall be rated as a first story.

**BED AND BREAKFAST:** Any dwelling used or designed in such a manner that certain rooms in excess of those used by the family and occupied as a dwelling unit, are rented to the transient public for compensation; this includes establishments that comply with Public or State Statutes. Such a use shall have the appearance of a single-family residence and be consistent with surrounding neighborhood character.

**BILLBOARDS:** A billboard shall mean any structure or portion thereof designed or intended to be used for posting, painting, or otherwise affixing any sign which does not pertain to the premises, or to the use of premises on which the billboard is located, or to goods sold or services rendered, or activities conducted on such premises.

**BUILDING:** A structure erected on-site, a mobile home or mobile structure, a pre-manufactured or pre-cut structure, above or below ground, designed primarily for the shelter, support or enclosure of persons, animals or property of any kind.

**BUILDING HEIGHT:** The vertical distance measured from the established grade to the highest point of the roof surface for flat roofs; to the deck line of mansard roofs; and the average height between the eaves and ridge for gable, hip, and gambrel roofs. "A" frame structures shall be measured to the highest point of the building. Where a building is located on sloping terrain, the height may be measured from the average ground level of the grade at the building wall.

**BUILDING LINE:** A line formed by the face of the building, a building line is not to be used when determining setbacks.

**BUILDING LENGTH:** The greatest overall linear dimension of a building measured at the building footprint.

**BUILDING WIDTH:** The greatest distance between two (2) sides of a building which extend half or more of its length as measured at the building footprint

**BUILD-TO-AREA:** The space within the Build-to-Line and the Lot Line Sides. The Build-to-Area may vary a distance on either side of the Build-to-Line. The distance is determined by measuring the number of feet between the Build-to-Line and the public right-of-way and multiplying the number of feet by ten percent (10%).

**BUILD-TO-LINE:** The line of vertical plane formed by the planned building façade that is parallel to the road right-of-way and extends to and coincides with the plane of the front façade of existing or planned buildings along the same right-of-way.

**CARE FACILITY, COMMERCIAL DAY:** A facility receiving more than twelve (12) minor children or adults for care for periods of less than twenty-four (24) hours in a day, for more than two (2) weeks in any calendar year. Child care and supervision provided as an accessory use, while parents are engaged or involved in the principal use of the property, such as a nursery operated during church services or public meeting, or by a fitness center or similar operation, shall not be considered Commercial Day Care.

**CARE FACILITY, CONVALESCENT OR NURSING HOME:** A facility with sleeping accommodations where persons are housed twenty-four (24) hours a day and furnished with meals, nursing and medical care.

**CARE FACILITY, FAMILY:** A facility required to be licensed by the state, which provides training, care, supervision, treatment and/or rehabilitation to the aged, disabled, those convicted of crimes, or those suffering the effects of drugs or alcohol, for more than one (1) but less than seven (7) adults. Care for persons related by blood, marriage, or adoption to a member of the family occupying the facility is excluded from this definition. This does not include commercial day care facilities, family child care homes, group child care homes, foster homes, schools, hospitals, jails or prisons.

**CARE FACILITY, GROUP:** A facility required to be licensed by the state, which provides training, care, supervision, treatment and/or rehabilitation to the aged, disabled, those convicted of crimes, or those suffering the effects of drugs or alcohol, for at least seven (7) but not more than twelve (12) adults. Care for

persons related by blood, marriage, or adoption to a member of the family occupying the facility are excluded from this definition. This does not include commercial day care facilities, family child care homes, group child care homes, foster homes, schools, hospitals, jails or prisons.

**CHILD CARE HOME, FAMILY:** A private home in which one (1) but fewer than seven (7) minor children are received for care and supervision for compensation for periods of less than twenty-four (24) hours a day, unattended by a parent or legal guardian, except children related to an adult member of the household by blood, marriage, or adoption. Family child care home includes a home in which care is given to an unrelated minor child for more than four (4) weeks during a calendar year. A family child care home does not include an individual providing babysitting service for another individual. This definition is intended to be pursuant to the Child Care Organizations Act, MCL 722.111

**CHILD CARE HOME, GROUP:** A private home in which more than six (6) but not more than twelve (12) minor children are given care and supervision for periods of less than twenty-four (24) hours a day unattended by a parent or legal guardian, except children related to an adult member of the household by blood, marriage, or adoption. This definition is intended to be pursuant to the Child Care Organizations Act, MCL 722.111

**CLIMBING BARRIER:** Material attached to the lowest eight feet (8') of a lattice tower for the prevention of using structural cross members as a ladder; a safety feature to discourage climbing by unauthorized individuals

**CLUB:** An organization of persons for the promulgation of sports, arts, sciences, literature, politics, or the like.

**CO-LOCATION:** The location of two (2) or more communication providers of wireless communication facilities on a common structure, tower or building, with the view toward reducing the overall number of structures required to support wireless communication antennas with the County.

**COMMERCIAL MOTOR VEHICLE:** Any self-propelled or towed vehicle designed or used on public highways to transport passengers or property, if the vehicle meets one or more of the following:

Has either a gross vehicle weight rating or actual gross weight or gross combination weight rating or an actual gross combination weight of ten thousand and one pounds (10,001 lbs.) or more;

Is designed for carrying sixteen (16) or more passengers, including the driver;

Is used in the transportation of hazardous materials in a quantity that requires the vehicle to be marked or placarded.

**CONDOMINIUM PROJECT:** Means a plan or project consisting of not less than two (2) condominium units if established and approved in conformance with the Condominium Act (Act 59, 1978).

**CONDOMINIUM SUBDIVISION:** A division of land on the basis of condominium ownership, which is not subject to the provisions of the Subdivision Control Act of 1967, Public Act 288 of 1967, as amended. Any "condominium unit", or portion thereof, consisting of vacant land shall be equivalent to the term "lot" for the purposes of determining compliance of a condominium subdivision with the provisions of this ordinance pertaining to minimum lot size, minimum lot width, and maximum lot coverage.

**CONDOMINIUM SUBDIVISION PLAN:** The drawings attached to the master deed for a condominium subdivision which describes the size, location, area, horizontal and vertical boundaries and volume of each condominium unit contained in the condominium subdivision, as well as the nature, location and size of common elements.

**CONDOMINIUM UNIT:** Means that portion of a condominium project or condominium subdivision which is designed and intended for separate ownership and use, as described in the master deed, regardless of whether it is intended for residential, office, industrial, business, recreational, use as a time-share unit, or any other type of use. A condominium unit may consist of either vacant land or space which either encloses or is enclosed by a building structure.

**COUNTY:** Where used in this Ordinance, shall mean the County of Otsego, State of Michigan.

**COURTYARD:** An unroofed area that is completely or mostly enclosed by the walls of a large building.

**DEVELOPMENT:** The construction of a new building or other structure on a zoning lot, the relocation of an existing building on another zoning lot, or the use of open land for a new use.

**DISTRICT:** A portion of the county lying outside the limits of incorporated cities and villages of the county within which certain regulations and requirements or various combinations thereof apply under the provisions of this Ordinance (also a zone).

**DRIVE-IN:** A business establishment so developed that its retail or service character is dependent on providing a driveway approach or parking area for vehicles, so customers may receive goods or services for use or consumption on the premises while remaining in their vehicles.

**DRIVE-THROUGH:** A business establishment so developed that it's retail or service character is dependent on providing a driveway approach and vehicle service window for vehicle access so customers may receive goods or services for use or consumption off the premises.

**DRIP LINE:** An imaginary line drawn around the base of a tree to connect the points where drips would fall straight down from the outermost tips of the tree's branches. The drip line generally delineates the ground area containing the root system near the surface which is most sensitive to disturbance

**DWELLING UNIT:** A single unit providing complete, independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation

**DWELLING, ONE-FAMILY:** A building containing not more than one (1) dwelling unit designed for residential use

**DWELLING, TWO-FAMILY (DUPLEX):** Dwelling, Two-Family - A building containing two (2) separate dwelling units designed for residential use.

**DWELLING, MULTIPLE-FAMILY:** A building containing three (3) or more dwelling units designed for residential use and including a rooming house, bed and breakfast, tourist home, apartment house, group quarters, or extended care facility for seven (7) or more persons, such as adult foster care or alternative institutional setting home. State-licensed residential facilities shall be considered as single-family dwellings when questions of overcrowding and safety are addressed by the state agency issuing the license.

**ERECTED:** Built, constructed, altered, reconstructed, moved upon, or any physical operations on the premises which are required for construction, excavation, fill, drainage, and the like.

**ESSENTIAL SERVICES:** The erection, construction, alteration or maintenance of underground, surface, or overhead gas, electrical, steam or water transmission or distribution systems; collection, communication, supply or disposal systems, including mains, drains, sewers, pipes, conduits, wires, cables, fire alarm boxes, traffic signals, hydrants, towers, poles, electrical substations, gas regulator stations, and other similar equipment, and applicable accessories reasonably necessary for the furnishing of adequate service by such public utilities or municipal departments or commissions or for the public health, safety, and general welfare. Provided, however, that wireless telecommunication towers and facilities, alternative tower structures, antennas, wind turbine generators and anemometer towers shall not be considered essential services.

**EXCAVATION:** Any breaking of ground, except common household gardening and ground care.

**FAMILY:** One (1) or two (2) related persons or parents with their direct lineal descendants and adopted children (and including the domestic employees thereof), together with not more than three (3) persons not so related, living together as a single housekeeping unit.

**FARM:** Structures, facilities and lands of twenty (20) acres or more for carrying on of any agricultural use or the raising of livestock or small animals as a source of income. [See also [AGRICULTURE](#)]

**FENCE:** Any permanent or temporary, partition, wall, structure or gate erected as a dividing structure, barrier or enclosure and not part of a structure requiring a building permit.

**FENESTRATION:** The arrangement of windows and doors on the elevations of a building.

**FLOOR AREA, USABLE (FOR COMPUTING PARKING):** That area used for, or intended to be used for, the sale of merchandise or services, or for use to serve patrons, clients, or customers. Floor area used, or intended to be used, for the storage or processing of merchandise, hallways, or for utilities or sanitary facilities, shall be excluded for the computation of "Usable Floor Area" All floor levels shall be counted.

**FLOWAGE:** Body of water impounded by a dam, used interchangeably with reservoir, impoundment, and flood water.

**GARAGE, PRIVATE:** A building used for the non-commercial storage of property owned by the owners of the parcel on which the building is located.

**GARBAGE:** The animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food. A self-contained compost pile is not considered garbage.

**GASOLINE SERVICE STATION:** A place primarily operated and designed for the dispensing, sale, or offering for sale of motor fuels directly to users of motor vehicles, together with the sale of minor accessories.

**GLAZING:** Furnishing or fitting with glass all surfaces on a fenestration.

**GOLF COURSE POLICY GUIDELINES:** Policy Guidelines for Minimizing Environmental Impacts from Golf Course Development in Otsego County, published by the Otsego County Water Quality Committee and the Northeast Michigan Council of Governments, as adopted by resolution of the Otsego County Planning Commission.

**GRADE:** For the purpose of regulating the number of stories and the height of buildings, the building grade shall be the level of the ground adjacent to the walls of the building. If the ground is not level, the grade shall be determined by averaging the elevation of the ground for each face of the building.

**GUEST HOUSE:** A building accessory to the main dwelling constructed under the same standards as those required for the main dwelling used for housing guests - A shared septic system does not by itself qualify the building as a guest house.

**HAZARDOUS SUBSTANCES:** Substances which are toxic, corrosive, flammable, combustible, radioactive, or capable of producing substantial injury through handling, use, or ingestion.

**HOME OCCUPATION:** The partial use of a home for commercial or nonresidential uses by a resident thereof, which is subordinate and incidental to the use of the dwelling for residential purposes. Family or group child care homes shall not be considered a home occupation and shall be regulated by 2006 PA 110, MCL 125.3206 and 1973 PA 116, MCL 722.111 to 722.128.

**IMPERVIOUS SURFACE:** A material incapable of being penetrated by water and other liquids. Under conditions where spills are to be retained, retention capability must be sufficient to contain one hundred twenty-five percent (125%) of any reasonably foreseeable spill for any reasonably foreseeable period necessary and have sufficient strength and durability to remain intact under reasonably foreseeable conditions. For the purpose of calculating storm water runoff, impervious surfaces shall include all roofs, slabs, pavements and gravel drives and parking lots.

**JUNK:** Junk includes, but is not limited to, broken and/or inoperable machinery or vehicles, or parts relating to machinery or vehicles, or broken and unusable furniture, stove, refrigerators, or other appliances.

**JUNK YARD:** An open area where waste, used or second-hand materials are bought and sold, exchanged, stored, baled, packed, disassembled, or handled, including scrap iron and other metals, paper, rags, rubber tires, and bottles. Junkyard also includes any area of more than 200 sq. ft. used for storage, keeping or abandonment of junk, but does not include uses established entirely within enclosed buildings.

**JUNK YARD - AUTOMOTIVE:** An area or facility for the storage, wrecking, or salvage of parts from inoperable motorized vehicles including cars, trucks, tractors, buses, etc., containing more than four (4) vehicles, or occupying an area of 200 sq. ft. or more.

**KENNEL:** A kennel is a use that includes indoor or outdoor facilities for the boarding, for profit, of dogs or other household pets which are owned by others as a commercial business.

**LIGHTS:** Flashing, intermittent or moving – a light that blinking, flashing, or fluttering lighting, including changes in light intensity, brightness or color except as provided for in [21.38.3.1](#).

**LOADING SPACE:** An off-street space on the same lot with a building for the temporary parking of a commercial vehicle while loading and unloading merchandise or materials

**LOT:** Land described in a recorded plat or by metes and bounds description, including a condominium unit in a condominium subdivision, occupied or to be occupied by a building, structure, land use or group of buildings having sufficient size to comply with the frontage, area, width-to-depth ratio, setbacks, yards, coverage, open spaces and buildable area requirements of this Ordinance, and having its principal frontage upon a public street or on a private road approved by the County.

**LOT AREA:** The total horizontal area within the lot lines of the lot, excluding public or private streets, roads, right of ways or easements dedicated for the purpose of vehicle access or transit.

**LOT - CORNER:** A lot which occupies the interior angle at the intersection of two (2) streets, which make an angle of less than one hundred thirty-five degrees (135°).

**LOT - INTERIOR:** Any lot other than a corner lot.

**LOT - THROUGH:** Any interior lot having frontage on two (2) more or less parallel streets as distinguished from a corner lot. In the case of a row of double frontage lots, all sides of said lots adjacent to streets shall be considered frontage, and front yards shall be provided as required (also a double frontage lot).

**LOT COVERAGE:** That portion of the lot occupied by main and accessory buildings

**LOT DEPTH:** The horizontal distance between the front and rear lot lines, measured along the median between the side lot lines.

**LOT LINES:** The lines bounding a lot as defined herein:

**LOT LINE - FRONT:** In the case of an interior lot, the line separating said lot from the street. In the case of a corner lot, the front lot line is that line separating said lot from the street which is designated.

**LOT LINE - REAR:** That lot line opposite the front lot line. In the case of a lot pointed at the rear (pie-shaped), the rear lot line shall be an imaginary line at least ten feet (10') long, parallel to the front lot line, but inside the side lot lines.

**LOT LINE - SIDE:** Any lot line other than the front lot line or rear lot line.

**LOT OF RECORD:** A parcel of land, the dimensions of which are shown on a document or map on file with the County Register of Deeds or in common use by County Officials, and which actually exists as so shown, or any part of such parcel held in record ownership separate from that of the remainder thereof.

**LOT WIDTH:** The horizontal distance between the side lot lines, measured at the two (2) points where the building line or setback line intersects the side lot lines.

**LOT - ZONING:** A contiguous tract of land which at the time of filing for a Zoning Permit is designated by its owner or developer as a tract to be used, developed, or built upon as a unit, under single ownership or control.

A Zoning Lot may or may not coincide with a lot of record as filed with the County Register of Deeds, and may include one (1) or more lots of record.

**MAIN BUILDING:** A building in which is conducted the principal use of the lot upon which it is situated.

**MAIN USE:** The principal use to which the premises are devoted and the principal purpose for which the premises exist.

**MANUFACTURED HOME:** [See [MOBILE HOME](#)]

**MANUFACTURED HOUSING PARK:** A parcel or tract of land under the control of a person upon which three (3) or more mobile homes are located on a continual, non-recreational basis and which is

offered to the public for that purpose regardless of whether a charge is made therefore, together with any building, structure, enclosure, street, equipment, or facility used or intended for use incidental to the occupancy of a mobile home.

**MARINA:** A facility which is owned or operated by a person, extends into or over an inland lake or stream and offers service to the public or members of the marina for docking, loading or other servicing of recreational watercraft.

**MASTER PLAN:** The County Comprehensive Plan as may be amended or updated, including graphic and written proposals indicating general locations for roads, streets, parking, schools, public buildings, and other physical development features, including resource conservation objectives.

**MOBILE HOME:** Means a structure, transportable in one (1) or more sections, which is built on a chassis and designed to be used as a dwelling with or without permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

**MUNICIPAL CIVIL INFRACTION:** The words “municipal civil infraction” means an act or omission that is prohibited by the Otsego County Zoning Ordinance or the Otsego County Municipal Civil Infractions Ordinance, and for which civil sanctions, including fines, damages, expenses and costs, may be ordered. A municipal civil infraction is not a lesser included offense of a violation of the Otsego County Zoning Ordinance that is a criminal offense.

**NEO-TRADITIONAL:** Reviving traditional methods; combining tradition with newer elements.

**NONCONFORMING BUILDING:** A building or portion thereof lawfully existing at the effective date of this Ordinance, or amendments thereto, that does not conform to the provisions of the Ordinance in the district in which it is located.

**NONCONFORMING USE:** A use which has lawfully occupied a building or land at the time this Ordinance, or amendments thereto, became effective, that does not conform to the use regulations of the district in which it is located. (Commonly referred to as “grandfathered”)

**NURSERY, PLANT MATERIALS:** A space, building or structure, or combination thereof, for the storage of live trees, shrubs, or plants offered for retail sale on the premises, including products used for gardening or landscaping. The definition of nursery does not include space used for the sale of fruits or vegetables.

**NUISANCE FACTORS:** An offensive, annoying, unpleasant, or obnoxious thing or practice, a cause or source of annoyance, especially a continuing or repeating invasion of any physical characteristics of activity or use across a property line which can be perceived by or affects a human being, or the generation of an excessive or concentrated movement of people or things, such as: noise, dust, heat, electronic or atomic radiation, objectionable effluent, noise of congregation of people, particularly at night, and passenger traffic.

**OFF-STREET PARKING LOT:** A parking area off the street, which may require drives and aisles for maneuvering, for the parking of four (4) or more vehicles.

**ORDINARY HIGH-WATER LINE:** On an inland lake which has a level established by law, it means the high established level. Otsego Lake has a High-Water Line established by law which is a 1273.5 elevation.

The elevation is maintained by the County Road Commission. For other lakes in the County it means the line between upland and bottom land which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil and the vegetation. Where water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural ordinary high-water mark.

**PARKING SPACE:** An area of definite length and width, exclusive of drives, aisles or entrances giving access thereto, and fully accessible for the storage or parking of permitted vehicles

**PERSONAL WIRELESS SERVICES TELECOMMUNICATIONS TOWERS AND FACILITIES:** Self-supporting or guyed towers of one hundred fifty feet (150’) or less that provide data and internet access

within a three to five (3-5) mile radius. These low wattage towers are a Permitted Use Subject to Special Conditions. [See [Section 21.46](#)]

**Section 322(c)(7) of the Federal Communications Act** uses the following definitions:

- (i) the term “personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;
- (ii) the term “personal wireless service facilities” means facilities for the provision of personal wireless services; and
- (iii) the term “unlicensed wireless service” means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services.

**PLANNING COMMISSION:** Shall mean the Otsego County Planning Commission

**PLAZA:** A public square in a city or town; an open area usually located near urban buildings and often featuring walkways, trees and shrubs, places to sit and sometimes shops.

**POLLUTING MATERIALS:** Materials which are capable of adversely affecting air or water resources by altering odor, taste, color, or physical or chemical composition to a degree that public health or biological communities are threatened - Examples of Polluting Materials include fertilizers and pesticides.

**PRACTICAL DIFFICULTY:** A situation whereby a property owner cannot establish a “minimum practical” legal use of a legal lot or parcel, while meeting all of the dimensional standards of the zoning district within which the lot is located. Situations occurring due to the property owner’s desire to establish a use greater than the “minimum practical” use or created by an owner subsequent to the adoption date of this Ordinance is not a practical difficulty.

**PUBLIC UTILITY:** A firm or corporation, municipal department, board or commission duly authorized to furnish and furnishing under Federal, State, or municipal regulations to the public: gas, steam, electricity, sewage disposal, communication, telegraph, transportation, or water.

**RACE TRACK:** A way improved, designed, constructed, excavated or ordinarily used for traffic in racing, or training or testing for racing. It includes all racing by motorized vehicles and all racing activities accompanied by spectators but does not include walking or hiking trails used exclusively by humans. Racing means a competitive event in which time is a determining factor.

**RESORT:** A recreational camp or facility operated for gain, and which provides overnight lodging and one or more of the following activities: golf, skiing, dude ranching, recreational farming, snowmobiling, pack trains, non-motorized bicycle trails, boating, swimming and related or similar uses normally associated with recreational resorts.

**ROAD, PRIVATE:** A road owned and maintained by a private individual, group of individuals, or a corporate entity, that provides the principal means of access for vehicular traffic to more than three lots, parcels, or site condominium units.

**ROADSIDE STAND:** An accessory and temporary farm structure operated for the purpose of selling local agricultural products.

**SERVICE ROADS:** Local roads that parallel an expressway or through street and that provide access to property near the expressway or through street.

**SETBACK:** The distance required to meet the front, side and rear yard open space requirements of this ordinance as measured from the lot lines or Road Right of Way to the fascia of the roof overhang or to the closest point of a deck or porch, not including steps, whichever is less.

**SHOOTING RANGE:** An area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting at targets.

**SHORELAND:** Land paralleling the lake shoreline, fifty feet (50’) wide as measured from the ordinary high-water level. And the land paralleling the banks of all rivers, streams and flowages of water in the

County that appear on the most recent U.S. Geological Survey Quadrangle maps, one hundred fifty feet (150') wide, measured from the ordinary high-water level, landward, at right angles or radial to the shoreline or bank, on a horizontal plane.

**SIGN:** The use of any words, numerals, figures, devices, designs or trademarks by which anything is made known such as are used to show an individual, firm, profession or business, and are visible to the general public. Accessory signs pertain to uses, activities or services conducted on the premises where located.

**SIGN FACE:** The part of a sign structure which is used to graphically communicate a message or announcement including a border space of not less than three inches (3") outside of any lettering or other graphic symbols or depictions.

**STORY:** That part of a building, except a mezzanine and/or basement, between the surface of one (1) floor and the surface of the next floor, or if there is no floor above, then the ceiling next above.

**STREET OR ROAD:** A right-of-way, affording the principal means of access to abutting property. Alleys differ in that they offer a secondary means of access to abutting property.

**STRUCTURE:** Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

**TEMPORARY BUILDING OR USE:** A use of a building or premises permitted by the Board of Appeals to exist during periods of construction of the main building or use, or for special events.

**TOURIST HOME:** A building containing not more than one (1) dwelling unit used or designed for rent to the transient public for compensation. Such a use shall have the appearance of a one (1) family dwelling and be consistent with surrounding neighborhood character. The dwelling need not be occupied by the family to be used as a Tourist Home. [See BED & BREAKFAST]

**TRAVEL TRAILER AND/OR CAMPER:** Any trailer, trailer coach, motor home, tent camper, truck-mountable camper, or other unit designed as a vacation or traveling unit for short term occupancy, and which unit is legally licensed or licensable for towing or travel over public highways by ordinary domestic vehicle.

**UNNECESSARY HARDSHIP:** A situation whereby a property owner, due to the unique or unusual conditions of a lot or parcel, cannot meet specific standards set by the Ordinance within the subject zoning district. Situations created by an owner subsequent to the enactment of this Ordinance shall not be deemed an unnecessary hardship.

**USE:** The principal purpose for which land or a building is arranged, designed or intended, or for which land or a building is or may be occupied. An accessory use is subordinate and clearly incidental to the principal use.

**USES SUBJECT TO SPECIAL CONDITIONS:** Refers to special land uses pursuant to PA 110 of 2006, as amended and also pursuant to uses referred to in this Ordinance as special approvals, special uses, special land uses, or conditional uses authorized by special permit.

**VARIANCE:** A modification of the literal provisions of the Zoning Ordinance which is authorized by the Zoning Board of Appeals when strict enforcement of the Ordinance would cause practical difficulties or unnecessary hardship for the property owner.

**VEHICLE:** Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices exclusively moved by human power or used exclusively upon stationary rails or tracks and excepting a mobile home as defined in Section 2 of Act No. 419 of the Public Acts of 1976, being section 125.1102 of the Michigan Compiled Laws.

**VEHICLE REPAIR:** Any major activity involving the general repair, rebuilding or reconditioning of vehicles, engines or trailers; collision services, such as body, frame, or fender straightening and repair; overall painting and vehicle rust-proofing; refinishing or steam cleaning.

**VEHICLE SERVICE STATION:** A building and lot or parcel designed or used for the retail sale of fuel, lubricants, air, water or other operating commodities for vehicles, and including customary space and facilities

for the installation of such commodities on or in such vehicles and including space for vehicle storage, minor repair and servicing

**WETLANDS:** Land characterized by the presence of water at a frequency and duration sufficient to support and that under normal circumstances does support wetland vegetation or aquatic life and is commonly referred to as a bog, swamp, marsh, or other areas such as flood plains or environmental areas designated as such in the County Comprehensive Plan or other county, state, or federal documents.

**WIND TURBINE GENERATOR (WTG):** A tower, pylon, or other structure and any, all or some combination of the following:

1. A wind vane, blade, or series of wind vanes or blades, or other devices mounted on a rotor for the purpose of converting wind into electrical or mechanical energy.
2. A shaft, gear, belt, or coupling device used to connect the rotor to a generator, alternator, or other electrical or mechanical energy producing device.
3. A generator, alternator, or other device used to convert the energy created by the rotation of the rotor into electrical or mechanical energy.

**WIND TURBINE GENERATOR HEIGHT:** The distance between the ground and the highest point of the wind turbine generator, regardless whether that point is on a fixed or mobile part of the wind turbine generator.

**WIND TURBINE GENERATOR- BUILDING-MOUNTED:** An on-site Wind Turbine Generator (WTG) used to generate electricity or produce mechanical energy for use on the property where it is located and attached to the building's roof, walls, or other elevated surface.

**WIND TURBINE GENERATOR - LARGE:** A commercial Wind Turbine Generator (WTG) used to generate and provide electricity to the electric utility grid. It may include nearby accessory facilities necessary to supply and transfer the electricity to the utility grid. These WTGs are greater than one hundred twenty feet (120') in height and shall not exceed four hundred feet (400').

**WIND TURBINE GENERATOR - MEDIUM:** An on-site Wind Turbine Generator (WTG) used to generate electricity or produce mechanical energy for use on the property where it is located having a height of greater than sixty feet (60') but less than or equal to one hundred twenty feet (120').

**WIND TURBINE GENERATOR - SMALL:** An on-site Wind Turbine Generator (WTG) used to generate electricity or produce mechanical energy for use on the property where it is located having a height of sixty feet (60') or less.

**YARDS:** The open spaces on the same lot with a main building, unoccupied and unobstructed from the ground upward except as otherwise provided in this Ordinance, and as defined herein:

**YARD - FRONT:** An open space extending the full width of the lot the depth of which meets the setback requirements of the zoning district. [See [SETBACK](#)]

**Corner Lots:** Shall provide front yard setbacks on all streets, frontages, or future road easements that have or may potentially have adjacent lots fronting on the same street (or across there from).

**YARD - REAR:** An open space extending the full width of the lot, the depth of which meets the setback requirements of the zoning district. In the case of a corner lot, the rear yard may be opposite either street frontage. [See [SETBACK.](#)]

**YARD - SIDE:** An open space which meets the setback requirements of the zoning district, extending from the front yard to the rear yard. [See [SETBACK](#)]

**ZONING ADMINISTRATOR:** The official designated by the County Board of Commissioners to administer and enforce the provisions of the Ordinance - The Zoning Administrator may be the Building Official, Building Inspector or other person charged with the responsibility of administering building, land use and/or other codes in Otsego County

## Christine Boyak-Wohlfeil

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**From:** Debbie Whitman <dawhitman@hotmail.com>  
**Sent:** Friday, August 7, 2020 12:19 PM  
**To:** Christine Boyak-Wohlfeil  
**Subject:** Re: Proposed Definition

**EXTERNAL SENDER, Use Caution when viewing, confirm legitimacy before clicking any links or opening any attachments**

The proposed definition for "Tourist Home" was reviewed by our Planning Commission and reported on to our Board. The Board agreed unanimously to recommend approval of the proposed definition at our meeting held on August 5, 2020.

Debbie Whitman  
Corwith Township Clerk

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**From:** Christine Boyak-Wohlfeil <cboyak-wohlfeil@otsegocountymi.gov>  
**Sent:** Tuesday, July 21, 2020 4:52 PM  
**To:** James Szymanski - Bagley Clerk (bagclk@yahoo.com) <bagclk@yahoo.com>; Ivan Maschke - Charlton Clerk (ivanmaschke@hotmail.com) <ivanmaschke@hotmail.com>; Melissa Szymanski - Chester Clerk (chestertwpclerk@frontier.com) <chestertwpclerk@frontier.com>; Debbie Whitman - Corwith Clerk (dawhitman@hotmail.com) <dawhitman@hotmail.com>; Janet Kwapis - Dover Clerk (jckwapis@hotmail.com) <jckwapis@hotmail.com>; Susan Schaedig - Elmira Clerk (clerk@elmiratownship.com) <clerk@elmiratownship.com>; Richard Ross - Hayes Clerk (rbross@freeway.net) <rbross@freeway.net>; Liz Mench - Livingston Clerk (livingstontwp@gmail.com) <livingstontwp@gmail.com>; Margaret Black - OLT Clerk (otslkclerk@charter.net) <otslkclerk@charter.net>  
**Cc:** Christopher Churches <cchurches@otsegocountymi.gov>  
**Subject:** RE: Proposed Definition

Good Afternoon everyone,

Attached is a proposed definition for 'Tourist Home' as discussed at last night's PC meeting. Please review for input and respond within the allotted time with any comments or concerns regarding the amendment. If you have questions or need anything further, please don't hesitate to contact our office.

Thank you for your participation in County Zoning.

Christine

August 15, 2020

Mr. Christopher Churches  
Director Otsego County Land Use Services  
1322 Hayes Road  
Gaylord, Mi 49735

Dear Chris,

The Otsego Lake Township Planning Commission held its meeting on August 6, 2020. At that meeting it voted to recommend the adoption of the proposed text amendment to the definition of Tourist Home.

Sincerely,

Nora Corfis

Secretary OLT Planning Commission

## Bagley Township Planning Commission Agenda/Minutes for 08/24/2020

### 1 Call to Order

Called to order at 6:01

### 2 Approval of Minutes from June Meeting

Wally moves to approved, Larry Seconded, motion passed unanimously

### 3 Presentation to the Board by Dale Smith on history of property of parcel number 010-017-400-005-03 subject to PZRZ20-001

Mid 70's acquired by Dale and his partner. At that time platted for a residential with approximately 30 homesites. Gas line went through center was put through the lot. Georgia Pacific then bought the property due to toxic plume. Dale bought the Commerce Park across the street which has its own central water system in the county. When doing the development it was stated that there needed to always be a buffer zone, including restrictions on hours and nothing that could be a potential contamination on Otsego Lake

### 4 Public Hearing for PZRZ20-001 Rezone of parcel 010-017-400-005-03, which includes public comment

Todd Siddell commented on how the master plan includes gradients to go from Industrial to Residential districts. He wants to have a buffer with small business across the street from Industrial to Residential. He implied that he would prefer to have more of a buffer from Industrial to Residential by going through the

Holly Jackson, the lawyer for Mr. Bills, wanted to talk about the environmental issues for the property. She wanted to make sure that it was clear that the DEQ (EGLE) has no further contamination that would require remediation at this point. When asked by Larry she stated that there is no further contamination on the site, but due to Georgia Pacific's restrictions to have no residences or day cares on the property. There are no current concerns for the property from EGLE and it.

Brian asked about the buffer, Todd commented that it would be 25-50 per what is allowed via the county. It would include some trees, but would depend on the area. Todd stated that they would follow the county zoning restrictions.

Wally stated that there issues from when Commerce Park was developed it was a huge detriment to the area and caused him to move because it was so loud. Todd stated that the county zoning has changed drastically since that time and the zoning.

Property owner that lives across the street that she already has enough issues with vandalism and has had a car go through her yard and doesn't want anymore traffic as it is busy enough.

Dale stated that the property along the road has a consumers easement and can't be developed with foliage due to it.

Patricia Holmes-White her parents were the original owners and developers of the property. When it was currently developed it was zoned as a buffer across the water an

Rob stated that there are plenty of industrial parks, including the Gaylord Industrial Park which is basically vacant at this point, and including Commerce Park and that there had been a promise of the buffer from the railway and the expressway that isn't there and that there isn't any developing along the west side of the lake except for a small store and the golf course. He supports keeping it industrial to protect the lake and as a trained biologist he used the example of Oscoda and Van Etna that they were told it would be okay, that there were no problems and plumes tend to follow elevation and do tricky things.

Lois Dean was involved with the Commerce Park rezone and was promised that there would be a 25 ft buffer which does not exist and wants the property to stay zoned. She asked where the plume currently is. Michelle Noirost stated she has been told that it currently is around the intersection of McCoy and Old 27 and moving northeast.

A resident across the street stated that she is getting more lime in her water since Commerce Park went

Bill Raymond lives across the street from the property in question. He thinks it should happen and be rezoned.

Ed Harris lives across the street that the water table is really high in his area and there is standing water in the neighborhood due to the high water. He is concerned that any pollution would get into the lake immediately. He was emotional about his statement that Otsego Lake should not be sacrificed for private gain as it is a natural gem that draws people to the area. Noise is already an issue from Commerce Park.

Dale asked if sewer and water is going into the project. They are evaluating the current position, but it is not finalized at this point.

David Parcell stated that the power company cleared 30 ft of trees a few years ago and since then the sound in the area is incredibly loud at this point and if they take out the trees in the property in question it will lose the trees forever and it won't go back.

Larry asked Dave about the Planning Commission and stated that the property was set as residential to give a buffer between the Industrial properties because it was what the people wanted. He also stated that he has gone to the County Commissioners meetings regularly and it has been stated that the plume is heading to the northeast of the property. He stated that he

think the property should stay residential. He asked if there had been conversations about putting sewer and water to the property and they stated he had not.

Larry motioned and Brian seconded the motion to oppose the rezoning due to the very strong opposition to the local residents, noise issues and a complete lack of an adequate buffer to the residential neighborhood across the street and most importantly because it does not match with our Future Land Use Map.

The vote was unanimous to oppose the rezoning of Parcel 010-017-400-005-03

5 Public Hearing for Tourist Home Definition, which includes public comment

Peter motioned to accept the updated for Tourist Homes, Celeste seconded.

The motion was approved unanimously.

6 Public Hearing for Article 18 Edits regarding "Lots Near Water", which includes public comment

We postponed a vote on the edit to have more time to consider it.

7 Public Comment

Called for Public Comment at 7:17, hearing none we closed it at 7:18

8 Adjourn

Meeting was adjourned at 7:19

## Christine Boyak-Wohlfeil

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**From:** Christopher Churches  
**Sent:** Friday, September 11, 2020 8:36 AM  
**To:** Christine Boyak-Wohlfeil  
**Subject:** FW:

-----Original Message-----

**From:** msanders@freeway.net [mailto:msanders@freeway.net]  
**Sent:** Wednesday, July 22, 2020 9:00 AM  
**To:** Christopher Churches <cchurches@otsegocountymi.gov>  
**Subject:**

EXTERNAL SENDER, Use Caution when viewing, confirm legitimacy before clicking any links or opening any attachments

Good Morning,

I have read the definition of the tourist house and also the bed and breakfast definition as in the listings presented.

It appears to me that the bed and breakfast is an area where the owner can rent to users for a short time that is attached to the home but is able to provide lodging for a period of short time.

It appears to me that the tourist home is NOT inhabited by a family, owner, etc. Thus the entire dwelling can be used for the rental facility for those who wish to use for their purposes. Thus, my understanding, today, is that any seasonal home, vacation home, or future retirement home or owners, can be used entirely for rental purposes.

I am assuming that a tourist home is to mean a certain defined length of time of usage as in less than a month,,,,,,,,,,,,,,,,,,,,. Persons who rent homes to live and work are on a lease or other agreement for long periods of time.

Is there a need to show the difference of rental units of long duration and for the tourist home which seems to indicate a short duration.

Mary