STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a Michigan nonprofit corporation,

Plaintiff,

v

PARK TOWNSHIP, a Michigan municipal corporation,

Defendant.
_____/

Hon. Jon H. Hulsing

Case No.: 2023-7474-CZ

DEFENDANT PARK TOWNSHIP'S MOTION FOR SUMMARY DISPOSITION

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NOW COMES Defendant Park Township (the "Township"), by its joint legal counsel, the Thurn Law Firm, P.C. and Bloom Sluggett, PC, and respectfully moves the Court as follows:

1. The Township seeks summary disposition in favor of the Township and against Plaintiff Park Township Neighbors ("Plaintiff") pursuant to MCR 2.116(C)(1), (8) and (10).

2. Counts III and VI of the Plaintiff's First Amended Complaint should be dismissed with prejudice because the Township's various zoning ordinances before April 1, 2024 did not allow short-term rentals ("STRs") in the single-family residential and agricultural zoning districts. Summary disposition in the Township's favor as to the STR prohibition issue is mandated by and pursuant to the Michigan and federal appellate cases of *Reaume v Township of Spring Lake*, 328 Mich App 321 (2019); partially vacated as to reasoning and generally upheld on alternate grounds, 505 Mich 1108 (2020); *Dezman v Charter Twp of Bloomfield*, 513 Mich 898 (2023) (Order of November 22, 2023 in Case No. 165878); on remand, June 27, 2024 unpublished decision by the Michigan Court of Appeals (Case No. 360406; 2024 WL 3216449); *Independence Twp v Skibowski*, 136 Mich App 178; 355 NW2d 903 (1984); *Moskovic v New Buffalo*, 638 F Supp 3d 770 (WD Mich, 2022); *Moskovic v New Buffalo*, unpublished opinion of the United States District Court for the Western District of Michigan, issued January 13, 2023; and *Moskovic v New Buffalo*, unpublished opinion of the United States Court of Appeals for the Sixth Circuit, issued December 14, 2023 (Case No. 23-1165); cert. denied in 144 S. Ct. 2609 (June 3, 2024).

3. Plaintiffs' claims of unenforceability of the relevant Park Township Zoning Ordinance provisions due to laches, estoppel, etc. are without merit and should be dismissed with full prejudice pursuant to the above-mentioned appellate cases in Section 2 hereof as well as *Fass v Highland Park*, 326 Mich 19, 27 and 25-26; 39 NW 336 (1949); *City of Hillsdale v Hillsdale Iron & Metal Co*., 358 Mich 377, 383-384; 100 NW2d 467 (1960); *Detroit Bldg. Comm v Kunin,* 181 Mich 604, 612–613; 148 NW 207 (1914); *Pleasanton Twp v Parramore***,** unpublished decision by the Michigan Court of Appeals dated December 18, 2014 (Case No. 317908; 2014 WL 721204); *Brummel v Grand Haven Twp*, 87 Mich App 442; 274 NW2d 814 (1979); *Sinelli v Birmingham Bd. of Zoning Appeals, 160 Mich App 649, 652; 408 NW2d, 415 (1987)*; *Lyon Charter Twp v Petty*,

317 Mich 482, 485, 486, 489-496; 896 NW2d 477 (2016); partially reversed on unrelated grounds, 500 Mich 1010; 896 NW2d 11 (2017); and *Yankee Springs Twp. v Fox,* 264 Mich. App. 604, 612; 692 NW2d 728 (2004).

4. Counts I, II and V of Plaintiff's First Amended Complaint should also be dismissed because Ordinance No. 2022-02 (which was a non-zoning, regulatory or police power ordinance) was not adopted by the Township Board in the form that was signed and published, but rather was mistakenly signed and published as an amendment to the Park Township Zoning Ordinance, but the error was corrected shortly thereafter pursuant to Ordinance No. 2023-02 (which constituted a non-zoning police power or regulatory ordinance enactment). Furthermore, the erroneous procedural publication of that non-zoning police power or regulatory ordinance (and subsequent correction thereof) is totally irrelevant to the current lawsuit. There is no allegation in Plaintiff's First Amended Complaint that the relevant Zoning Ordinance provisions (before April 1, 2024) were improperly enacted or adopted in violation of the Michigan Zoning Enabling Act.

5. Count IV of Plaintiff's First Amended Complaint should also be dismissed because *mandamus* will not apply should the Township prevail with regard to summary disposition of the other Counts in Plaintiff's First Amended Complaint (i.e. mandamus is only applicable where a clear legal duty is present and must be performed). *Barrow v Wayne County Board of Canvassers*, 341 Mich App 473, 484-485; 991 NW2d 610 (2022) and *Sakorafos v Charter Twp of Lyon*, ___ Mich App ___ (2023).

6. Finally, Plaintiff's entire First Amended Complaint should be dismissed with full prejudice because the claims and assertions contained therein are not ripe, and thus, the Court does not even have jurisdiction over this lawsuit. See *Carter v DTN Management Company*, ____ Mich ____ (2024).

7. This Motion for Summary Disposition is supported by the Township's Brief submitted to the Court together with this Motion.

WHEREFORE, the Township respectfully requests that full summary disposition be entered in favor of the Township and against the Plaintiff as specified above and in the accompanying brief, that Plaintiff's First Amended Complaint be dismissed with full prejudice, that the injunctive Order of the Court issued on December 1, 2023 regarding Township ordinance enforcement be dissolved, that the Township be awarded its attorney fees and costs and that the Court accord the Township such other relief as the Court deems appropriate.

Respectfully submitted by,

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Dated: September 30, 2024

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Dated: September 30, 2024

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BRIEF IN SUPPORT OF DEFENDANT PARK TOWNSHIP'S MOTION FOR SUMMARY DISPOSITION

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INTRODUCTION

Rarely does a lawsuit so closely resemble and "parallel" a published Michigan Court of Appeals decision, yet a plaintiff still insists on pursuing litigation in clear contravention of that decision. That is the situation in this case with *Reaume v Township of Spring Lake*, 328 Mich App 321; 937 NW2d 734 (2019); partially vacated as to reasoning and generally upheld on alternate grounds, 505 Mich 1108 (2020). In addition, the main issue in this case (whether short-term rentals or commercial transient rental use of a single-family dwelling violates the Park Township Zoning Ordinance) is also governed by last fall's decision by the Michigan Supreme Court in *Dezman v Charter Twp of Bloomfield*, 513 Mich 898 (2023) (Order of November 22, 2023 in Case No. 165878); on remand, June 27, 2024 unpublished decision by the Michigan Court of Appeals (Case No. 360406; 2024 WL 3216449) (**Exhibit 1**), *Independence Twp v Skibowski*, 136 Mich App 178; 355 NW2d 903 (1984) and progeny. Accordingly, Plaintiff Park Township Neighbors' current lawsuit is without merit (and probably frivolous) and should be summarily dismissed.

FACTS

Unfortunately, Plaintiff Park Township Neighbors ("PTN") obfuscates, conflates and mixes up many of the facts and legal issues in this lawsuit.[1]

For the past *50 years*, since 1974, the Park Township Zoning Ordinance (the "Zoning Ordinance") has prohibited short-term rentals ("STR") of single-family dwellings in all its residential and agricultural zoning districts.[2] During that half century, everyone (including PTN's members)

[1] It is interesting to note that the Plaintiff should choose the euphemistic name "Park Township Neighbors," as most of Plaintiff's members who operate STRs neither reside in the units nor are technical neighbors of the adjoining residents. Nor are the transient renters "neighbors."

[2] Both the Michigan Court of Appeals and the Supreme Court have upheld and enforced this short-term rental prohibition in a materially identical ordinance adopted by the Township of Spring Lake in *Reaume v Township of Spring Lake.* Prior to 1974, Park Township's 1963 Zoning Ordinance allowed hotels and motels as a permitted use in the residential and agricultural zoning districts, and tourist room businesses for the housing of transient travelers as a permitted use in Residence District B. Prior to that, the Township's 1946 Zoning Ordinance allowed transient lodging

has been legally charged with having constructive notice of this STR ordinance prohibition. See *Cummins v Robinson Twp*, 283 Mich App 677, 698; 700 NW2d 421 (2009) and *Adams Outdoor Advertising v East Lansing* (after remand), 463 Mich 17, 27 (n-7); 614 NW2d 634 (2000). Everyone (including PTN and its members) is conclusively presumed to know the law and cannot be excused from its enforcement by any claimed ignorance or misunderstanding of it. *Ibid.* Also, every landowner "is presumed to know the nature and extent of the powers of municipal officers" and this rule applies even "when the ordinance violator acts in good faith, expending money or incurring obligations in reliance upon the official's acts." *Fass v Highland Park*, 326 Mich 19, 27 and 25-26; 39 NW 336 (1949); see also *City of Hillsdale v Hillsdale Iron & Metal Co*., 358 Mich 377, 383-384; 100 NW2d 467 (1960). Finally, the Court of Appeals has stated:

> "This Court relied on the reasoning in *Fass* and explained that the plaintiffs must "be charged with at least constructive knowledge of the zoning ordinance provision requiring a waiver by the common council. Neither the department of buildings nor the police department could exercise the authority vested in the common council. *Id.* at 362–363. The Court further held that all persons dealing with municipalities and their agents act with constructive, if not actual, knowledge of the limitations on the agents' powers and, when an agent acts outside his or her authority, the acts are extralegal and without efficacy. *Mazo v City of Detroit,* 9 Mich. App at 363, quoting *Fass,* 326 Mich at 27, quoting *Detroit Bldg. Comm v. Kunin,* 181 Mich. 604, 612–613; 148 NW 207 (1914)." *Pleasanton Twp v Parramore***,** unpublished decision by the Michigan Court of Appeals dated December 18, 2014 (Case No. 317908; 2014 WL 721204) at p. 6 of the slip opinion. **Exhibit 2**.

Park Township's current Zoning Ordinance took effect on February 7, 1974. It currently permits (and long has permitted) as of right a "single family dwelling" in six of its twelve zoning districts, including AG, R-1, R-2, R-3, R-4, R-5, and two of its overlay districts, 4A and 4B. See Sections 38-155-462 of the Zoning Ordinance as attached hereto. **Exhibit 3**. It also has two commercial districts; one of which is the "C-2 Resort Service District", which "is for commercial

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and boarding as a permitted accessory use in residential zones. But in February 1974, the Township Board adopted the current Zoning Ordinance, which has never allowed such uses in the residential or agricultural zoning districts.

uses that primarily serve tourist and seasonal residents", including "hotels and motels." See Section 38-451-456 of the Zoning Ordinance. *Ibid.* The Zoning Ordinance prohibits motels, tourist homes and short-term rentals in all other non-commercial zoning districts.[3]

None of the residential or agricultural zoning districts permit either motels or tourist homes as of right or even by a special use permit. Section 38-155-462 of the Zoning Ordinance. *Ibid.* As discussed below, uses not expressly permitted in a zoned district are prohibited. Thus, in addition to not being expressly permitted in a residential or agricultural zoning district (and are thereby prohibited), a "motel" and a "tourist home" are also expressly and specifically prohibited in all residential and agricultural zoning districts.

Prohibiting STRs in residential and agricultural districts is a legitimate exercise of the Township's authority given that such short-term rental commercial uses, as determined by the Township, can be very annoying for, disruptive to and incompatible with single-family residential communities. Consequently, the Zoning Ordinance requires that STRs be located in the C-2 Resort Service zoning district where hotels, motels and other commercial establishments for transients are permitted as of right, and can exist in harmony with each other.

DISCUSSION

1. Summary Disposition Standards.

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests whether there is factual support for a claim. *Maiden v. Rozwood*, 461 Mich 109, 597 NW2d 817 (1999). To consider a motion for summary disposition under MCR 2.116(C)(10), the trial court reviews affidavits,

[3] The Zoning Ordinance attached hereto as **Exhibit 3** was in effect on and prior to March 31, 2024. It was amended then to thereafter include the term "short-term rental" and to regulate STRs. As noted in footnote 2, prior to 1974, the Township allowed hotels and motels as a permitted use in the residential and agricultural zoning districts, and allowed tourist room businesses for the housing of transient travelers in Residence District B. However, upon adoption of the 1974 Zoning Ordinance, those uses were no longer explicitly permitted in the residential or agricultural zoning districts and are therefore prohibited and are only allowed to continue as lawful nonconforming uses if established prior to February 7, 1974.

pleadings, depositions, admissions, and other evidence in the light most favorable to the non-moving party. MCR 2.116(G)(5); *Quinto v Cross & Peters Co*., 451 Mich 358; 362-363; 547 NW2d 314 (1996). Once the moving party supports its position with documentary evidence, the opposing party has the burden of proving that a genuine issue of disputed fact exists. *Id*. The opposing party may not rely upon mere allegations or denials but must set forth specific facts showing genuine issues for trial. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves an issue upon which reasonable minds might differ. *West v General Motors Corp.,* 469 Mich 177, 183, 665 NW2d 468 (2003). Summary disposition is proper if the affidavits and other documentary evidence show that there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

"A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in the light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999) (citing *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992)). "A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.'" *Id.* (quoting *Wade*, 439 Mich at 163). When deciding a motion brought under MCR 2.116(C)(8), a court considers only the pleadings. See MCR 2.116(G)(5).

2. <u>This lawsuit is premature and there is no actual case or controversy</u>.

This appears to be a "preemptive" lawsuit. This lawsuit was filed prematurely and without any actual case or controversy. This lawsuit simply is not "ripe." See *Carter v DTN Management Company*, ___ Mich ___ (2024).

It appears uncontroverted that:

(a) Neither PTN nor any of its members have ever applied for a zoning permit or other zoning approval from the Township for an STR.

(b) The lawsuit does not allege that PTN or any of its members ever applied for and were denied any Township permit or approval that would have permitted them to provide for an STR, nor allege any other official action or decision by the Township on the issue of STRs in the Township. If they had, then any such official interpretation of the Zoning Ordinance is required to be first appealed to the Park Township Zoning Board of Appeals before one can appeal to the circuit court. See MCL 125.3603(1) and MCL 125.3605. Until then, the Plaintiff in this case has not exhausted its administrative remedies, thereby rendering this case not ripe for adjudication.

(c) Neither PTN nor any of its members have been denied a zoning permit or a zoning approval request from the Township.

(d) Neither PTN nor any of its members have appealed any formal zoning determination/interpretation by the Park Township Zoning Administrator (the "Zoning Administrator") denying an STR zoning permit or application to the Park Township Zoning Board of Appeals (the "ZBA").

(e) Any claim by PTN, or any of its members that they may continue to use their property for STRs, contrary to the Zoning Ordinance, on the basis of being a lawful non-conforming use, has to be first addressed by the Township for a determination. Until then, they would not have exhausted their administrative remedies, thereby rendering such a claim not ripe for adjudication.

Based on all of the above, PTN's claims are unripe, speculative and hypothetical, such that this lawsuit should be dismissed.

3. Short-term rentals are (and have long been) illegal within the residential and agricultural zoning districts under the Park Township Zoning Ordinance.

The key issue in this lawsuit (and likely the overriding and determinative issue) is whether STRs are allowed (at least prior to March 31, 2024) within the residential and agricultural zoning districts pursuant to the Zoning Ordinance.[4] The resolution of that issue will almost certainly resolve the balance of this case.

What a specific provision in a zoning ordinance means is normally an issue of law. See *Jones v Wilcox*, 190 Mich App 564, 566; 476 NW2d 473 (1991). Michigan applies the same rules of construction or interpretation to a municipal ordinance as a state statute. The courts must apply clear and unambiguous language as written, and any rules of construction are applied "in order to give effect to the legislative body's intent." *Brandon Charter Twp v Tippett*, 241 Mich App 417, 422; 616 NW2d 243 (2000) and *Reaume v Twp of Spring Lake*, 328 Mich App 325-326. Michigan appellate courts also review *de novo* the application of legal and equitable doctrines. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008) and *Sylvan Twp v City of Chelsea*, 313 Mich App 305, 315-316; 882 NW2d 545 (2015). Courts should consider the substance of pleadings and look beyond the names or labels applied by the parties. *Reaume*, 328 Mich App 326; *Hartford v Holmes*, 3 Mich 460, 463 (1855) and *Norris v Lincoln Park Police Officers*, 292 Mich App 574, 582; 808 NW2d 578 (2011).

In general, when the Michigan courts interpret or construe a provision of a municipal zoning ordinance, there are three possibilities as follows:

(a) The ordinance provision is crystal clear and need not be interpreted or construed.

(b) The ordinance provision requires some construction or interpretation.

[4] The Township formally amended the Zoning Ordinance on March 14, 2024 (effective on April 1, 2024) to expressly prohibit STRs outside of its commercial zoning districts. Therefore, the lawsuit and this brief apply to pre-April 1 of 2024 matters only. Nevertheless, the outcome of this case will likely determine general lawful nonconforming details of some pre-existing STRs that were established between February 7, 1974 and March 31, 2024. References herein to the "Zoning Ordinance" refer to the ordinance pre-April 1, 2024 unless otherwise expressly stated.

(c) The ordinance provision is significantly ambiguous and susceptible of more than one meaning or interpretation.

The Township respectfully asserts that the current situation is (b), above. The ordinances in both *Reaume* and the present case would be crystal clear if they expressly defined the phrase "short-term rentals" and indicated specifically where and how STRs would be allowed. However, very few municipal zoning ordinances in Michigan expressly define or deal with STRs, which would otherwise be scenario (a), above. See **Exhibit 4** (the many STR appellate court decisions in Michigan). Scenario (c) is where the ordinance provision is clearly ambiguous and generally must be construed in favor of the property owner.[5] It should be noted that the courts in *Reaume* and *Moskovic (citations are below),* (as well as the multiple STR appellate decisions listed in **Exhibit 4**), did not conclude that the relevant ordinance provisions are ambiguous (and must be construed in favor of the property owner even though construction or interpretation was required). Therefore, this Court should apply scenario (b). And, based on all of the relevant Michigan appellate cases, Michigan rules of ordinance construction or interpretation and common sense, STRs have not been allowed under the Park Township Zoning Ordinance since 1974.[6]

[5] Even if this Court were to accept PTN's erroneous assertion that some Township officials, charged with administering the ordinance, believed over an extended period of time, that short-term rentals were permitted in residential and agricultural zoning districts, that assertion has no relevancy in this case. First, the Court remains free to overrule any such construction that it deems to be wrong or erroneous. Second, such a finding carries absolutely no weight in cases where the ordinance is **not ambiguous**. In fact, in cases where the ordinance is not ambiguous, the Court is required to enforce the ordinance as written. *Kalinoff v Columbus Twp*. 214 Mich App 7, 11; 542 NW2d 276 (1995). See *NSC Walker, LLC v City of Walker*, unpublished decision by the Michigan Court of Appeals (Case No. 358403, Dec. 15, 2022; 2022 WL 17724288) at p. 5, where the Court so stated. (**Exhibit 5**) Even if ambiguous, the Court of Appeals has observed:

> "**In cases of ambiguity** in a municipal zoning ordinance, the past practical construction over an extensive period by the officer or administrative agency charged with its administration is to be accorded great weight in determining its meaning. However, an administrative construction is **not binding** on the court, which is **free to overrule** the construction if it is deemed to be wrong or erroneous." *Sinelli v. Birmingham Bd. of Zoning Appeals*, 160 Mich App 649, 652; 408 NW2d, 415 (1987) (Emphasis added).

[6] PTN appears to assert that if an ordinance requires any interpretation or construction at all, then it is hopelessly vague and unenforceable. That is not the law in Michigan.

The ordinance interpretation issue is clearly governed by *Reaume v Twp of Spring Lake*; *Moskovic v New Buffalo*, 638 F Supp 3d 770 (WD Mich, 2022) ("*Moskovic I*") (**Exhibit 6**); *Moskovic v New Buffalo*, unpublished opinion of the United States District Court for the Western District of Michigan, issued January 13, 2023 (Case Nos. 1:21-cv-144; 1:21-cv-674) ("*Moskovic II*") (**Exhibit 7**); and *Moskovic v New Buffalo*, unpublished opinion of the United States Court of Appeals for the Sixth Circuit, issued December 14, 2023 (Case No. 23-1165), cert. denied, 144 S. Ct. 2609 (June 3, 2024) ("*Moskovic III*") (**Exhibit 8**). Based on those decisions alone, STRs are illegal in the Township within the residential and agricultural zoning districts under the longstanding Park Township Zoning Ordinance. No matter how much PTN might try to "distinguish" or downplay those court decisions, they are completely applicable to this lawsuit and mandate a decision in favor of the Township as to the illegality of the STRs at issue.

In the past, the Zoning Ordinances for Park Township have not mentioned "short-term rentals." That is not surprising since until fairly recently, the phrase "short-term rentals" was not used extensively in ordinances in Michigan. Prior to the past half-dozen years or so, renting out cottages, houses and cabins in single-family residential or agricultural zoning districts to third parties for purely commercial or business use was relatively rare. It has long been common throughout West Michigan (particularly on lakes) for the past century or so for families to rent out their cottages or cabins for a few weeks each year to pay the property taxes and defray costs. Still, such dwellings normally remained for the primary non-commercial use of the property owners or their families. And, in other cases, a family would own a cottage next door on a lake or nearby which was rented solely to third parties, but the owner resided nearby and was able to carefully monitor the use by third-party renters of those dwellings. In commercial districts in certain higher density resort areas, rentals were often contained in tourist cabins, small motels, boarding houses or similar situations.

The notion of widespread use of highly transient commercial rentals within single-family residential (i.e. non-commercial) zoning districts was somewhat foreign.

Given that the various Zoning Ordinances over the years by Park Township did not expressly mention the term "short-term rental" (as has been the case with most township zoning ordinances throughout the state, including Spring Lake Township in *Reaume*), this Court must look to the definitions in and the structure or make up of such Park Township Zoning Ordinances to determine whether STRs have ever been lawful within the residential and agricultural zoning districts within the Township.[7]

Neither this Ottawa County Circuit Court, the Court of Appeals nor the Supreme Court in *Reaume v Spring Lake Twp* found these types of STR prohibiting ordinance provisions to be ambiguous. Instead, the courts appropriately applied the clear and unambiguous language of the ordinance as written, giving effect to every word, phrase and clause, and avoiding an interpretation that would render any part of the ordinance surplusage or nugatory. See *Jenkins v Patel,* 471 Mich 158, 167; 684 NW2d 346 (2004). Nor did the federal courts in the *Moskovic* decisions find similar wording to be ambiguous. **Exhibits 6, 7** and **8**.

The Township respectfully asserts that apart from any lawful nonconforming use situation, STRs are not lawful in Park Township in the residential and agricultural zoning districts for four different and alternate reasons, each or any one of which is sufficient on its own to prove such illegality and uphold the Township's position.[8] Those reasons are generally as follows:

[7] As noted in footnote 2, the Township's Zoning Ordinances prior to February 1974 allowed hotels, motels, and tourist rooms for transient guests in the residential and agricultural zoning districts. That changed by the adoption of the 1974 Zoning Ordinance.

[8] As discussed above, the Zoning Ordinance was amended effective April 1, 2024 to expressly use and define "short-term rental" and to confine STRs to the commercial zoning districts.

- Since February 1974, STRs (or the equivalent) have not been listed as a permitted use within the residential or agricultural zoning districts, but instead are only allowed in the C-2 Commercial zoning district.
- STRs (or the equivalent) have long fallen within the definitions of both a "motel" and a "tourist home" over the years, and since February 1974 have not been allowed within the residential or agricultural zoning districts.
- STRs (or the equivalent) are clearly a commercial, "for profit" or business use or operation that is disallowed within the residential and agricultural zoning districts.
- Finally, STRs (or the equivalent) are not an allowed residential use.

* * *

(a) *Since February 1974, STRs (or the equivalent) have not been listed in the Zoning Ordinance as either a permitted use or allowed use with special land use approval within the residential or agricultural zoning districts.*

In each zoning district, the Zoning Ordinance specifically identifies the uses permitted in that zoning district as of right or by a special land use. See Sections 38-155-462 of the Zoning Ordinance. **Exhibit 3**. If a use is not expressly listed as a permitted or special land use, then that use must be regarded as being prohibited in that zoning district. That is often referred to as a "pyramid" or "permissive" ordinance.

It appears undisputed that since February 1974, STRs (or the equivalent) have never been expressly listed within the residential or agricultural zoning districts as either a permitted use or an allowed activity with special land use approval. That alone should preclude STRs in those zoning districts. As the Michigan Supreme Court held in *Dezman v Charter Twp of Bloomfield*, 513 Mich 898 (2023) (Order of November 22, 2023 in Case No. 165878) (**Exhibit 9**); on remand, above (**Exhibit 1**), any use not expressly listed as a permitted use or with special land use approval within a specific zoning district is prohibited and illegal.[9] *Dezman* stated:

[9] That Supreme Court decision in *Dezman* was apparently not available to this Court when it issued the preliminary injunction regarding ordinance enforcement on December 1, 2023. Had this Court had the benefit of the Supreme

> Under the ordinance which specifically sets forth permissible uses under each zoning classification…absence of the stated use must be regarded as excluding that use. **Exhibit 9**.

Likewise, in *Pittsfield v Malcolm,* 375 Mich 135; 134 NW2d 166 (1965), the Michigan Supreme Court stated:

> Under the ordinance which specifically sets forth permissible uses under each zoning classification, absence of the stated use must be regarded as excluding that use. This is especially true where the use is expressly permitted … under other classifications. 375 Mich 143.

It is true that the zoning ordinance in *Dezman* did have express interpretation or construction language, whereas the zoning ordinances in both the current Park Township case and the *Reaume* case did not. Nevertheless, the Michigan common law also holds that a use, activity, building or structure not expressly allowed in a municipal zoning ordinance or specific zoning district thereof is prohibited. In *Independence Twp v Skibowski*, 136 Mich App 178; 355 NW2d 903 (1984), the Court of Appeals reiterated that common law rule and stated:

> In considering whether the C-3 zoning classification permits the mixing and processing of concrete, we note that the Independence Township ordinance is organized upon a permissive format. A permissive format states the permissive uses under the classification, and necessarily implies the exclusion of any other non-listed use. *McQuillan, Municipal Corporations* (3d ed), § 25.124, p 376. 136 Mich App 178, 184 (1984)

See also *Pigeon v Ashkay Island, LLC*, unpublished decision by the Court of Appeals dated January 28, 2021 (Case No. 351235; 2021 WL 299329). Slip opinion at p. 5. **Exhibit 10**.

Finally, the Federal District Court noted recently in *Moskovic I* as to STRs specifically:

> In other words, the Zoning Ordinance prohibited uses that were not expressly permitted. Plaintiffs do not contend that the Zoning Ordinance expressly permitted the use of residential property for short-term rentals, and there is no evidence that the

Court's Order in *Dezman* on December 1, 2023, the Township believes that this Court may not have issued its preliminary injunction regarding enforcement of the Zoning Ordinance regarding STRs.

Zoning Administrator or the Board of Zoning Appeals decided to classify that use as a permitted use or as similar to one. *Moskovic I* at p. 784. **Exhibit 6**. [10]

Therefore, since STRs have not been expressly listed as allowed in the residential and agricultural zoning districts in the Zoning Ordinance, they have been disallowed.

(b) *STRs fall within the definitions of both a "motel" and a "tourist home" under the current and past Zoning Ordinances, and such uses have not been allowed in either the residential or agricultural zoning districts since February 1974.*

Currently, Section 38-6 of the Zoning Ordinance defines a "motel" as follows:

> A commercial establishment consisting of a building or group of buildings on the same lot, whether detached or in connected rows, which offers lodging accommodations and sleeping rooms to transient guests in return for payment. Access to the lodging facilities is generally from the outside. **Exhibit 3**.

Attached hereto as **Exhibit 11** are the definitions of a "motel" over the years in past versions of the Zoning Ordinance.[11]

Currently, Section 38-6 of the Zoning Ordinance defines a "tourist home" as follows:

> A building, other than a hotel, boardinghouse, lodging house, or motel, where lodging is provided by a resident family in its home for compensation, mainly for transients. **Exhibit 3**.

Attached hereto as **Exhibit 11** are the definitions of a "tourist home" over the years in past versions of the Zoning Ordinance.

Based on these definitions, an STR is <u>both</u> a motel <u>and</u> a tourist home. As the Court of Appeals stated in *Pigeon*:

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[10] See also the decision in *Moskovic III* at p. 4 of the slip opinion. **Exhibit 8**.

[11] PTN has argued that when (and after) the definition of a "motel" was amended by the Township in 2018, an STR could no longer be considered a "motel" because a single-family unit used as an STR could not be considered a "commercial establishment" or a "facility." However, dictionary definitions and common word usage indicate that an STR can be both an "establishment" and a "facility." A facility is a place and presumably can include a house. Furthermore, a business in a house can be an "establishment." And, the definition of a "commercial establishment" in Section 38-6 actually incorporates its own meaning ("a commercial establishment consisting of a building or group of buildings on the same lot, whether detached or in connected rows, which offers lodging accommodations and sleeping rooms to transient guests in return for payment").

> We need not resolve the parties' competing interpretations of what constitutes a single-family dwelling, however, because we agree with the Township that defendant's use of the house meets the definition a "**tourist home**," which is not permitted in the AR District. A **tourist home** is defined as follows: "A dwelling in which overnight accommodations are provided or offered to transient guests for compensation. A **tourist home** shall not be considered or construed to be a multiple dwelling, motel, hotel, boarding or rooming house." **Tourist homes** are permitted only in the Community Commercial Center Zoning District (CC District).
>
> The house on Ashkay Island is a dwelling that is being rented overnight to transient guests for compensation. Defendant asserts that the house is not a **tourist home** because the guests are not provided overnight accommodations. Defendant does not elaborate on that assertion, however, and "[a] party cannot simply . . . announce a position and then leave it to this Court to discover and rationalize the basis for [its] claims . . . ." *Mitchell v Mitchell*, 296 Mich App 513, 524; 823 NW2d 153 (2012) (quotation marks and citation omitted). In any event, defendant is undoubtedly providing overnight accommodations as the renters are given exclusive occupation of the house along with numerous other amenities such as the use of the boats on the property. Accordingly, defendant is using the house as a **tourist home**. *Pigeon*, slip opinion at p. 4. (Emphasis added) **Exhibit 10**.

Since the adoption of the Zoning Ordinance in February 1974, motels and tourist homes have not been allowed in the residential or agricultural zoning districts (neither as a permitted use nor with special land use approval). Therefore, STRs are not allowed either.

(c) *STRs are commercial or business uses or operations not allowed in either the current or past residential or agricultural zoning districts.*

Sections 38-184, 38-214, 38-244, 38-249, 38-261, 38-274, 38-304, 38-321, 38-324, and 38-334 of the Zoning Ordinance do not list or allow business or commercial uses within the residential or agricultural zoning districts. The past versions of the allowed uses in those zoning districts are attached hereto as **Exhibit 12**.

Any single-family residential dwelling that is rented or leased to third parties transitorily as its sole or predominant use is clearly a commercial and business use, not a residential use.[12]

[12] In *Townes at Liberty Park Condominium Assn v Arabella Ventures, Inc*. (decided on May 23, 2024; Case No. 365956; 2024 WL 2499177), the Court of Appeals reiterated that short-term rentals are, at least in real property contexts, commercial uses as determined by the Michigan Supreme Court: "Commercial" is commonly defined as "able or likely to yield a profit." *Random House Webster's College Dictionary* (1991). "Commercial use" is defined in legal parlance as "use in connection with or for furtherance of a profit-making enterprise." *Black's law Dictionary* (6th ed).

Michigan courts do not require the suspension of common sense and plain meanings when interpreting a zoning ordinance. The Township respectfully asserts that it is obvious (as well as reasonable and fully based on common sense) that a single-family residential dwelling that is used predominantly as an STR for compensation, profit or financial gain is a commercial or business use or operation. That may not be true of an STR property that is only rented or leased to third parties for a few weeks per year to defray property taxes or other costs (and where the owner occupies the dwelling for most of the year), but it certainly is true for a property that is primarily or solely an STR commercial or business venture or operation. And, except for very limited exceptions (for example, specifically enumerated farming in the agricultural district and home occupations under certain circumstances, but even in that situation, the owner of the dwelling must reside therein), commercial and business uses and operations are not allowed in any of the single-family residential or agricultural zoning districts.

PTN will likely argue that the residential and agricultural zoning districts list "single-family dwelling" as a permitted or allowed use but do not expressly indicate that the dwelling can only be used for noncommercial or even residential uses. Or, put another way, PTN may assert that the dwelling they are renting out was designed and built as a "single-family dwelling," but claim there is no limitation for only a residential or even single-family use. With respect, that argument fails for two reasons. First, the allowed uses section in each relevant zoning district does not expressly mention commercial or short-term rental uses as being allowed, which means that they are disallowed. See *Dezman* and *Independence Twp, above*. Second, PTN's argument would allow not only single-family dwellings, but also many other buildings with similar building labeling (but no

"Commercial activity" is defined in legal parlance as "any type of business or activity which is carried on for a profit." [*Terrien v Zwit*, 467 Mich 56, 63-64; 648 NW2d 602 (2002).] Considering these definitions, in *Aldrich v Sugar Springs Prop Owners Ass'n, Inc*, 345 Mich App 181, 192; 4 NW3d 751 (2023), this Court held, "the act of renting property to another for short-term use is a commercial use …." Slip opinion at pp. 4 – 5 (footnote 1). **Exhibit 13**.

express use limitations) to be used for virtually anything. For example, if a zoning district allows a "restaurant building" but does not expressly limit the uses, under PTN's view, the restaurant building (as designed and built) could also be used for industrial, factory or even residential uses. Or, where a zoning district allows an accessory building in a single-family residential zone (but does not have express use limitation language), it could be used for a small industrial machine shop. PTN's assertion would clearly elevate form over substance. The *Moskovic II* Court noted the absurdity of PTN's argument made by other STR property owners in New Buffalo:

> Plaintiffs' interpretation does not fit with the rest of the ZO and would lead to absurd results. In particular, Plaintiffs' reliance on the design of their homes would render their homes acceptable for almost any use, whether commercial, recreational, industrial, or otherwise, when that is clearly not the intent of the ZO. In general, the ZO relegates residential uses, commercial uses, and industrial uses to different districts. That segregation would disintegrate if a person could use a single or multi-family dwelling for industrial or commercial purposes simply because that building was designed for use by one or more families. *Moskovic II* at p. 8 of the slip opinion. **Exhibit 7**.

The *Moskovic II* Court went on to note:

> Also, as some Michigan courts have noted, "commercial or business uses of property—that is, uses intended to generate a profit—are generally inconsistent with residential uses of property." *Reaume*, 937 NW2d at 742 (citing Terrien v. Zwit, 648 NW2d 602, 605-07 (Mich. 2002)). The use of a home for short-term rentals is a commercial or business use. See id.; see also *People v. Dorr*, No. 349910, 2020 WL 6374724, at *2 (Mich. Ct. App. Oct. 29, 2020) ("Because defendant was engaged in using his home to offer short-term rental accommodations, he was operating a business out of his home."); *John H. Bauckham Tr. v. Petter*, No. 332643, 2017 WL 4158025, at *4 (Mich. Ct. App. Sept. 19, 2017) ("The act of renting property to a third-party for any length of time involves a commercial use because the property owner is likely to yield a profit from the activity."). Although not dispositive here, the tension between commercial activity and residential uses further supports the Court's interpretation of the ZO. *Moskovic II* at p. 10 of the slip opinion. (footnote omitted) **Exhibit 7**.

In order to comply with a zoning ordinance, a single-family residential dwelling must not only be designed and built as such, but must be <u>used</u> only as a residential dwelling as well.

In ascertaining and giving effect to the intent of the Zoning Ordinance, this Court is to consider the "language in the context of the (ordinance) as a whole." *Tomra of North America, Inc. v Department of Treasury*, 505 Mich 333, 339; 952 NW2d 384 (2020). Here, the Zoning Ordinance specially provides a commercial C-2 zoning district for transient commercial short-term rental use. It would be illogical, and also defy common sense, to permit such an incompatible commercial use as an STR in a residential or agricultural zoning district. This is reinforced and supported by the fact that the Township actually has regulations for "hotels and motels" contained in its C-2 zoning district. See Section 38-456 of the Zoning Ordinance. **Exhibit 3**. The Zoning Ordinance does not have any regulations for motels (or tourist homes) in its residential or agricultural zoning districts. This is because motel (or tourist homes) regulations are not needed in residential or agricultural zoning districts given the fact that motels (and tourist homes) are completely prohibited therein.

Further, as the Zoning Ordinance states under the "Description and Purpose" for each residential district, those districts "are intended for … residential uses", as opposed to "commercial uses", and that statement alone, in and of itself, under Michigan law, precludes STRs in residential zoning districts. See for example Section 38-273. **Exhibit 3**. Instead, such STRs fit under the stated "Description and Purpose" for a C-2 Resort Service District as being "for *commercial* uses that primarily serve tourists and seasonal residents." (Emphasis added).

Both the structure of the Zoning Ordinance and common sense make it clear that citizens should understand that such business and commercial uses cannot occur within a residential or agricultural zoning district unless they are expressly listed as allowed (as is the case for certain expressly allowed farms and home occupation uses).[13]

[13] In addition to applying common sense, ordinances and statutes should be interpreted or construed to avoid absurd results. See *Lepp v Cheboygan Area Schools*, 190 Mich App 726, 732; 476 NW2d 506 (1991) and *Richmond Twp v Erbes*, 195 Mich App 210, 222-223; 489 NW2d 504 (1992). Allowing intensive commercial operations (with new

(d) *The structure of the Zoning Ordinance (and definitions or discussions of residential, dwelling and home in the Zoning Ordinance) clearly forbids STRs in the residential and agricultural zoning districts.*

Renting a single-family residential house or dwelling to third parties in a transitory and predominantly commercial or business fashion is not a residential use and violates the commonly understood definition of a "dwelling."

A "dwelling" is defined in Section 38-6 of the Zoning Ordinance (**Exhibit 3**) as:

> Any building or portion of a building that is occupied in whole or in part as a home or residence, either permanently or temporarily, by one or more families, but not including motels, hotels, resorts, tourist rooms or cabins. Subject to compliance with the requirements of Section 38-507, a mobile home shall be considered to be a dwelling. (emphasis added)

A "dwelling unit" is defined in Section 38-6 as:

> A building or portion of a building, with one or more rooms, including bathroom, kitchen, and sleeping facilities, connected together in a manner designed and maintained as a self-contained unit for residential occupancy by one or more people living as a single housekeeping unit. (emphasis added)

A "single family dwelling" is defined in the Zoning Ordinance (**Exhibit 3**) to be:

> "A building designed for use and occupancy by one family only."[14]

Regardless of whether a dwelling is used as a full-time residence or a residence part of the time, it still must be a home or residence (i.e. where the owner of the home lives or inhabits).[15] For the overwhelming majority of the STRs, the owner of the dwelling never resides, lives in or inhabits the STR dwelling or does so very little (so that it certainly could not be categorized honestly as the dwelling owner's "residence" or "home"). Why would the owner of a dwelling who does not rent out their dwelling only reside in that house as a residence for only part of the year (i.e. temporarily)?

groups or families coming and going as frequently as every 2-3 days) in otherwise single family residential neighborhoods would be both absurd and unreasonable.

[14] Past definitions are attached as **Exhibit 11**.

[15] Renters are not residents! The dictionary definitions of a "domicile" and a "residence" are synonymous. Nor is a transitory rental unit a "home."

There are many reasons. That is exceedingly common for homeowners who winter in Florida or elsewhere yet still claim their Michigan home as their primary residence. And, in most cases, those homeowners do not rent out their house to others during the winter while they are in Florida or other warm weather venue. People also leave or vacate their residence temporarily for purposes such as house renovation, long hospital stays, temporary work assignments elsewhere, etc. without renting their dwelling out or losing their residency status.

In *Moskovic II*, the Federal District Court discussed the meaning of a domicile or residence versus a motel or transient situation:

> Short-term renters are not "domiciled" with one another when using a rental home. See *Concerned Prop. Owners of Garfield Twp., Inc. v. Charter Twp. of Garfield*, No. 342831, 2018 WL 5305235, at *2 (Mich. Ct. App. Oct. 25, 2018) (Murphy, J., concurring) ("[D]omiciled together ... in a dwelling unit indicat[es] permanence not transience. A family renting a dwelling for a short period is not domiciled together in the dwelling.") (citations omitted). Instead, they are more like the "transient" guests of a bed-and-breakfast or motel. (See Zoning Ordinance, PageID.4773, 4780 (defining "bed-and-breakfast" as a "use within a single-family dwelling in which transient guests are provided a sleeping room, breakfast and access to bathing and lavatory facilities in return for payment" and defining "motel" as a series of rental units in which "transient, overnight, lodging or boarding are offered to the public for compensation").) The ZO permitted the latter uses in the "central business district" and the "general commercial district," not in the three residential districts where Plaintiffs' homes are located. (See *id*., PageID.4826, 4831.) Thus, the definition of single-family dwelling did not encompass the use of such buildings for short-term rentals. *Moskovic II* at p. 9 of the slip opinion. **Exhibit 7**.

The *Moskovic II* Court believed that words of residency and domicile denote <u>permanence</u> (not transient arrangements):

> Like the word domicile, the term "residential" connotes "permanence" and a "continuity of presence" that is generally inconsistent with the use of property for short-term rentals. See *Concerned Prop. Owners*, 2018 WL 5305235, at *3 (noting that "the term 'residence' excludes uses of a transitory nature") (*citing O'Connor v. Resort Custom Builder, Inc*., 591 NW2d 216, 221 (Mich. 1999)). *Moskovic II* at pp. 9-10 of the slip opinion. **Exhibit 7**.
>
> * * *
>
> Instead, as discussed above, the ZO referred to use by a group of individuals who are "domiciled" together. That term connotes a permanence of occupancy that

does not apply to transient, short-term renters. *Moskovic II* at p. 10 of the slip opinion. **Exhibit 7**.

The 6th Circuit Court of Appeals (in *Moskovic III*) likewise held:

> In its order on the motion to reconsider, the district court concluded that STRs fail to meet this permitted use because the original zoning ordinance required property owners to use properties within the R-1, R-2, and R-3 zoning districts as domiciles, as reflected in the definition of "family," and residentially, not commercially. The original zoning ordinance defined neither "domicile" nor "residential." But Michigan courts define "domicile" as "the place where a person has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning." *Grange Ins. Co. of Mich. v. Lawrence*, 835 NW2d 363, 372 (Mich. 2013) (internal quotation marks and citation omitted). And Michigan courts have defined "residence" in STR contexts as "exclud[ing] uses of a transitory nature." *Concerned Prop. Owners of Garfield Twp., Inc. v. Charter Twp. of Garfield*, No. 342831, 2018 WL 5305235, at *3 (Mich. Ct. App. Oct. 25, 2018) (citing *O'Connor v. Resort Custom Builders, Inc.*, 591 NW2d 216, 220–221 (Mich. 1999)). The inherent transitory nature of STRs means that their occupants do not use them as domiciles or residentially under these definitions, so the original zoning ordinance's text alone excludes STRs as permitted uses in R-1, R-2, and R-3 zoning districts… The district court therefore correctly interpreted the original zoning ordinance: it prohibited all uses that it did not expressly permit. *Moskovic III* at pp. 3-4 of the slip opinion. **Exhibit 8**.

A residence or home is where one lives, not rents short term. A person can certainly have a seasonal or part-time residence at a particular location, but it is still where someone lives or inhabits, not rents short term. Clearly, a short-term renter is not an inhabitant or a resident in the normal sense. The STR property is not that person's home, domicile or residence. If an STR renter is asked about the dwelling at which they are temporarily staying, they do not respond that it is their residence or home. For PTN to assert otherwise requires extensive unconvincing wordplay gymnastics.

The *Moskovic III* Court (**Exhibit 8**) cited (at p. 5 thereof) the Michigan deed restriction case of *O'Connor v Resort Custom Builders, Inc*., 459 Mich 335; 591 NW 216 (1999) regarding STRs not being a "residence" or home due to their transitory nature. The *O'Connor* Court stated:

> Proceeding on that basis, we return to the trial court's analysis. We conclude that its reasoning is sound, and adopt it as our own:

> [W]hat's a residential purpose is the question. Well, a residence most narrowly defined can be a place which would be one place where a person lives as their permanent home, and by that standard people could have only one residence, or the summer cottage could not be a residence, the summer home at Shanty Creek could not be a residence if the principal residence, the place where they permanently reside, their domicile is in some other location, but I think residential purposes for these uses is a little broader than that. It is a place where someone lives, and has a permanent presence, if you will, as a resident, whether they are physically there or not. Their belongings are there. They store their golf clubs, their ski equipment, the old radio, whatever they want. It is another residence for them, and it has a permanence to it, and a continuity of presence, if you will, that makes it a residence.

The trial court then correctly determined that interval ownership did not constitute a residential purpose under the circumstances of this case:

> I don't think that's true of weekly—of timeshare units on a weekly basis of the kind, at least, of the kind being discussed here, which includes trading, and is a traditional—usually associated with condominiums, but in this case happens to be instead of an apartment happens to be a building that is a single family building other than this arrangement for its joint ownership by, at least, up to forty-eight people in this case. The people who occupy it, or who have these weekly interests in this property, they have the right to occupy it for one week each year, but they don't have any rights, any occupancy right, other than that one week. They don't have the right to come whenever they want to, for example, or to leave belongings there because the next resident, who is a one-fiftieth or one forty-eighth co-owner has a right to occupy the place, too, and the weekly owner has no right to be at the residence at anytime other than during their one week that they have purchased. That is not a residence. That is too temporary. There is no permanence to the presence, either psychologically or physically at that location, and so I deem that the division of the home into one-week timeshare intervals as not being for residential purposes as that term is used in these building and use restrictions.... 458 Mich 335, 345-346.

PTN is trying to make this case much more complicated than it really is. PTN seeks to hold the Township to an impossibly high standard regarding definitions and wording in the Zoning Ordinance. To provide the level of complexity, detail, thoroughness, etc. demanded by PTN for zoning definitions would require municipalities to have zoning ordinances that are three or four times as lengthy (or even longer). That is not required by Michigan law. Both *Reaume* and the federal

Moskovic case decisions made short shrift of similar highly technical definitional arguments made by STR proponents.

The Zoning Ordinance definitions and provisions in this case should be read and interpreted in context and with common sense, not in a highly legalistic or stilted fashion.

(e) *The nature and characteristics of STRs.*

PTN fails to acknowledge the truly unusual and often disruptive consequences of the highly transient nature of their STRs in single-family residential neighborhoods primarily occupied by the long-term residents and homeowners. In most cases, STRs are only leased or rented to a particular party or family for a week or less. Like a motel, tourist home, hotel or boarding house, short-term renters and their families are frequently "turning-over." Often, renters and guests are unfamiliar not only with the single-family dwelling involved, but also area neighbors and the neighborhood. Transient renters and their guests almost never know about the customs and traditions of the local neighborhood involved, let alone neighbor preferences, the local neighborhood support system and groups and other uniquely local conditions. Single-family residential zoning implies noncommercial status, stability, long-term ownership, residency and low-impact uses and activities. Most long-term residents never envisioned a purely transitory and intense commercial use next door in their residential neighborhood.

The transient nature of STRs is also instructive. The Court in *Moskovic I* upheld the "under 30/over 30 days" rental distinction using logic and common sense:

> Plaintiffs argue that they are similarly situated with owners who rent their properties for more than thirty days, and that there is no rational basis for treating them differently. The Court disagrees. As the City puts it, short-term rentals "operate more akin to commercial lodging and cater to transient populations, vacationers, bachelor/bachelorette parties, and others that have no stake in the community." … In contrast, "long-term rentals...connote a permanency of residence akin to a homesteaded residence." (Id.) In other words, long-term rentals house people who are more likely to contribute to the community. There is a rational basis for treating them differently. *Moskovic I* at p. 798 (slip opinion at p. 69). **Exhibit 6**.

(f) *Other issues.*

Many STR renters also violate the "single-family" limitation in the residential and agricultural zoning districts. For example, two or more families often rent a single-family dwelling together and use it simultaneously. Or, the renter holds a bachelor or bachelorette party, wedding reception or similar non-single family use (i.e. a purely commercial) at the dwelling. In those circumstances, the use is more intense, extensive and highly visible than a mere dwelling use by a single family for residential long-term purposes. Some STR properties are like mini-resorts! See *Moskovic I*, above.

Regardless of whether a given property can be used as an STR, the dwelling is still a valuable property. This is not a situation where the owner is being deprived of substantially all of the use or value of the property or the dwelling. This situation is more akin to an existing hardware store that is later denied the ability to install an outdoor garden center or display model sheds outdoors for sale. Or a dwelling on a small residential lot that has an attached garage but is denied a large pole barn.

What about the residents of adjoining or nearby residential dwellings in a neighborhood who never envisioned the possibility of a fairly intensive commercial rental occurring next door? Very little has been focused on those unsuspecting homeowners who reasonably assumed that purely commercial or business uses would not be allowed in their neighborhood.

Attached hereto as **Exhibit 4** is the other relevant Michigan appellate case law regarding short-term rentals. There are simply too many Michigan STR appellate decisions in existence to discuss all or even most of those decisions in this brief. Some of those cases are deed restrictions/restrictive covenant cases, which are fully analogous to zoning situations and regulations. [16] Virtually all of those appellate decisions disallowed STRs.

[16] This Court itself decided an analogous STR deed restriction case in 2013 in *Heinbeck v Tunnel Breeze Homeowners Association*, Case No. 12-03144-CZ. **Exhibit 14**. In that Opinion and Order dated April 30, 2013, this Court noted:

In *O'Connor*[14] (*[14]O'Connor v Resort Custom Bldrs*, 459 Mich 335; 591 NW2d 216 (1999)), the Michigan Supreme Court held that the sale of "time shares" or interval ownership in a home was not consistent with the "residential" purpose required by the CCRs.

. . .

Terrien[20] (*[20]Terrien v Zwit,* 467 Mich 56; 648 NW2d 602 (2002)) took the day care issue raised in *Beverly Island* and viewed it from the perspective of a CCR that prohibited commercial uses. In this situation, while the day care operation was a residential use as allowed by *Beverly Island*, the day care center was also a commercial use. Thus, the day care center was violative of the CCR. *Terrian* rejected the notion that day care operations were favored over CCRs by "public policy."

Terrian referred to both the common and legal meanings of the terms "commercial" and "business:"

> "Commercial" is commonly defined as "able or likely to yield a profit." *Random House Webster's College Dictionary* (1991). 'Commercial use' is defined in legal parlance as "use in connection with or for furtherance of a profit-making enterprise." Black's Law Dictionary (6th ed). 'Commercial activity' is defined in legal parlance as 'any type of business or activity which is carried on for a profit.' *id*. 'Business' is commonly defined as "a person … engaged in … a service." *Random House Webster's College Dictionary* (1991). 'Business' is defined in legal parlance as an '[a]ctivity or enterprise for gain, benefit, advantage or livelihood.' Black's Law Dictionary (6th ed)."[22]

. . .

Like the case at bar, *Enchanted Forest*[24] (*[24]Enchanted Forest Property Owners Ass'n v Schilling*, unpublished opinion per curiam of the Court of Appeals issued March 11, 2010 (Docket No. 287614)) addressed the issue of whether a CCR precluded the short-term rental of a residence … The court determined that the intent of the drafter was to preclude the short-term rental of the home because that constituted a commercial use which was prohibited by the CCRs.

. . .

Torch Lake[25] (*[25]Torch Lake Protection Alliance v Ackerman*, unpublished opinion per curiam of the Court of Appeals issued November 30, 2004 (Docket No. 246879)) also has some similarities with, yet important differences from, the case at bar. … The court held: "As a whole, the language in the restriction expresses a clear and unambiguous intent to preclude frequent and regular short-term rentals as part of a 'business,' as that term is commonly understood."

The CCRs limit the single family structures to single family uses. The CCRs define "family" narrowly to only include certain blood or affinity relationships. While Plaintiffs occupy the home, they seek to rent portions of their home to groups of non-family members on a weekly basis. Such use is requested over most, if not all, of the summer months and amounts to 25% of the year. Said use of allowing transient groups of paying individuals to occupy the home is contrary to the CCRs and not merely incidental to Plaintiffs' residential use of the property. Such use is precluded by the CCRs. To the extent that Plaintiffs do not occupy this lot during the rentals, then the lot is not used for any residential purposes. Rather, the sole use of the lot would be for commercial use and is likewise prohibited by the CCRs. **Exhibit 14**.

Reaume v Twp of Spring Lake was decided at the trial court level in this Court by Judge Jon Van Allsburg. **Exhibit 17** (the written opinion and decision transcript of this Court's decision in *Reaume*). This Court found that STRs were prohibited in the commercial and agricultural zoning districts under the Spring Lake Township Zoning Ordinance. Not only are many of the definitional and structural aspects of the Spring Lake Township Zoning Ordinance similar to that of Park Township, but many of the relevant zoning provisions were drafted by the same local attorney - Thomas Reinsma. In general, Judge VanAllsburg found in *Reaume* that STRs were prohibited in the relevant Spring Lake Township zoning district based on two factors – the use was "transitory" based on the ordinance definition of family and various ordinance definitions. The Court of Appeals fully upheld the trial court in *Reaume*, 328 Mich App 321. On further appeal, the Michigan Supreme Court did not overturn any of the substantive holdings of the trial court decision in *Reaume* and in fact upheld all of the holdings of the Court of Appeals in *Reaume* except for one of the reasons underpinning the decision. See 508 Mich 1108 (2020). The Supreme Court found that the addition of the word "transitory" in the definition of "family" in the Spring Lake ordinance went to the nature of the family involved, not the potential transitory or temporary nature of using a single-family dwelling. *Ibid*. Given the alternate valid reasoning (i.e. that various ordinance definitions precluded commercial or STR uses), the Supreme Court upheld all other aspects of the published Court of Appeals decision in *Reaume*.

Reaume alone should resolve virtually all of the issues in this current lawsuit in favor of the Township. The Cout of Appeals stated in relevant part in *Reaume*:

> Plaintiff argues that her use of the property as a short-term rental was lawful under the definition of the term "dwelling" in the Spring Lake Township Zoning Ordinance. We disagree. Section 205 of the Spring Lake Township Zoning Ordinance defines "dwelling" as follows:
>
> > Any Building or portion thereof which is occupied in whole or in part as a home, residence, or sleeping place, either permanently or temporarily, by one

(1) or more Families, but not including Motels or tourist rooms. Subject to compliance with the requirements of Section 322, a Mobile Home shall be considered to be a Dwelling.

(1) Dwelling, Single-Family: A Building designed for use and occupancy by one (1) Family only.

(2) Dwelling, Two-Family: A Building designed for use and occupancy by two (2) Families only and having separate living, cooking and eating facilities for each Family.

(3) Dwelling, Multi-Family: A Building designed for use and occupancy by three (3) or more Families and having separate living, cooking and eating facilities for each Family.

The Spring Lake Township Zoning Ordinance does not define the term "tourist room," but it defines "motel" under § 214 as follows:

A Building or group of Buildings on the same Lot, whether Detached or in connected rows, containing sleeping or Dwelling Units which may or may not be independently accessible from the outside with garage or Parking Space located on the Lot and designed for, or occupied by transient residents. The term shall include any Building or Building groups designated as a Hotel, motor lodge, transient cabins, cabanas, or by any other title intended to identify them as providing lodging, with or without meals, for compensation on a transient basis.

Finally, the term "family" is defined under § 207 as:

A single individual or individuals, domiciled together whose relationship is of a continuing, non-transient, domestic character and who are cooking and living together as a single, nonprofit housekeeping unit, but not including any society, club, fraternity, sorority, association, lodge, coterie, organization, or group of students, or other individuals whose relationship is of a transitory or seasonal nature, or for anticipated limited duration of school terms, or other similar determinable period of time.

We note that the R-1, R-2, R-3, and R-4 zoning districts all permit "Dwelling, Single-Family" use, but only in the R-4 zoning district are "Dwelling, Two-Family" and "Dwelling, Multiple-Family" uses permitted. The stated "intent" of R-4 zoning is that such zoning "is dispersed throughout the Township to avoid pockets of rental or transient housing."

Read as a whole, the definition of "Dwelling, Single-Family" unambiguously excludes transient or temporary rental occupation. Plaintiff focuses on the word "temporarily" in the overview definition of "Dwelling." Plaintiff fails to note that although *some* types of dwellings permit temporary occupancy, *single-family* dwellings do not. The definition of single-family dwelling emphasizes use by one

> family *only*, and "family" expressly excludes "transitory or seasonal" or otherwise temporary relationships. Notwithstanding the possibility of some temporary occupancy, *any* kind of "dwelling" excludes a "motel." "Motels" expressly provide transient lodging, or "tourist rooms," which are undefined but reasonably understood as also referring to transient lodging. Plaintiff's use of her property for short-term rentals seemingly fits the definition of a "motel." Finally, it is notable to contrast the descriptions of the R-1 through R-3 zoning districts with the description of the R-4 zoning district, which suggests that some form of temporary occupancy might be permitted in two-family or multi-family dwellings. **The Spring Lake Township Zoning Ordinance clearly forbids short-term rental uses of property in the R-1 zoning district, irrespective of whether the ordinance does so in those exact words.**
>
> As plaintiff notes, there was never any serious dispute that she actually was using the property for short-term rental purposes. However, doing so was not permitted in the R-1 district at any time. Therefore, plaintiff is not entitled to continue doing so as a prior nonconforming use, notwithstanding the Township's prior failure to enforce its zoning requirements. (*Reaume* at pp. 332-334) (Emphasis added).

In *Pigeon v Ashkay Island, LLC*, unpublished decision by the Court of Appeals dated January 28, 2021 (Case No. 351235; 2021 WL 299329), the Court of Appeals also analyzed some of the STR issues and stated:

> Plaintiffs and the Township rely on *Reaume v Twp of Spring Lake*, --- Mich. ---- (2020) (Docket No. 159874), in which the Supreme Court affirmed our holding that the plaintiff's use of a home as a short-term rental did not constitute a "dwelling" under the zoning ordinance because it met the ordinance's definition of a "motel." Although *Reaume* presents somewhat similar facts, we agree with defendant that the case is not controlling given the textual differences between the zoning ordinances. For example, in *Reaume* the zoning ordinance's definition of "dwelling" allowed for temporary occupation but expressly excluded "[m]otels or tourist rooms." *Reaume v Twp of Spring Lake*, 328 Mich App 321, 332; 937 NW2d 734 (2019), vacated in part --- Mich ----. The ordinance in *Reaume* did not define tourist room, *id*. at 333, nor was there any reference to a tourist *home*. Because our goal is to discern the intent behind the MTZO, the interpretation of a similar, yet substantially different, ordinance does not aid our analysis. [*Pigeon,* n-4 at pp. 5 and 6 of the slip opinion] **Exhibit 10**.

Nevertheless, the *Pigeon* Court sill found the STR involved to be unlawful. *Ibid*.

In summary, multiple different appellate court decisions should point to deciding this case in favor of Park Township. *Reaume v Township of Spring Lake* and the *Moskovic* decisions addressed

STR issues directly, while the Michigan Supreme Court's decision Order in *Dezman v Charter Township of Bloomfield* and the Court of Appeals' reasoning in *Independence Twp* should confirm that STRs are not a permitted or an allowed use in the Park Township Zoning Ordinance (except in the C-2 Commercial Resort Service zoning district).

As the federal court stated in *Moskovic I*, and which should apply in this case as well:

> "Plaintiffs have provided no plausible argument for construing the text of the City's Zoning Ordinance to permit short-term rentals." *Moskovic I* at p. 48 of the slip opinion (**Exhibit 6**).

For all the above-mentioned reasons, the Township respectfully requests that this Court hold that short-term rentals (and the short-term rental uses of PTN's members) are and have long been unlawful within the residential and agricultural zoning districts under the Zoning Ordinance.

4. <u>The Township's short-term rental non-zoning licensing ordinance is essentially irrelevant to this lawsuit</u>.

PTN has attempted to make much of the fact that in 2022, the Township initially adopted a simple non-zoning short-term licensing ordinance but subsequently and erroneously signed and published a version in Zoning Ordinance amendment form, realized its error and later re-adopted the licensing ordinance (the "Licensing Ordinance") and properly published it. The circumstances surrounding the Licensing Ordinance have nothing to do with the Zoning Ordinance's longstanding ban of STRs in the residential and agricultural zoning districts, any of the legal issues in the current lawsuit or this lawsuit in general.[17] The Township requests that this Court so rule so as to not to waste any further attorney fees, costs or judicial time and resources on this distracting non-issue.

[17] Why enact a non-zoning licensing ordinance if STRs are unlawful under the Zoning Ordinance? There are at least four different valid reasons. First, if there are any lawfully nonconforming STRs in existence in the Township (i.e. STRs lawfully in existence before the first zoning regulations went into effect for Park Township in 1974 or before and which have been operating at the same scope ever since), the Township can require licensing for such "grandparented" uses. Second, if for whatever reason this Court invalidates the Zoning Ordinance provisions outlawing STRs in this lawsuit, the Licensing Ordinance would be in place and appropriate. Third, the Township desired to determine how many STRs exist within the Township. Finally, there may be STRs operating in the commercial zoning districts which would be subject to STR licensing requirements.

The Licensing Ordinance was properly enacted initially as a non-zoning or police power ordinance.[18] However, it was placed in the wrong form/format when signed and the notice of adoption appeared in the newspaper like a Zoning Ordinance amendment. Therefore, the initial adoption of the Licensing Ordinance was ineffective, because the version approved by the Township Board was never timely signed and published, and the ordinance was therefore null and void. An ordinance that is invalidly enacted procedurally is *void ab initio* and null and void. See *City of Ann Arbor v Danish News*, 139 Mich App 218, 227; 361 NW2d 772 (1985) and *Sanders v Detroit Edison Company*, 147 Mich App 20, 24-25; 383 NW2d 85 (1986). Accordingly, there was no need for the Township Board to formally rescind that erroneously published (and ineffective) version of the ordinance. Then, after the Township Board realized its mistake, the Township Board reenacted the Licensing Ordinance. The proper notice of adoption then appeared in the newspaper. The Township Board never intended to amend the Zoning Ordinance with the Licensing Ordinance. Therefore, the hype and conspiratorial claims by PTN in its First Amended Complaint about the Licensing Ordinance are without basis and simply irrelevant. Accordingly, the Court should also summarily dismiss Counts I and II of PTN's First Amended Complaint.

5. PTN's claim of Estoppel and Laches.

PTN has claimed that even if the Zoning Ordinance for Park Township over the years could be interpreted to ban short-term rentals, the Township cannot enforce such prohibition due to estoppel or laches by Township officials, the Park Township Zoning Board of Appeals (the "ZBA") and/or the Park Township Planning Commission (the "Planning Commission").

6. Michigan law on laches and estoppel as to ordinances.

[18] Ordinance Nos. 2022-02 and 2023-02 are attached hereto as **Exhibits 15** and **16** for context.

Although PTN does not always differentiate or articulate as to what specific legal or equitable theory on which it bases its claim that the Township cannot enforce an STR ban pre-winter of 2024, PTN's claims appear to be loosely based on estoppel or laches.

Michigan follows the rule of "municipal non-estoppel." See *Fass v Highland Park*, 326 Mich 19; 39 NW2d 336 (1949). That is, even if a municipal official with full legal authority erroneously issues a zoning permit, license or other written municipal approval, the municipality involved is not bound and the approval or license can be rescinded. *Ibid*. There are two general exceptions to the rule of municipal non-estoppel. First, in extraordinary circumstances, a court can refuse to invoke the rule against municipal estoppel. *Pittsfield v Malcolm*, 375 Mich 135; 134 NW2d 166 (1965). Interestingly and critically, in the current PTN lawsuit, PTN apparently cannot point to even one instance where the Township issued or approved a zoning permit, variance or other express written approval for any particular STR use. And, as discussed below, only the Park Township Zoning Administrator (the "Zoning Administrator") could issue a zoning permit or written approval for an STR in any event. There is no evidence that any current or past Zoning Administrator for the Township ever issued any such express permit or approval for a specific STR (let alone that the Zoning Board of Appeals decided a direct appeal about the legality of an STR).[19]

The second exception to municipal non-estoppel appears to be equitable in nature and was addressed in the case of *Brummel v Grand Haven Twp*, 87 Mich App 442; 274 NW2d 814 (1979). That court decision was not based on a true exception to the rule of municipal non-estoppel, but on the "equities" involving an injunction.

[19] Even if a municipal officer or agency charged with administration had applied an erroneous construction of an ordinance over an extended period of time, that construction is not to be given any weight in cases of no ambiguity. *Sinelli v. Birmingham Bd. of Zoning Appeals, 160 Mich App 649, 652; 408 NW2d, 415 (1987)*. Here, neither this Court, the Court of Appeals nor the Supreme Court in *Reaume v Township of Spring Lake, supra,* found any ambiguity in essentially the same ordinance provisions.

PTN is likely also asserting laches. However, it is exceedingly difficult for a property owner to prevail on a laches defense against a municipality. In *Lyon Charter Twp v Petty*, 317 Mich 482, 485, 486, 489-496; 896 NW2d 477 (2016); partially reversed on unrelated grounds, 500 Mich 1010; 896 NW2d 11 (2017), the Court of Appeals stated:

> It is undisputed that the Hoskins and Petty families operated their businesses without township interference for several decades despite that their uses were never permitted under their zoning classification. Defendants claim that township officials have visited their property several times over the years and never raised any concerns. Moreover, each presented commercial personal property tax bills connected with their Belladonna addresses.
>
> . . .
>
> In defense of the township's enforcement actions, the Hoskins and Petty families contended that the township's decades-long pattern of ignoring their zoning violations and the investments they made in their businesses as a result, precluded the township from taking enforcement action now. To this end, the Hoskins and Petty families asserted laches and estoppel defenses. These defenses "are judicially disfavored" because they invite judicial interference into an area of local "public interest" and are "rarely applied in the zoning context except in the clearest and most compelling circumstances." 83 Am. Jur. 2d, § 937, p 894. And relevant to both, a historical failure to enforce a particular zoning ordinance, standing alone, is insufficient to preclude enforcement in the present. Anno: *Right of Municipality or Other Public Authority to Enforce Zoning or Fire Limit Regulations as Affected by its Previous Conduct in Permitting or Encouraging Violation Thereof,* 119 A.L.R. 1509, 1511, § IIIa. See also *Marzo v. Abington Twp. Zoning Hearing Bd.,* 30 Pa.Cmwlth. 225, 230, 373 A.2d 463 (1977) ("[M]ere delay in enforcement does not create a vested right to use property in violation of zoning regulations.") (quotation marks and citation omitted).
>
> "The doctrine of laches is founded upon long inaction to assert a right, attended by such intermediate change of conditions as renders it inequitable to enforce the right." *Boston–Edison Protective Ass'n v. Teahen,* 337 Mich. 353, 360, 60 NW2d 162 (1953) (quotation marks and citation omitted). "The application of the doctrine of laches requires the passage of time combined with a change in condition that would make it inequitable to enforce the claim against the defendant." *Yankee Springs Twp. v. Fox,* 264 Mich.App. 604, 612, 692 NW2d 728 (2004). To merit relief under this doctrine, the complaining party must establish prejudice as a result of the delay. *Id.; Gallagher v. Keefe,* 232 Mich.App. 363, 369–370, 591 NW2d 297 (1998); *City of Troy v. Papadelis (On Remand),* 226 Mich.App. 90, 96–97, 572 NW2d 246 (1997). Proof of prejudice is essential.

A township can be equitably estopped from enforcing a zoning ordinance when:

> "(1) a party by representation, admissions, or silence, intentionally or negligently induces another party to believe facts; (2) the other party justifiably relies and acts on this belief; and (3) the other party will be prejudiced if the first party is permitted to deny the existence of the facts...." [*Howard Twp. Bd. of Trustees v. Waldo,* 168 Mich.App. 565, 575, 425 NW2d 180 (1988), quoting *Cook v. Grand River Hydroelectric Power Co., Inc.,* 131 Mich.App. 821, 828, 346 NW2d 881 (1984).]

Just as with a laches defense, prejudice is a mandatory element.

> The prejudice necessary to establish a laches or estoppel defense cannot be a *de minimis* harm. As described in 83 Am. Jur. 2d, § 937, p. 894, the party fighting the zoning enforcement must show that he or she "made such a substantial change in position or incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights which he or she ostensibly had acquired." Courts have also held that the property owner must establish "a financial loss ... so great as practically to destroy or greatly to decrease the value of the ... premises for any permitted use." *Carini v. Zoning Bd. of Appeals,* 164 Conn. 169, 173, 319 A.2d 390 (1972). Precedent emphasizes the inadequacy of the evidence in this case.

The Michigan appellate case law has made it clear that general erroneous statements by municipal officials that a particular use is allowed or disallowed under the municipal zoning ordinance never binds the municipality. Instead, in those rare cases where a court finds a municipality to be constrained by laches or estoppel, there generally must be an express approval, it must be fairly definitive, the landowner must be significantly prejudiced, and there must also be reasonable and justified reliance by the property owner. It also appears that the municipal official who allegedly gave such approval must have actually had the legal authority to do so.

PTN's claims of estoppel and laches should fail as a matter of law based on just the following two decisions:

- In *Reaume v Spring Lake Twp*, 328 Mich 321, the Court of Appeals noted:

> We observe, initially, that much of plaintiff's argument is, in substance and effect, an equitable-estoppel argument. Equitable estoppel may preclude the enforcement of a zoning ordinance if a party reasonably relies to its prejudice on a representation made by the municipality. *Lyon Charter Twp. v. Petty*, 317 Mich. App.

482, 490, 896 NW2d 477 (2016), vacated in part on other grounds 500 Mich. 1010, 896 NW2d 11 (2017). Generally, plaintiff contends that before the Township's adoption of Ordinance Nos. 255 and 257, it had formally determined and communicated to plaintiff that her use of the property for short-term rentals was lawful. Plaintiff therefore concludes that her use of the property is necessarily "grandfathered" and that the Township may not deny her permission to continue using the property for short-term rentals. Plaintiff argues that she expended considerable sums of money on renovations and modifications to the property in reliance on the Township's alleged assurances that short-term rentals were lawful in the R-1 zoning district. However, plaintiff's argument turns on making untenable extrapolations from statements made by individuals who had no authority to bind the Township.

[A] historical failure to enforce a particular zoning ordinance, standing alone, is insufficient to preclude enforcement in the present." *Lyon*, 317 Mich. App. at 489, 896 NW2d 477. A municipality may, in some cases, be estopped from enforcing zoning ordinances "because of the positive acts of municipal officials which induced plaintiff to act in a certain manner, and where plaintiff relied upon the official's actions by incurring a change of position or making expenditures in reliance upon the officials' actions." *Parker v. West Bloomfield Twp.*, 60 Mich. App. 583, 591, 231 NW2d 424 (1975); see also *Lyon*, 317 Mich. App. at 490, 896 NW2d 477. The general rule is against estopping municipalities from enforcing zoning ordinances in the absence of "exceptional circumstances," which must be viewed as a whole, and "no factor is in itself decisive." *Pittsfield Twp. v. Malcolm*, 375 Mich. 135, 147-148, 134 NW2d 166 (1965). However, a municipality cannot be estopped from enforcing zoning ordinances by the unauthorized or illegal conduct of its officers. *Parker*, 60 Mich. App. at 594-595, 231 NW2d 424; see also *Blackman Twp. v. Koller*, 357 Mich. 186, 189, 98 NW2d 538 (1959). "Casual private advice offered by township officials does not constitute exceptional circumstances." *Howard Twp. Bd. of Trustees v. Waldo*, 168 Mich. App. 565, 576, 425 NW2d 180 (1988), citing *White Lake Twp. v. Amos*, 371 Mich. 693, 698-699, 124 NW2d 803 (1963).

Plaintiff's only argument of serious concern pertains to the conversation that Barbara Hass, the manager of the property-management company, had "with Connie Meiste at the Spring Lake Township offices via telephone[.]" According to Hass's affidavit, she was told "that Spring Lake Township had no restrictions on short term or long term rentals." It is reasonable to expect municipal employees to provide accurate information upon request. However, this record does not disclose enough detail about the conversation to draw any conclusions. For example, at the time of Hass's inquiry, it appears that the Township did not, in fact, have any formal regulations that specifically addressed the rental of property. Nevertheless, that is not necessarily equivalent to a statement that any kind of rental was explicitly authorized. We also do not know precisely what questions Hass asked. It is unclear whether Hass's affidavit repeats a direct quotation from Meiste's answer or whether the affidavit sets forth Hass's understanding of the gravamen of Meiste's answer. Importantly, the record provides no support for the proposition that Meiste had any authority to bind the Township. Because plaintiff has the burden of proof, we are

unimpressed with plaintiff's protestations to the effect that the Township has not *disproved* Meiste's authority or anything about the nature of her statement to Hass.

Plaintiff argues that the Township's zoning administrator, Lukas Hill, explicitly approved plaintiff's revised rental listing after obtaining clarification that the property was not being improperly held out as a multifamily dwelling. Again, there is nothing in the record to show that Hill had individual authority to bind the Township to a zoning determination.[3] Furthermore, the record indicates that the Township's enforcement protocol has historically been to address violations as they are reported in the forms of complaints, rather than to affirmatively look for violations. The record does not reflect whether the Township had received any complaints at the time of the original rental listing alleging a violation of the R-1 zoning requirements. Plaintiff extrapolates too much from Hill's satisfaction that plaintiff's revised rental listing complied with the specific prohibition against multifamily dwellings in the R-1 zoning district. The fact that the revised listing did not contravene one restriction is not proof that it did not contravene *any* restrictions. In any event, as noted, failure to enforce a zoning ordinance does not constitute approval of an otherwise illegal use.

[Footnote 3: Plaintiff cites *Gordon Sel-Way, Inc. v. Spence Bros., Inc.*, 177 Mich. App. 116, 124, 440 NW2d 907 (1989), rev'd in part on other grounds 438 Mich. 488, 475 NW2d 704 (1991), for the proposition that Hill's "interpretation" should be imputed to the Township. Hill does not appear to have rendered an "interpretation." More importantly, the pertinent holding in *Gordon Sel-Way* was that *knowledge* possessed by a corporation's managerial employees may be imputed to the corporation, such that the corporation may not willfully ignore any duties that might arise as a consequence of that knowledge. *Id*. In this case, the Township does not claim ignorance of any of the statements made by its employees and officers but, rather, properly challenges their meaning and significance. *Gordon Sel-Way* did not purport to contravene the caselaw we have discussed that limits the circumstances under which a municipality's employees or officers may bind the municipality.]

Plaintiff also argues that Hill had "determined unequivocally that short-term rentals were lawful under the Spring Lake Township Zoning Ordinance...." We have carefully reviewed the documents plaintiff provided in support. One document is a printout of an e-mailed complaint from one of plaintiff's neighbors regarding plaintiff's rentals on which an unidentified person handwrote, "Lukas says nothing we can do about it as yet." No explanation has been provided as to why Hill might have made the statement, and we decline to speculate. Another document, this one from Township Supervisor John Nash, conveyed advice to neighbors about actions they could take; it contains no hint of a determination that plaintiff's use of the property was actually lawful. Neither document constitutes a formal determination by the Township that plaintiff's use of the property for short-term rentals was actually lawful, and neither document is binding on the township. Indeed, neither document appears even to constitute a private opinion that plaintiff's use of the property was lawful. Plaintiff also relies on the fact that the Township had not cited any other short-term rentals, which, again, is not an expression of approval.

In summary, plaintiff mostly relies on seriously mischaracterizing statements made by individuals. We conclude that the statements do not provide a basis for estopping, formally or substantively, the Township from enforcing its zoning or regulatory ordinances to preclude plaintiff from using the property for short-term rentals.

. . .

The Township's prior failure to enforce the ordinance does not confer upon plaintiff a right to continue violating the ordinance. Neither does a statement made by any individual without the power to bind the Township confer that right upon plaintiff, especially when none of the statements clearly or affirmatively expressed an opinion that short-term rentals in the R-1 zoning district were lawful… 328 Mich 326-330 and 335.

- The *Moskovic* cases:

Alternatively, Plaintiffs argue that the Court must defer to the City's past interpretation of the ZO, as exemplified by the statements of Watson, O'Donnell, and Curcio. Plaintiffs cite *Tuscola Wind III, LLC v. Almer Charter Township*, No. 17-cv-10497, 2018 WL 1250476 (E.D. Mich. Mar. 12, 2018), but that case underscores the problem with Plaintiffs' argument. There, the plaintiffs challenged the interpretation of a zoning ordinance by the township board. *Id.* at *2. The court held that it should defer to the township board's interpretation because the board was " 'the legislative body which enacted the Zoning Ordinance in the first place[.]' " *Id.* at *5 (quoting *Macenas v. Vill. of Michiana*, 446 NW2d 102, 110 (Mich. 1989)). The court also noted that " '[i]n cases of ambiguity in a municipal zoning ordinance, where a construction has been applied over an extended period by the officer or agency charged with its administration, that construction should be accorded great weight in determining the meaning of the ordinance.' " *Id.* (quoting *Macenas*, 446 NW2d at 110). But here, the ZO is not ambiguous with respect to short-term rentals.

Moreover, unlike the plaintiffs in *Tuscola Wind* and *Macenas*, Plaintiffs are not challenging a decision by a zoning board or a township board applying the zoning ordinance. Statements by the City Attorney at a town hall meeting or by the City's employees during depositions are not equivalent to interpretations by a "legislative body" or by "the officer or agency" charged with administration of the ZO. Indeed, the ZO gives the Zoning Administrator and the Zoning Board of Appeals authority to decide whether particular uses are consistent with the ZO. Plaintiffs have not pointed to any instances in which the City Council, the Zoning Administrator, or the Zoning Board of Appeals concluded that the ZO permitted short-term rentals in single-family dwellings.

Furthermore, the statements by Watson, O'Donnell, and the City Attorney are not evidence of an administrative construction of the ZO "applied over an extended period." *Cf. Macenas*, 446 NW2d at 110. They recognize the City's past practice of

not enforcing the ZO against short-term rentals, but that practice does not bind the City or this Court. *See Lyon Charter Twp.*, 896 NW2d at 481.

Plaintiffs cite other cases that rely on the same principle discussed in *Tuscola Wind*; those cases are distinguishable for similar reasons. *See Davis v. Bd. of Ed. for Sch. Dist. of River Rouge*, 280 NW2d 453, 454 (Mich. 1979) ("[T]he construction placed upon a statute by the agency legislatively chosen to administer it is entitled to great weight."); *Robinson v. City of Bloomfield Hills*, 86 NW2d 166 (Mich. 1957) (noting that the court's role is not to "substitute [its] judgment for that of the legislative body charged with the duty and responsibility in the premises"); *Sinelli v. Birmingham Bd. of Zoning App.*, 408 NW2d 412, 414 (Mich. Ct. App. 1987) ("A zoning board of appeals has the power to interpret the zoning ordinance which it must administer.... [C]ourts will consider and give weight to the construction of the ordinance by those administering the ordinance."). Neither Watson, O'Donnell, nor Curcio are or were legislative bodies or enforcement agencies who rendered opinions to which this Court must defer. [*Moskovic II* at pp. 13 and 14 of the slip opinion; January 13, 2023; **Exhibit 7**].

Plaintiffs cite testimony from the City Attorney and the City Manager, who also served as the Zoning Administrator and stood as the City's Rule 30(b)(6) deponent, expressing opinions that the original zoning ordinance permitted STRs. But those city officials' limited authority precludes their testimony from contravening what the original zoning ordinance's text provides. *See* City Charter § 4.5(b), R. 117-8, PageID 3640 (in the section defining the City Attorney's function and duties, failing to expressly authorize him to issue legal opinions that bind the City); *Mays v. LaRose*, 951 F.3d 775, 790 (6th Cir. 2020) ("Most courts don't treat concessions by Rule 30(b)(6) designees as binding."). [*Moskovic III* at p. 8 of the slip opinion, footnote 4; December 14, 2023; **Exhibit 8**].

See also *Yankee Springs Twp v Fox*, 264 Mich App 604; 692 NW2d 728 (2004).

7. <u>The Township official or body must have had the legal authority to grant an approval before estoppel or laches can apply</u>.

If a municipal official or body without authority to grant a zoning permit, license or other municipal approval erroneously does so, there can be no laches or estoppel against the municipality due to the lack of actual or even apparent authority. See *Reaume* at 327-329 and also *Parker v West Bloomfield Twp*, 60 Mich App 583, 594-595; 231 NW2d 424 (1975).

In Park Township, only the Zoning Administrator (via a formal Zoning Ordinance interpretation) or the ZBA (pursuant to a specific formal appeal) can theoretically bind the Township

in the first instance regarding zoning interpretations. The Township Board, the Planning Commission and other Township officials are without real or apparent authority to bind the Township in zoning interpretation or determination matters. Therefore, any pronouncements, approvals or statements made by any Township official (apart from the Zoning Administrator), the Planning Commission or the Township Board regarding STRs before April 1, 2024 are non-binding (as to the Township) and irrelevant in the current lawsuit.

8. PTN's entire case is based on its members' assumptions.

PTN's entire case appears to be based on two invalid bases:

A. The fact that Zoning Ordinances over the years were silent as to STRs; and

B. Non-binding (and often vague) pronouncements by Township officials.

Before April 1, 2024, STRs were not expressly defined or even mentioned in past Zoning Ordinances. STRs were never listed as either a permitted use or special approval use in any of the non-commercial zoning districts. Of course, under Michigan law, that means they are prohibited within the residential zoning districts. See pages10-12 as discussed above. For a property owner to assert that a municipal zoning ordinance does not mention a particular use (such that the use should be allowed in any zoning district) is a losing argument. The current and past Zoning Ordinances for Park Township also do not mention circuses, commercial bungee jumping operations, castles, ice skating rinks, or many other uses or items. That silence does not indicate or even imply that those uses are allowed, generally or in any specific zoning district. The same is true regarding STRs (at least in the non-commercial zoning districts).

Many of the pronouncements by some Township officials over the years regarding STRs have been not only vague and general, but inconclusive in any event. For a Township official to state that the Zoning Ordinance neither mentions nor prohibits or precludes STRs is, at best, inconclusive. Again, the same is true with regard to circuses, commercial bungee jumping operations, etc. Or, for

a Township official to state that STRs are allowed under the Zoning Ordinance (without more), is not only generally non-binding, but could also be interpreted to mean that the municipal official meant within the commercial zoning districts.

Based on all of the above, most of PTN's claims about what Township officials and bodies said or did not say is vague and inconclusive, and simply helped fuel the erroneous assumptions of PTN's members.

In the end, any "reliance" by PTN's members was shaky and not reasonable (i.e. the assumptions by and willful ignorance of PTN's members was not reasonable).

9. Property owners in Michigan are charged with an obligation to know what the law is (including Zoning Ordinance requirements).

In Michigan, it is the obligation of property owners to know what the law is, which would include municipal zoning ordinances. See the discussion in Section 8 on the previous page and pages 1-2 hereof. Therefore, ignorance of what current and past Park Township Zoning Ordinances means or meant is no excuse or defense to members of the PTN. *Ibid*.

10. The lack of prejudice.

Even if all of the arguments being made by PTN regarding laches, estoppel, etc. are otherwise legally and factually correct (which they are not), PTN and its members cannot show "prejudice." In the end, even if PTN's members cannot operate STRs within their houses, cottages, condominium units or dwellings, they still have valuable dwellings and residential property. That would be unimpaired by this Court holding that STRs were not lawful in the residential or agricultural zoning districts in the Township before this past winter's zoning amendments.

11. No "piggy-backing".

It must be kept in mind that laches, estoppel, etc. is "property specific" only. In other words, if PTN has, for example, 100 members (i.e. the owners of 100 properties), not all of them can benefit

from estoppel, laches, etc., even if the trial court finds estoppel, laches, etc. in certain cases. In order for a specific property owner to prove laches, estoppel, etc., they would have to show that they had interaction with a specific Township official who said STR's were allowed and also need to prove all of the elements of those defenses for their own specific property; other properties could not "piggyback" on another property owners' claim of laches, estoppel, etc. There do not appear to be any Michigan appellate court decisions that allow "mass" or collective laches or estoppel based on a municipality's website, press releases, minutes, etc. Accordingly, even if the Court accepts the laches, estoppel, etc. argument by PTN, it should only be for a few properties among all PTN members where they had actual personal interaction with the Township official who indicated that STR's were permissible.

12. Failure to enforce the ordinance.

PTN claims that the Zoning Ordinance prohibition against STRs somehow fails given the Township's *alleged* lack of prior enforcement. However, Michigan law is clear that any prior "failure to enforce a zoning ordinance does not constitute approval of an otherwise illegal use." *Reaume v Township of Spring Lake*, 328 Mich App 321, 329. "The Township's poor failure to enforce the ordinance does not confer upon the plaintiff a right to continue violating the ordinance.", *Ibid.* p. 335. "A historical failure to enforce a particular ordinance, standing alone, is insufficient to preclude enforcement in the present." *Ibid*. p. 327.

Also see *Lyon Twp v Petty*, 317 Mich 482, 489; 896 NW2d 477 (2016), wherein the Court held the same to deny a claim asserting that the township was precluded from enforcing its ordinance because it had a "decades-long pattern of ignoring their zoning violations and the investments they made in their business as a result." Clearly, lack of enforcement does not repeal nor invalidate an ordinance, and it remains enforceable.

CONCLUSION

For the reasons specified in the Township's Motion for Summary Disposition and this accompanying Brief, the Township respectfully requests that the Court grant summary disposition in the Township's favor and hold specifically as follows:

A. Short-term rentals are unlawful under the Park Township Zoning Ordinance in the agricultural and residential zoning districts, such that Counts III and VI of PTN's First Amended Complaint are dismissed with prejudice and that the Court also holds in favor of the Township as to the Township's Affirmative Defenses numbers 11, 12, 22, 23, 24, 26 and 34.

B. This case is not ripe and there is no actual case and controversy, such that PTN's First Amended Complaint is dismissed (See the Township's Affirmative Defenses at number 3).

C. PTN's claims of unenforceability of the relevant Park Township Zoning Ordinance provisions due to laches, estoppel, etc. are without merit and should be dismissed with full prejudice (See the Township's Affirmative Defenses numbers 2, 10, and 28).

D. Counts I, II and V of Plaintiff's First Amended Complaint should also be dismissed because Ordinance No. 2022-02 (which was a non-zoning, regulatory or police power ordinance) was not adopted by the Township Board in the form that was signed and published, but rather was mistakenly signed and published as an amendment to the Park Township Zoning Ordinance, but the error was corrected shortly thereafter pursuant to Ordinance No. 2023-02 (which constituted a non-zoning police power or regulatory ordinance enactment) (See the Township's Affirmative Defenses numbers 14 and 15).

E. Count IV of Plaintiff's First Amended Complaint should also be dismissed because *mandamus* will not apply should the Township prevail with regard to summary disposition of the other Counts in Plaintiff's First Amended Complaint (i.e. mandamus is only applicable where a clear legal duty is present and must be performed).

F. The Township be awarded its attorneys fees and costs.

Park Township thanks the Court for its careful consideration of these matters.

Respectfully submitted by,

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Dated: September 30, 2024

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Dated: September 30, 2024

EXHIBIT 1

2024 WL 3216449

Only the Westlaw citation is currently available.

UNPUBLISHED

Court of Appeals of Michigan.

Lindsey DEZMAN and Jon Geiger, Plaintiffs-Appellants, v. CHARTER TOWNSHIP OF BLOOMFIELD and Charter Township of Bloomfield Board of Zoning Appeals, Defendants-Appellees.

No. 360406

June 27, 2024

Oakland Circuit Court, LC No. 2021-190703-AV

Before: Patel, P.J., and Cavanagh and Redford, JJ.

ON REMAND

Per Curiam.

*1 Our Supreme Court reversed this Court's judgment [1] which held that plaintiffs were not required to seek a variance to keep chickens and a coop on their residential property. Our Supreme Court explained that **Zoning** Ordinance § 42-3.1.3(B)(i) and (vi) states "what activities are permitted at the one-family detached dwelling on plaintiffs' property: accessory uses and accessory structures customarily incidental to one-family detached dwellings[,]" and that, under *Pittsfield Twp v Malcolm*, 375 Mich 135, 142; 134 NW2d 166 (1965), where an ordinance specifically sets forth permissible uses, in the absence of a specifically stated use under a **zoning** classification, the ordinance excludes that use. ***Dezman** v Charter Twp of Bloomfield*, --- Mich ----; 997 NW2d 42 (2023). The Court remanded this matter for consideration whether the circuit court erred by affirming the Charter Township of Bloomfield **Zoning** Board of Appeals (ZBA) decision denying plaintiffs' request to keep chickens in a chicken coop on their property. We incorporate herein by reference our summary of the facts and proceedings and the statement of the applicable standard of review set forth in our previous opinion.

Because we conclude the circuit court did not err by affirming the ZBA's decision to deny plaintiffs' request to keep chickens and a coop on their residential property because the accessory use and accessory structures did not comply with **Zoning** Ordinance § 42-7.6.6, we affirm.

I. THE ZONING ORDINANCE AND FUNCTION OF THE ZONING BOARD OF APPEALS

Under Bloomfield Township **Zoning** Ordinance § 42-3.1.3, permitted uses of R-3 one-family residential land in relevant part includes: (i) one-family detached dwellings, (ii) farms, and (vi) accessory uses and accessory structures customarily incidental to any of the permitted uses. [2] Plaintiffs' property featured a one-family detached dwelling and did not constitute a farm. [3] Section 42-1.4 states: "No building or structure, or part thereof, shall hereafter be erected, constructed or altered and maintained, and no new use or change shall be made or maintained of any building, structure or land, or part thereof except in conformity with the provisions of this Chapter." Under § 42-5.1, any accessory structure customarily incidental to any permitted use under § 42-3.1.3 must, among other conditions, be in a rear yard, may not occupy more than 25% of the rear yard, may not be within 16 feet of any side or rear lot line, and may not exceed 14 feet in height. Section 42-5.1 specifies that erection of any accessory structure requires ZBA review and approval, and the ZBA is charged with determining whether the structure meets the requirements of § 42-7.6.6.

*2 Although plaintiffs argued that keeping chickens and having a coop did not require them to obtain a **zoning** variance, the record reflects that plaintiffs never sought a **zoning** variance. When issued a **zoning** violation, they appealed it to the ZBA and requested permission to have chickens and a coop on their R-3 **zoned** residential property. Consequently, the variance standard under § 42-7.6.5.C does not apply. [4] Plaintiffs' request sought permission respecting an accessory use and accessory structure. For their request to be permissible under the **zoning** ordinance, the proposed use and accessory structure needed to be one customarily incidental to any of the permitted uses in compliance with § 42-5.1, subject to the ZBA's review and approval, and its finding that such complied fully the standards set forth in § 42-7.6.6. See § 42-5.1.6. Section 42-7.6.6 provides:

> Standards. Each case before the **Zoning** Board of Appeals shall be considered as an individual case and shall conform to the detailed application of the following standards in a manner appropriate to the particular circumstances of such case. All uses as listed in any district requiring Board approval for a permit shall be of such location, size, and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is situated and will not be detrimental to the orderly development of adjacent districts. The Board shall give consideration to the following:
>
> A. The location and size of the use.

B. The nature and intensity of the operations involved in or conducted in connection with it.

C. Its size, layout and its relation to pedestrian and vehicular traffic to and from the use.

D. The assembly of persons in connection with it will not be hazardous to the neighborhood or be incongruous therewith or conflict with normal traffic of the neighborhood.

E. Taking into account amount [sic] other things, convenient routes of pedestrian traffic, particularly of children.

F. Vehicular turning movements in relation to routes of traffic flow, relation to street intersections, site distance and the general character and intensity of development of the neighborhood.

G. The location and height of buildings: the location, nature and height of walls, fences and the nature and extent of landscaping of the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.

H. The nature, location, size and site layout of the uses shall be such that it will be a harmonious part of the district in which it is situated taking into account, among other things, prevailing shopping habits, convenience of access by prospective patrons, the physical and economic relationship of one type of use to another and characteristic.

I. The location, size, intensity and site layout of the use shall be such that the operations will not be objectionable to nearby dwellings, by reason of noise, fumes or flash of lights to a greater degree than is normal with respect to the proximity of commercial to residential uses, will not interfere with an adequate supply of light and air, nor increase the danger of fire or otherwise endanger the public safety.

II. ANALYSIS OF PLAINTIFFS' ARGUMENTS

*3 Plaintiffs argue that, because the township's ordinance is silent on keeping chickens, they should be free to do so and have a chicken coop on their property. They point out that the general ordinance regulates dog, cat, and horse ownership but does not say anything about chickens. [5] Notably, the **zoning** ordinance is silent on pets and the keeping of animals on residential **zoned** properties. Defendants argue that, under *Pittsfield Twp*, 375 Mich 135, because the **zoning** ordinance does not expressly provide for chickens kept at one-family detached dwellings, such are necessarily excluded. In our previous opinion, we considered that argument and explained:

> In *Pittsfield Twp*, the relevant ordinance stated: " 'No building or structure or part thereof shall be erected, altered, used, or land or premises used in whole or part for other than one or more of the following specified uses ....' " *Id.* at 140. Based on the ordinance's language, our Supreme Court held: "Under the ordinance which specifically sets forth permissible uses under each **zoning** classification, therefore, absence of the specifically stated use must be regarded as excluding that use." *Id.* at 142-143. Thus, if an ordinance contains language expressly limiting use of the land only to the uses listed in the ordinance, a landowner may not use the land for unlisted purposes. [***Dezman***, unpub. op. at 5.]

We found *Pittsfield Twp* distinguishable from the case at bar because the **zoning** ordinance language at issue differs substantively from that in *Pittsfield Twp* which expressly specified the *only* permitted uses allowed; whereas, the **zoning** ordinance in this case is far less restrictive and does not set forth such a list of the only permissible uses under the **zoning** classification. ***Dezman***, unpub. op. at 5. Our Supreme Court's remand order indicates we should consider *Pittsfield Twp* differently and deem that the absence of reference to chicken-keeping in the **zoning** ordinance at issue means such is necessarily excluded. As we previously observed, the **zoning** ordinance at issue lists three applicable uses but does not designate or expressly limit what activities may be conducted at R-3 residential **zoned** properties within those three uses. Section 42-3.1.3.B in relevant part states that one can use R-3 one-family residential land under subpart (i) for one-family detached dwellings, and under subpart (vi) for accessory uses and accessory structures customarily incidental to any of the permitted uses. [6]

Plaintiffs argue that the ZBA abused its discretion by engaging in an uneven application of the **zoning** standards. According to plaintiffs, the ZBA did not consider lot size, shape, or unique features of the land for other applicants, including for the applicant on Aldgate Drive, whose request was considered at the ZBA hearing on August 10, 2021. Plaintiffs further contend that the ZBA has not denied a variance to keep hens in the past seven years. Plaintiffs assert that their parcel of land is four times larger than the Aldgate parcel, yet the ZBA granted that request without regard to the neighbors' health concerns or the unique features of the land.

*4 At the September 14, 2021 ZBA meeting, the ZBA made the following determination regarding plaintiffs' request:

> Based on the information presented, the applicant did not demonstrate compliance with Section 42-7.6 standards because the use of the accessory structure is inappropriate for the neighborhood and the location will hinder and discourage the adjacent neighbor to live in harmony on their property due to issues associated with the proposed use.

Respecting the request on Aldgate Drive, the ZBA determined on August 10, 2021:

> Based on the information presented, the applicant did demonstrate compliance with Section 42-7.6 standards because it will not hinder or discourage the use of adjacent property. Based on the information presented, the applicant did demonstrate all of the standards for practical difficulty because compliance with the strict letter of the ordinance would be unduly burdensome because there they have three front yards. There is no injustice to the adjoining neighbors because the chickens have resided at the home for over three years with no issues. Unique circumstances exist with the property since it has three frontages and that is not self created. Application for permits must be made within 5 business days for the existing chickens and coops. Additional screening may be required to screen from public view. The approval is for 8 years until 8-10-29 and chickens can remain on the site for the remainder of their life cycle and cannot be replaced.

The minutes demonstrate that the ZBA applied the same standard in the Aldgate case as it did in this case by considering in both cases whether the applicant complied with § 42-7.6.6, a necessary prerequisite to accessory uses and erection of accessory structures incidental to permitted uses. The record reflects that the ZBA considered lot size, shape, and unique features of the land in the Aldgate case. The ZBA further considered the impact on the neighbors and the visibility of the chicken coop in that case. Although the ZBA reached a different result in the Aldgate case, plaintiffs fail to establish that the ZBA did not apply the proper procedure or abused its discretion by arbitrarily applying the **zoning** ordinance in this case. The record indicates that the ZBA considered the standards and based its determination on the evidence presented. The question then is whether substantial evidence on the record supported the ZBA's determination in this case. The fact that the ZBA granted permission requests for chicken coops in other instances does not establish that the ZBA acted arbitrarily in this case. Plaintiffs have not provided all of the facts underlying those determinations, so they cannot establish by comparison that the ZBA acted improperly or arbitrarily, or abused its discretion in this case.

Plaintiffs argue that the ZBA impermissibly relied on less than a scintilla of evidence, their next-door neighbor's unsubstantiated and speculative allegations that she and her family would suffer health problems and would see the chicken coop in the winter months. The record indicates that the neighbor, Gracey, spoke at the August 10, 2021 hearing in opposition to the chicken coop. The ZBA did not vote on the issue at that hearing but tabled the decision until the full board could consider the request. Gracey spoke again at the September 14, 2021 hearing and asserted that "the chickens would create allergy and respiratory issues for her family, attract

pests, create odor, and the chicken coop would be visible from her property[.]" Gracey also submitted a letter in opposition to plaintiffs' request, stating that the chicken coop "is only partially covered by the arborvitae trees" and she and her family "can still see it." She complained that, in the winter months, the coop "will remain largely uncovered and clearly visible." She asserted that she and her family members had severe allergies that would be affected by dander from the chickens and the dust created by the chickens, which "dig holes" in order to "dust bathe." Gracey referred to the coop as being "unsightly," causing "extreme odor nuisance" from the ammonia, causing constant noise nuisance, creating a risk of encounters with predators, creating a risk of disease, and decreasing property values.

*5 Plaintiffs argue that Gracey provided no medical documentation in support of her claim that she and her family had allergies. Plaintiffs, however, fail to establish that medical documentation must be provided at a ZBA hearing for a ZBA to find substantial evidence to support its determination. Moreover, Gracey's claims of allergies involve a credibility determination. "[I]f the administrative findings of fact and conclusions of law are based primarily on credibility determinations, such findings generally will not be disturbed because it is not the function of a reviewing court to assess witness credibility or resolve conflicts in the evidence." *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Accordingly, we must defer to the ZBA's credibility determination. We also note that plaintiffs' argument is factually incorrect. Plaintiffs suggest that Gracey expressed concern merely about the animal dander. Her letter, however, clarified that she also had concerns about the dust created by chickens. Further, contrary to plaintiffs' contention, the fact that Gracey's family has two dogs does not necessarily diminish the credibility of her statements regarding her and her family members' allergies.

Plaintiffs also argue that Gracey provided no evidence in support of her claim that the arborvitaes will thin in the winter and that she will possibly see the chicken coop. This issue, however, also involved a credibility determination by the ZBA to which we give deference. The record also indicates that plaintiffs misstate Gracey's position. She did not state that she would *possibly* see the coop in the winter; she stated that the coop was visible and only partially covered by the arborvitae trees, and would be clearly visible in the winter months when the arborvitaes are not as full. Plaintiffs focus on whether arborvitaes thin in the winter. Anania opined that the trees provided year-round coverage. Gracey, however, asserted that the coop could be seen from her property during the entire year. Obviously, the ZBA had to make credibility determinations in this regard. As this Court has explained, the primary reason for deference to the ZBA is "its members are local residents who reside in the township and who possess a much more thorough knowledge of local conditions, current land uses, and the manner of future development desirable for those who reside in the township." *Szluha v Charter Twp of Avon*, 128 Mich App 402, 410; 340 NW2d 105 (1983).

Plaintiffs rely on *Henry v Dow Chemical Co*, 473 Mich 63, 72; 701 NW2d 684 (2005), in support of their assertion that speculative claims of future harm are insufficient. In *Henry*, the Court stated that "[i]f plaintiffs' claim is for injuries they may suffer in the future, their claim is precluded as a matter of law, because Michigan law requires more than a merely speculative injury." *Id.* The Court in *Henry*, however, described the injury required to support a negligence claim, not the substantial-evidence test respecting a ZBA decision. *Henry*, therefore, is inapposite.

III. CONCLUSION

The record reflects that the ZBA's decision is supported by competent, material, and substantial evidence. The ZBA relied on the information provided by Gracey to conclude that "the use of the accessory structure is inappropriate for the neighborhood and the location will hinder and discourage the adjacent neighbor to live in harmony on their property due to issues associated with the proposed use." As such, the accessory structure failed to comply with § 42-7.6.6. Plaintiffs focus only on the issues of Gracey's allergies and the visibility of the chicken coop, but Gracey listed several other ways in which the chicken coup would hinder her use of her property and ability to live in harmony, including the odor, noise, risk of predators, risk of disease, and decreased property values. Although Anania disagreed with Gracey and expressed support for plaintiffs having the chicken coop, the information provided by Gracey supported the ZBA's factual findings which must be affirmed, even if alternative findings could have been supported by the record.

Finally, although plaintiffs do not challenge the sufficiency of the ZBA's findings, the ZBA did not "merely repeat the conclusionary language of the **zoning** ordinance without specifying the factual findings underlying the determination that the requirements of the ordinance were satisfied in the case at hand." *Reenders v Parker*, 217 Mich App 373, 378-379; 551 NW2d 474 (1996). Even though the ZBA did not address each requirement listed in the ordinance, not all were applicable. See § 42-7.6.6. The circuit court appropriately reviewed the record and applied correct legal principles. The circuit court did not misapprehend or grossly misapply the substantial-evidence test to the ZBA's factual findings. Accordingly, we hold that the circuit court did not err by affirming the ZBA's decision to deny plaintiffs' request to keep chickens and a coop on their residential property because the accessory use and accessory structures did not comply with § 42-7.6.6.

*6 Affirmed.

All Citations

Not Reported in N.W. Rptr., 2024 WL 3216449

Footnotes

1 *Dezman v Charter Twp of Bloomfield*, unpublished per curiam opinion of the Court of Appeals, issued June 1, 2023 (Docket No. 360406).

2 Section 42-2.2.1 defines "accessory use and accessory" as "a use which is clearly incidental to, customarily found in connection with, and (except in the case of accessory off-street parking spaces or loading) located on the same **zoning** lot as, the principal use to which it is related." The term "accessory use" including but not limited to 10 specified uses for, among other things, servant or caretaker residential accommodations, recreational facilities, domestic or agricultural storage barns, sheds, tool rooms or similar accessory buildings or structures, storage facilities related to business operations, parking, industrial or commercial operations, and signage.

3 Section 42-2.2.31 defines a farm as land not less than 40 acres that operates as greenhouses, nurseries, orchards, chicken hatcheries, or apiaries.

4 Section 42-7.6.5 in relevant part provides:

> C. Variance. To authorize, upon an appeal, a variance from the strict applications of the provisions of this Chapter where by reason of exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of ordinance from which this Section is derived or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to, or upon the owner of such property, provided such relief may be granted without substantially impairing the intent and purpose of this Chapter. In granting a variance the Board may attach thereto such conditions regarding the location, character, and other features of the imposed uses as it may deem reasonable in furtherance of the purpose of this Chapter. In granting a variance, the Board shall state the grounds upon which it justifies the granting of a variance.

5 See Bloomfield Township Ordinance §§ 8-8.32-48 (dogs); §§ 8-8.70-92 (cats); and § 42-4.12 (horses).

6 Although application of the *Pittsfield Twp* principle could lead to the conclusion that plaintiffs needed a variance for keeping chickens and having a coop for them, because they never sought one and requested permission to do so, as others apparently successfully did, we believe the focus should be on the permission decision process. Irrespective of whether plaintiffs could qualify for a variance, the erection of an accessory structure incidental to a permitted use nevertheless required review and approval by the ZBA of such structure's compliance with § 42-7.6.6.

End of Document

EXHIBIT 2

2014 WL 7215204
Only the Westlaw citation is currently available.

UNPUBLISHED
Court of Appeals of Michigan.

PLEASANTON TOWNSHIP, Plaintiff/Counter–Defendant–Appellant,
v.
Douglas PARRAMORE, Defendant/Counter–Plaintiff–Appellee.

Docket No. 317908.
Dec. 18, 2014.

Manistee Circuit Court; LC No. 12–014762–CZ.

Before: M.J. KELLY, P.J., and CAVANAGH and METER, JJ.

Opinion

PER CURIAM.

*1 In this zoning dispute, plaintiff, Pleasanton Township, appeals by right the trial court's order granting summary disposition in favor of defendant, Douglas Parramore. For the reasons explained below, we affirm in part, reverse in part, and remand for entry of summary disposition in the Township's favor on its nuisance per se claim and on Parramore's equal protection counterclaim.

As a preliminary matter, we note that the Michigan Townships Association argues as an amicus curiae that the trial court lacked subject-matter jurisdiction to grant relief to Parramore because he did not appeal the Zoning Board of Appeals' decisions in the circuit court. A party may raise a challenge to subject-matter jurisdiction at any time and whether a court has jurisdiction is a question of law that this Court reviews de novo. *Davis v. Dep't of Corrections,* 251 Mich.App 372, 374; 651 NW2d 486 (2002).

A court's subject-matter jurisdiction concerns the types of cases and claims that it has the authority to decide. *In re AMB,* 248 Mich.App 144, 166; 640 NW2d 262 (2001). Subject-matter jurisdiction does not involve the court's power to consider a specific case, but rather involves the court's power to hear a class of cases. *Joy v.. Two–Bit Corp.,* 287 Mich. 244, 253–254; 283 NW 45 (1938). Michigan's circuit courts have

jurisdiction "to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court...." MCL 600.605. "Thus, circuit courts are presumed to have subject-matter jurisdiction unless jurisdiction is expressly prohibited or given to another court by constitution or statute." *In re Wayne Co. Treasurer Petition,* 265 Mich.App 285, 291; 698 NW2d 879 (2005). "When a court is without jurisdiction of the subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void." *Todd v. Dep't of Corrections,* 232 Mich.App 623, 628; 591 NW2d 375 (1998).

The Association characterizes the present action as an improper collateral challenge to the Zoning Board's decisions. Under MCL 125 .3605 provides that a party aggrieved by a decision of the Zoning Board must appeal to the circuit court for the county in which the property is located. The party must file the appeal within 30 days after the Zoning Board issues its decision in writing or 21 days after it approves the minutes of its decision, whichever comes first. MCL 125.3606(3). "The failure to file a timely claim of appeal deprives the circuit court of jurisdiction to hear the appeal." *Schlega v. Detroit Bd. of Zoning Appeals,* 147 Mich.App 79, 82; 382 NW2d 737 (1985). In this case, Parramore has not collaterally challenged the Zoning Board's decision. Rather, the Township sued Parramore, alleging claims of nuisance per se and fraud, and asking for injunctive relief. And the circuit court has jurisdiction to hear nuisance and fraud claims and to grant injunctive relief. MCL 600.605; *Joy,* 287 Mich. at 253–254.

*2 The Township argues the trial court erred in granting summary disposition to Parramore. It contends that the variance granted to Parramore, which allowed him to construct an accessory building that was eight feet into the 10–foot side yard setback [1], was conditioned on a height restriction contained in Parramore's application for a variance. In the application, Parramore represented that the accessory structure would have eight-foot high side walls and would match the height of his single-story house. "This Court reviews de novo a trial court's decision on a motion for summary disposition." *Hackel v. Macomb Co. Comm.,* 298 Mich.App 311, 315; 826 NW2d 753 (2012). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v. Taylor,* 263 Mich.App 618, 621; 689 NW2d 506 (2004).

The Zoning Board has the authority to grant variances concerning the construction or alteration of buildings or structures related to dimensional requirements of the zoning ordinance. MCL 125.3604(8). "A variance is permission granted by a board of appeals to disregard a literal enforcement of an ordinance." *Johnson v. Bobbie's Party Store,* 189 Mich.App 652, 661; 473 NW2d 796 (1991). The Zoning Board may, however, impose conditions on variances. See MCL 125.3604(7); Pleasanton

Township Ordinance, Article 96, § 9604(C); *City of Troy v. Aslanian,* 170 Mich.App 523, 526–529; 428 NW2d 703 (1988). [2] Such conditions must be expressed with enough clarity to inform the applicant of the limitations on the use of the land and to protect nearby owners. *Id.* at 528. Although a nonconforming use is permitted to continue, the Zoning Board need not permit a property owner to alter the quality, intensity, or location of a nonconforming use. *Id.*

When it granted the variance at issue, the Zoning Board did not expressly state that the structure must be one story or have walls that were no more than eight feet in height. It did, however, state that its decision to grant the variance was "based on" Parramore's application and site plan. Parramore stated in his application that the height of the accessory structure would match the single-story house siding and roofing and that the sidewalls would be eight feet tall, with a roof pitch to match the house. His contractor's diagram attached to the application also represented that the roof and sides would match the house with "[s]ingle story peaks" that would not block the neighbors' view. By stating that its decision to grant the variance was based on Parramore's application, the Zoning Board expressed with sufficient clarity that Parramore's representations concerning the height of the structure constituted a condition on its decision to grant the variance. This condition was reasonable given that the new structure's square footage was larger than that of the existing garage, which constituted a nonconforming use. *Id.;* see also *Schadewald v. Brule,* 225 Mich.App 26, 33; 570 NW2d 788 (1997); *Anatra v. Zoning Bd of Appeals of Town of Madison,* 307 Conn 728, 747; 59 A3d 772 (2013) (holding that the conditions on a variance are determined by examining "the entire public record, including the variance application, the accompanying plans and exhibits, the minutes or hearing transcript, and the record of decision"). [3]

*3 Contrary to Parramore's argument, the subsequent land use permit issued by the Zoning Administrator did not constitute the variance granted by the Zoning Board. The variance decision is reflected in the minutes of the Zoning Board's public meeting at which it voted to grant the variance "based on" Parramore's application. The land use permit was signed by and issued by the Zoning Administrator following the Zoning Board's decision to grant the variance. It is the Zoning Board that has the authority to grant variances and impose conditions on variances. MCL 125.3604(7), (8); *City of Troy,* 170 Mich.App at 526–529.

In any event, the land use permit, while containing what the Township characterizes as boilerplate language stating the maximum building height for the district is 35 feet, and stating that the side yard setback was 10 feet, also expressly stated that the zoning permit application and attachments and the variance decision were to be attached to the file copy of the land use permit. This reference to the zoning application and the variance decision effectively incorporated those documents into the land use permit and alerted Parramore that his representations concerning the

height of the structure, which were adopted in the variance decision, remained in effect. [4]

This height restriction was further reinforced in the Zoning Board's second decision in September 2011, after Parramore sought a height variance for the 22 ½-foot-tall structure that he already built. The Zoning Board denied Parramore's request noting that he had a variance for a one-story structure and that permitting a two-story structure to be built two feet from the property line would alter the essential character of the area. The Zoning Board referred to complaints by three neighbors that the two-story structure was obtrusive given its proximity to the property line. The Zoning Board's subsequent decision made clear that it did not approve the structure. Parramore's suggestion that the 22 ½ foot tall building was one story under an ordinance definition ignores the fact that the Zoning Board's initial grant of a variance was premised on Parramore's application, which contained representations that the *height* of the building would be eight feet tall, and ignores the fact that the Zoning Board expressly found that the 22 ½ foot tall structure would alter the essential character of the area. Thus, Parramore's claim that the Zoning Board did not impose a height restriction in its variance lacks merit.

"Except as otherwise provided by law, a use of land or a dwelling, building, or structure, including a tent or recreational vehicle, used, erected, altered, razed, or converted in violation of a zoning ordinance or regulation adopted under this act is a nuisance per se." MCL 125.3407; see also *Shelby Charter Twp v. Papesh,* 267 Mich.App 92, 96 n. 3; 704 NW2d 92 (2005). Parramore's accessory building violated the zoning ordinance as it did not satisfy the height restriction imposed as a condition on the grant of a variance from the side yard setback requirement. Therefore, the Township established that the building constituted a nuisance per se and was entitled to summary disposition on its nuisance claim.

*4 The Township next argues that even if the Zoning Administrator verbally told Parramore or his contractor, Charles Iverson, that they could build the accessory structure up to 35 feet in height, or even if the land use permit issued by the Zoning Administrator could be construed to permit construction to that height, such representations are not binding on the Township. Generally, a municipality cannot be estopped from enforcing its zoning ordinances by "the ultra vires acts of its zoning officials." *Grand Haven Twp. v. Brummel,* 87 Mich.App 442, 444–445; 274 NW2d 814 (1978) (citations omitted), citing *Fass v. Highland Park,* 326 Mich. 19; 39 NW2d 336 (1949). Moreover, every person "is presumed to know the nature and extent of the powers of municipal officers" and this rule applies even "when the ordinance violator acts in good faith, expending money or incurring obligations in reliance upon the official's acts." *Id.;* see also *City of Hillsdale v. Hillsdale Iron & Metal Co.,* 358 Mich. 377, 383–384; 100 NW2d 467 (1960).

In *Fass,* 326 Mich. at 21, the plaintiffs received licenses in the years 1945, 1946, and 1947 to sell both dressed and live poultry on their property, but in 1948 a license was denied on the ground that a zoning ordinance prohibited the sale of live poultry. The plaintiffs claimed that the defendant-city was estopped from enforcing the zoning ordinance because of the interpretation placed on the ordinance in past years by certain city officials. *Id.* at 25. The plaintiffs claimed that they had purchased the property in reliance on statements of the city engineer indicating that the city did not oppose using the property as a retail live poultry market, and that the plaintiffs invested money in equipment and fixtures and would suffer loss in the value of their property if they could not carry on the business of selling live poultry. *Id.* at 25–26. After reviewing case law, our Supreme Court rejected the plaintiffs' estoppel argument:

> Plaintiffs' claim that the defendant municipality is estopped to enforce its zoning ordinance against plaintiffs' property because of the improper issuance of the building permit and of the licenses for the years 1945, 1946, and 1947, is not tenable. At the time such acts were performed plaintiffs were charged with knowledge of the restrictive provisions of the ordinance as applied to property in a "B2" district. Such acts being unauthorized and in express contravention of ordinance provisions of the city, plaintiffs acquired no vested right to use their property for a purpose forbidden by law. No claim is made that the building erected by plaintiffs, or the equipment therein, cannot be utilized for the transaction of a permissible business. The sole question at issue is the right of plaintiffs to sell live poultry as a part of their operations. The trial judge was correct in holding that they did not have such right and in consequence were not entitled to the relief sought by them. [*Id.* at 30–31.]

[*5] Similarly, in *Mazo v. Detroit,* 9 Mich.App 354, 357; 156 NW2d 155 (1968), the plaintiff obtained from the Detroit department of buildings and safety engineering a written approval of her request to establish a bar on her property. The Detroit police department likewise approved the plaintiff's request to transfer her liquor licenses to the property in question. *Id.* at 358. Later, however, the Detroit department of buildings and safety engineering refused the plaintiff's request for a building permit to make alterations and withdrew its earlier approval of zoning status, after realizing that the plaintiff's proposed use of the property was prohibited by a zoning ordinance. *Id.* The plaintiff petitioned the Detroit common council for a waiver of the ordinance provision. *Id.* at 359. The Detroit common council denied the plaintiff's petition. *Id.* at 360. The trial court found that it was inequitable to deny the plaintiff a waiver because she had incurred detriment in reliance on approvals given by city officials. *Id.* This Court concluded that the trial court had erred, noting that

"nonestoppel of municipalities in the enforcement of zoning ordinances is the rule in Michigan." *Id.*

This Court relied on the **reasoning in** *Fass* and explained that the plaintiffs must "be charged with at least constructive knowledge of the zoning ordinance provision requiring a waiver by the common council. Neither the department of buildings nor the police department could exercise the authority vested in the common council." *Id.* at 362–363. The Court further held that all persons dealing with municipalities and their agents act with constructive, if not actual, knowledge of the limitations on the agents' powers and, when an agent acts outside his or her authority, the acts are extralegal and without efficacy. *Mazo,* 9 Mich.App at 363, quoting *Fass,* 326 Mich. at 27, quoting *Detroit Bldg. Comm v. Kunin,* 181 Mich. 604, 612–613; 148 NW 207 (1914).

In this case, Parramore averred that the Zoning Administrator told Iverson in March 2011 that the accessory structure could be built to any height Parramore desired as long it was within the maximum building height limit of 35 feet, and Parramore stated that construction then began in April or May of 2011. The Zoning Administrator averred that she never told Iverson he could build as high as 35 feet, as she knew that the Zoning Board had approved the variance from the 10 foot side yard setback requirement on the basis of Iverson's proposed structure with eight foot high walls and a roof peak to match that of the single story home on the property. Parramore contends that the Zoning Administrator's purported verbal statements to Iverson granting permission to build to any height was consistent with the language on the land use permit, which reflected a 35–foot maximum height.

As discussed, the land use permit explicitly referenced the zoning variance decision and Parramore's application. The variance decision was explicitly based on Parramore's variance application, which represented that the sidewalls would be eight feet high and that the siding and roof would match the height of the single-story home on the property. Nonetheless, even accepting Parramore's characterization of the land use permit as approving a height up to 35 feet and his claim that the Zoning Administrator made similar verbal comments to Iverson, the fact remains that the Zoning Administrator lacked the authority to modify or waive the height restriction that was imposed as a condition for granting the variance from the side yard setback requirement. The Zoning Board alone was authorized to grant variances and to impose conditions on variances. MCL 125.3604(7), (8); Pleasanton Township Ordinance, Article 96, § 9604(C). The Zoning Administrator possessed no authority to waive or modify the conditions imposed by the Zoning Board when granting a variance. Therefore, even if the Zoning Administrator gave Iverson permission to build up to 35 feet, that permission lacked any legal effect. *Mazo,* 9 Mich.App at 363. The Zoning Administrator could not exercise the authority vested in the Zoning Board. *Id.* at 362–363. Parramore was further presumed to know the nature and extent of the powers of the Township's officers. *Grand Haven Twp,* 87

Mich.App at 444. The Township, therefore, cannot be estopped on the basis of the Zoning Administrator's alleged verbal statements or the land use permit issued by the Zoning Administrator from enforcing the zoning ordinance or the condition imposed by the Zoning Board on the variance.

*6 The Township next contends that Parramore is estopped from asserting a right to build a taller structure than what he represented he would build in his variance application.

A party who has accepted and retained the advantages of a variance that was granted on condition will be deemed to have waived any error with respect to that condition. *City of Troy,* 170 Mich.App at 530, quoting 101A CJS, Zoning & Land Planning, § 238, p. 691; see also *Johnson,* 189 Mich.App at 662 ("[W]here an applicant accepts a variance with a condition which was an indispensable component of the approval and which was treated by all parties at that time as being a valid limitation, the condition is binding on the applicant, who enjoyed the benefits which flowed from the variance."). As discussed, the Zoning Board's decision to grant a side yard setback variance "based on" Parramore's application, which represented that the height of the sidewalls would be eight feet and that the siding and roof heights would match that of his house, imposed a height restriction that comprised a condition of the variance. Parramore did not appeal the Zoning Board's decision or otherwise challenge the height restriction until after constructing a 22 ½ foot structure two feet from the property line and then seeking approval for the height after the fact, which the Zoning Board promptly denied. Parramore did not appeal the Zoning Board's second decision and his contractor initially submitted plans to the Zoning Administrator suggesting that he was going to remove the second story and lower the structure to nine feet in height, but ultimately refused to do so. Therefore, the facts establish that Parramore was granted a variance to build eight feet into a 10 foot side yard setback conditioned on a height restriction and accepted the advantages of the variance by building his structure, but did not comply with the condition on the grant of the variance. Accordingly, Parramore is estopped from challenging the propriety of the condition and it is binding on him. *City of Troy,* 170 Mich.App at 530.

The Township also contends that Parramore is also estopped under a fraud theory, but cites no authority to support this aspect of its argument. "A party cannot simply announce a position and expect the court to search for authority to sustain or reject that position." *Hodge v. Parks,* 303 Mich.App 552, 557; 844 NW2d 189 (2014). Moreover, the Township has failed to establish that the trial court erred in dismissing its fraud claim. The Township alleged that the original variance decision was null and void because it was obtained fraudulently, and, therefore, it was entitled to have the *entire* accessory structure torn down. To establish a valid claim for fraud, the Township had to show:

> (1) That defendant made a material representation; (2) that it was false; (3) that when he made it he knew that it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) that he made it with the intention that it should be acted upon by plaintiff; (5) that plaintiff acted in reliance upon it; and (6) that he thereby suffered injury. [*Titan Ins. Co. v. Hyten,* 491 Mich. 547, 555; 817 NW2d 562 (2012).]

*7 General allegations or mere speculation are insufficient to establish fraud. *LaMothe v. Auto Club Ins. Ass'n,* 214 Mich.App 577, 586; 543 NW2d 42 (1995). Fraud must be proved by clear, satisfactory, and convincing evidence. *Cooper v. Auto Club Ins. Ass'n,* 481 Mich. 399, 414; 751 NW2d 443 (2008). A future promise is contractual and does not constitute fraud unless the promise was made in bad faith without the present intention to perform. *Hi-Way Motor Co. v. Int'l Harvester Co.,* 398 Mich. 330, 336–338; 247 NW2d 813 (1976).

Although Parramore, through Iverson, stated in his original variance application that he planned to build a structure with eight foot high sidewalls and wall heights to match the house, and he later built a structure that was more than twice that high, the Township cites no evidence that he made the representations regarding his building plans in bad faith without the present intention to perform. The Township also fails to address the possibility that Parramore made the representations in the variance application in good faith with the present intention to perform but later changed his building plans. Accordingly, in addition to its failure to cite pertinent authority regarding the fraud claim, the Township failed to present evidence to establish all of the elements necessary to establish fraud. [5]

The trial court did not err when it dismissed the Township's fraud claim.

Next, the Township contends that it is also entitled to relief under the doctrine of judicial estoppel. "The doctrine of judicial estoppel prevents a party who has successfully and unequivocally asserted a position in a prior proceeding from asserting an inconsistent one at a subsequent proceeding." *Auto-Owners Ins. Co. v. Harvey,* 219 Mich.App 466, 474; 556 NW2d 517 (1996). Michigan follows the prior success model of the doctrine. *Morales v. State Farm Mut Auto Ins. Co.,* 279 Mich.App 720, 737; 761 NW2d 454 (2008). Under that model, "the mere assertion of inconsistent positions is not sufficient to invoke estoppel; rather, there must be some indication that the court in the earlier proceeding accepted that party's position as true. Further, in order for the doctrine of judicial estoppel to apply, the claims must be wholly inconsistent." *Paschke v. Retool Indus,* 445 Mich. 502, 510; 519 NW2d 441 (1994).

In asserting the applicability of judicial estoppel, the Township conflates Parramore's factual representations concerning the height of the building in his original variance application with a legal position that those representations concerning the height of the building comprised a condition of the variance. However, although Parramore represented in his variance application that the accessory structure would have eight foot high sidewalls, he did not take a position in that proceeding that the height of the building was a condition of the variance. Although we concluded earlier that the Zoning Board's grant of the variance "based on" Parramore's application rendered his representations regarding the height of the structure a condition of the variance, Parramore did not unequivocally assert a position in the Zoning Board that the height of the structure was a condition of the variance. Therefore, he has not asserted wholly inconsistent positions on that question. Accordingly, the Township has failed to establish that the doctrine of judicial estoppel applies in this case.

*8 Finally, the Township argues that it is entitled to summary disposition with respect to Parramore's equal protection counterclaim. Generally, an issue must have been addressed and decided by the trial court to be preserved for appellate review. *Hines v. Volkswagen of America, Inc.,* 265 Mich.App 432, 443; 695 NW2d 84 (2005). The Township raised this issue in its motion for summary disposition, but the trial court refused to address it. In its order, the court stated that it was neither granting nor denying the Township's motion for summary disposition on the counterclaim because it was not necessary to decide the counterclaim. Nonetheless, this Court may reach an issue that was raised below even if the trial court failed to address and decide it, because a party should not be punished for the trial court's omission. *Peterman v. Dep't of Natural Resources,* 446 Mich. 177, 183; 521 NW2d 499 (1994). Therefore, we will address the issue. [6] This Court reviews de novo constitutional issues such as whether a party was denied equal protection under the law. *Lima Twp. v. Bateson,* 302 Mich.App 483, 503; 838 NW2d 898 (2013).

> Under the federal and Michigan constitutions, similarly situated persons must be treated equally. In a zoning context, the first question has to be whether the variance applicant demonstrated on the record that it was treated differently from some similarly situated applicant. However, unless the dissimilar treatment alleged impinges on the exercise of a fundamental right or targets such protected classifications as those based on race or gender, the challenged regulatory scheme will survive equal protection analysis if it is rationally related to a legitimate governmental interest. The party raising the equal protection challenge has the burden of proving that the challenged law is arbitrary and thus irrational. *Risko v. Grand Haven Charter Twp. Zoning Bd. of Appeals,* 284 Mich.App 453, 465; 773 NW2d 730 (2009) (quotation marks, brackets, and citations omitted).]

Parramore failed to demonstrate that he was treated differently from a similarly situated applicant. He alleged in his counterclaim that three other property owners in the zoning district were permitted to construct two-story accessory buildings. Thus, Parramore contended, the Township was enforcing the zoning ordinances against him but not against similarly situated property owners in the same zoning district. In seeking dismissal of the counterclaim, the Township attached to its motion for summary disposition an affidavit of the Zoning Administrator. The Zoning Administrator averred that the cases cited by Parramore each involved structures that were "built within the normal building envelope (where a 35′ height is permitted) on their lots and none of them were built in a setback area where no construction is permitted without a variance...." Parramore did not file a response to the motion for summary disposition and presented no evidence to contradict the Zoning Administrator's affidavit. Therefore, because Parramore's 22 ½ foot building was built in a setback area, within two feet of the property line, the other property owners who built two-story accessory structures in the normal building envelope were not similarly situated to him. Parramore thus has not presented evidence that he was treated differently from some similarly situated applicant.

*9 We also note that the right to build according to a preferred design is not a substantial property right. *Id.* at 463–464. Local governmental units possess broad authority to establish requirements regarding matters such as the height of structures and setback regulations. *Id.* at 463, citing MCL 125.3201. See also *McClain v. City of Hazel Park,* 357 Mich. 459, 461; 98 NW2d 560 (1959) (noting that setback requirements in residential areas have long been held constitutional when provided by ordinance); *Sisters of Bon Secours Hosp. v. City of Grosse Pointe,* 8 Mich.App 342, 360–361; 154 NW2d 644 (1967) ("The concept of building height restrictions is virtually universally accepted as bearing a substantial relation to public health, safety, morals and welfare."). Therefore, the setback requirement and the height restriction imposed as a condition of the variance from the setback requirement are rationally related to a legitimate governmental interest. Parramore failed to establish that the Township's ordinances were arbitrary or irrational or disparately applied.

Affirmed in part, reversed in part, and remanded for entry of summary disposition in favor of the Township on its nuisance per se claim and on Parramore's equal protection counterclaim. We do not retain jurisdiction.

All Citations

Not Reported in N.W.2d, 2014 WL 7215204

Footnotes

1 See Pleasanton Township Ordinance, Article 45, § 4504.D.3

2 The analysis in *City of Troy* is based in part on zoning statutory provisions that are no longer in effect, but the current version continues to recognize the Zoning Board's authority to condition the grant of a variance. See MCL 125.3604(7).

3 This Court may look to foreign decisions as persuasive authority. *K & K Constr., Inc. v. Dep't. of Environmental Quality,* 267 Mich.App 523, 559 n. 38; 705 NW2d 365 (2005).

4 Further, even if the land use permit issued by the Zoning Administrator could be construed to permit Parramore to build a structure up to 35 feet in height, as more fully explained below, the Zoning Administrator lacked authority to alter the Zoning Board's variance decision.

5 Although the trial court did not dismiss the fraud claim on this basis, this Court will affirm the trial court's decision when it reaches the correct result regardless of the reason. *Zimmerman v. Owens,* 221 Mich.App 259, 264; 561 NW2d 475 (1997).

6 At oral arguments Parramore's lawyer conceded that he had abandoned this claim. Nevertheless, we elect to address the issue in the interests of finality.

End of Document

Related documents

Selected topics | Secondary Sources | Briefs | Trial Court Documents

Nature, Extent, and Exercise of Jurisdiction
Trial Court Lack of Jurisdiction of Subject Matter of Action

EXHIBIT 3

Part A - 90 pages

Chapter 38

ZONING

DIVISION 2
AG Agricultural and Permanent Open Space District

DIVISION 3
R-1 Rural Estate District

DIVISION 4
R-2 Lakeshore Residence District

DIVISION 4A
LC Lake Court Overlay District

DIVISION 4B
EB Edgewood Beach Overlay District

DIVISION 5
R-3 Low Density Single-Family Residence District

DIVISION 6
R-4 Medium Density Single- and Two-Family Residence District

DIVISION 6A
MP Macatawa Park Overlay District

DIVISION 6B
OB Ottawa Beach Overlay District

DIVISION 7
R-5 Low Density Multifamily Residence District

DIVISION 8
Planned Unit Development (PUD)

DIVISION 9
C-1 Neighborhood Business District

DIVISION 10
C-2 Resort Service District

DIVISION 11
P Public Lands and Open Space District

ARTICLE IV
Supplemental Regulations

ARTICLE I
In General

Sec. 38-1. Title. [Ord. No. Z, eff. 2-7-1974]

This chapter shall be known and may be cited as the "Park Township Zoning Ordinance."

Sec. 38-2. Purpose. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-56, eff. 8-22-2006]

This chapter is based upon the Township Land Use Plan and is designed to:

(1) Promote the public health, safety, morals and general welfare;

(2) Encourage the use of land in accordance with its character and adaptability and limit the improper use of land;

(3) Avoid the overcrowding of population;

(4) Provide adequate light and air;

(5) Lessen congestion on the public streets and private roads;

(6) Reduce hazards to life and property;

(7) Facilitate the adequate provision of a system of transportation, sewage disposal, safe and adequate water supply, education, recreation and other public requirements; and

(8) Conserve the expenditure of funds for public improvements and services so as to obtain the most advantageous uses of land, resources and properties.

This chapter is adopted with reasonable consideration, among other things, of the character of each zoning district, its peculiar suitability for particular uses, the conservation of property values and natural resources, and the general and appropriate trend and character of land, building and population development.

Sec. 38-3. Scope and interpretation. [Ord. No. Z, eff. 2-7-1974]

This chapter shall not repeal, abrogate, annul or in any way impair or interfere with existing provisions of other laws, ordinances or regulations, except those repealed herein by specific reference or with private restrictions placed upon property by covenant, deed or other private agreement, or with restrictive covenants running with the land to which the Township is a party. Where this chapter imposes greater restrictions, limitations, or requirements upon the use of buildings, structures, or land, the height of buildings or structures, lot coverage, lot areas, yards or other open spaces or any other use or utilization of land than are imposed or required by such existing laws ordinances regulations private restrictions, or restrictive covenants, the provisions of this chapter shall control.

Sec. 38-4. Legal basis. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-56, eff. 8-22-2006]

This chapter is enacted pursuant to the Michigan Zoning Enabling Act, Public Act No. 110 of 2006 (MCL § 125.3101 et seq.).

Sec. 38-5. Rules applying to text. [Ord. No. Z, eff. 2-7-1974]

The following listed rules of construction apply to the text of this chapter:

(1) The particular shall control the general.

(2) With the exception of this section and Section 38-6, the headings which title a chapter, section or subsection are for convenience only and are not to be considered in any construction or interpretation of this chapter or as enlarging or restricting the terms and provisions of this chapter in any respect.

(3) The word "shall" is always mandatory and not discretionary. The word "may" is permissive.

(4) Unless the context clearly indicates to the contrary:

a. Words used in the present tense shall include the future tense;

b. Words used in the singular number shall include the plural number; and

c. Words used in the plural number shall include the singular number.

(5) The term "building" or "structure" includes any part thereof.

(6) The word "person" includes a firm, association, partnership, joint venture, corporation, trust, or equivalent entity or a combination of any of them as well as a natural person.

(7) The words "used" or "occupied," as applied to any land or building, shall be construed to include the words "intended, arranged, or designed to be used, or occupied."

(8) Any word or term not defined herein shall be considered to be defined in accordance with its common or standard definition.

Sec. 38-6. Definitions. [Ord. No. Z, eff. 2-7-1974; amended by Ord. No. Z-3, eff. 2-3-1977; Ord. No. Z-12 eff. 12-4-1980; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-5, eff. 1-18-1983; Ord. No. Z-16, eff. 9-7-1983; Ord. No. Z-17, eff. 6-14-1985; Ord. No. Z-18, eff. 2-13-1986; Ord. No. Z-21, eff. 1-20-1989; Ord. No. Z-23, eff. 7-17-1989; Ord. No. Z-26, eff. 10-5-1989; Ord. No. Z-51, eff. 9-5-2003; Ord. No. Z-52, eff. 9-5-2003; Ord. No. Z-55, eff. 3-31-2005; Ord. No. Z-56, eff. 8-22-2006; Ord. No. Z-58, eff. 12-13-2007; Ord. No. ZO16-1, eff. 6-16-2016; Ord. No. ZO17-1, eff. 5-15-2016; Ord. No. 2018-3, eff. 8-26-2018]

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

ABUT — To physically touch or border upon, or to share a common property line. A property is considered to abut another property when the two properties share all or a portion of a common property line or the property lines touch, such as at a corner.

ACCESSORY USE OR STRUCTURE — A use, building or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use, building or structure. Without limitation of the foregoing definition of an accessory building, the following buildings are hereby determined to be accessory buildings: garages, storage buildings, guesthouses, boathouses, greenhouses, playhouses, pool equipment and storage buildings, and pump houses. Without limitation of the foregoing definition, docks are hereby determined to be accessory structures.

ADJACENT — To be near but not necessarily abut, adjoin, or be contiguous. A property is considered to be adjacent to another property when the two properties are nearby but do not share a common property

line.

ADJOIN — To physically touch or border upon, or share all or part of a common property line with, another lot or parcel of land. A property is considered to adjoin another property when the two properties share all or part of a common property line.

ADULT FOSTER CARE FACILITY — A facility licensed under Public Act No. 218 of 1979 (MCL § 400.701 et seq.), as well as any other facility of substantially similar character and purpose.

AGRICULTURAL PRODUCTS — Those plants and animals useful to humans produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, deer, livestock (including breeding and grazing), horses, fish and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms and other similar products. Marijuana is not considered an agricultural product.**[Added by Ord. No. 2023-01, eff. 4-15-2023]**

ALTERATIONS, STRUCTURAL — Any change in the supporting members of a building or structure, such as bearing walls, columns, beams or girders, any substantial change in the roof, or an addition to or diminution of a structure or building.

BASEMENT — A portion of a building, or a portion of a room, located wholly or partially below grade, but not including any part thereof not so located.

BED-AND-BREAKFAST OPERATION — An operation located in a single-family dwelling used to house a family unit as its principal place of residence, which offers overnight accommodations and a morning meal to transient guests in return for payment, including, but not limited to, any operation designed as an inn or tourist home.

BILLBOARDS and SIGNS —

(1) BILLBOARD — Any structure, including the wall of any building, on which lettered, figured, or pictorial matter is displayed for advertising a business, service, or entertainment which is not conducted on the land upon which the structure is located or products not primarily sold, manufactured, processed or fabricated on such land.

(2) BUSINESS SIGN — Any structure, including the wall of any building, on which lettered, figured, or pictorial matter is displayed for advertising a business, service, or entertainment conducted on the land where the structure is located or products primarily sold, manufactured, processed, or fabricated on such land.

(3) IDENTIFYING SIGN — Any structure on the same premises it identifies which serves only:

   a. To tell the name or use of any public or semipublic building or recreation space, club, lodge, church, or institution;

   b. To tell the name or address of an apartment house, hotel, or motel; or

   c. To inform the public as to the use of a parking lot.

(4) NAMEPLATE — A structure affixed flat against the wall of a building, which serves solely to designate the name or the name and profession or business occupation of a person or persons occupying the building.

(5) REAL ESTATE SIGN — Any temporary structure used only to advertise with pertinent information the sale, rental, or leasing of the premises upon which it is located.

BLOCK — The property on either or both sides of the same street between the two nearest intersecting streets (crossing or terminating), railroad right-of-way, unsubdivided acreage, lake, rivers, or live streams, or between any of the foregoing and any other barrier to the continuity of development, or boundary line of the Township.

BUILDING — Anything which is constructed or erected, including a mobile home, having a roof supported by columns, walls, or other supports, which is used for the purpose of housing or storing of persons, animals, or personal property or carrying on business activities or other similar uses.

BUILDING HEIGHT — The vertical distance measured from the average existing grade, measured three linear feet out from the structure, to the highest point of the roof surface. The average existing grade shall be established using the Ottawa County Geospatial Insights and Solutions Department, or successor department, 2018 contours and shall be measured by utilizing no more than four points, each located at the center of the generally north-facing elevation, east-facing elevation, south-facing elevation, and west-facing elevation of the proposed structure.**[Amended by Ord. No. 2021-02, eff. 8-4-2021]**

BUILDING SETBACK — The distance between the adjacent lot line and the nearest wall projection or structural component of any building as measured along a straight line at a right angle to the lot line. Certain exceptions or additional restrictions to building setbacks can be found in Sections 38-494, 38-495, 38-496, 38-497, 38-483 and various other parts of this chapter regulating the location of buildings or structures. A deck or raised patio may be located within the building setback only if it is not more than 30 inches above the average surrounding grade. A deck over 30 inches above grade on a waterfront lot must comply with Section 38-495.

BUILDING, PRINCIPAL — A building or, where the context so indicates, a group of buildings which are permanently affixed to the land and which are built, used, designed, or intended for the shelter or enclosure of the principal use of the lot.

CARPORT — An open-sided vehicle shelter usually, but not always, formed by the extension of the roof from the side of a building. A carport shall be considered both an outdoor parking space and an accessory structure.

COMMON OPEN SPACE — Any area or space other than required yard areas which is unobstructed and unoccupied by buildings, structures, roads, or other man-made objects and is readily accessible to all those for whom it is required.

CONTIGUOUS — To abut or adjoin another property by sharing all or portion of a boundary line or property line. A property is considered to be contiguous to another property when the two properties share all or a portion of a common property line.

CORNER LOT — A lot located at the intersection of two or more public streets, private roads, or combination of public streets and private roads, where the corner interior angle formed by the intersection of the streets and/or roads is 135° or less, or a lot abutting upon a curved street and/or road if tangents to the curve, at the two points where the lot lines meet the curve, form an interior angle of 135° or less.

DOCK — Any structure, whether permanent or removable, that extends from the shoreline into a lake, river or stream and to which one or more boats or other watercraft may be docked or moored.

DWELLING — Any building or portion of a building that is occupied in whole or in part as a home or residence, either permanently or temporarily, by one or more families, but not including motels, hotels, resorts, tourist rooms or cabins. Subject to compliance with the requirements of Section 38-507, a mobile home shall be considered to be a dwelling.

(1) MULTIFAMILY — A building designed for use and occupancy by three or more families.

(2) SINGLE-FAMILY — A building designed for use and occupancy by one family only.

(3) TWO-FAMILY — A building designed for use and occupancy by two families only.

DWELLING UNIT — A building, or a portion of a building, with one or more rooms, including bathroom, kitchen, and sleeping facilities, connected together in a manner designed and maintained as a self-contained unit for residential occupancy by one or more people living as a single housekeeping unit.

FAMILY — One or more persons occupying a single dwelling unit and using common cooking facilities; provided, however, that, unless members are related by blood, marriage or adoption, no such family shall contain more than five persons.

FARM MARKET — A year-round or seasonal location where transactions and marketing activities between farm market operators and customers take place, which is located on property owned or controlled by the producer of the products offered for sale at the market, and subject to Generally Accepted Agricultural Management Practices as defined by the Michigan Department of Agriculture and Rural Development or its successor agency.**[Added by Ord. No. 2023-01, eff. 4-15-2023]**

FIRE GRATE — A metal cover that fits over the fire pit or recreational fire that helps control sparks from leaving the outdoor recreational fire, fireplace, fire pit, or container with openings not to exceed 12.5 millimeters/1.25 centimeters in dimension.**[Added by Ord. No. 2020-2, eff. 9-17-2020]**

FLOOR AREA — The gross floor area of all floors of a building or an addition to an existing building. For all office buildings and for any other building, except dwelling units, where the principal use thereof shall include the basement, the basement floor area shall be included except that part thereof which contains heating and cooling equipment and other basic utilities.

GREENBELT — An undeveloped or natural area, which may only be improved with landscaping and/or nature trails.

GROSS SITE ACREAGE — The total area in acres in any PUD that is determined according to the requirements of Section 38-367(2)a and that may include road right-of-way if the legal description for the land includes the road right-of-way.

GROSS USABLE ACRE — The total area per acre in any PUD District that is suitable for development, i.e., excluding areas of swamps, steep slopes, or other natural or man-made limitations, which preclude or limit development.

HOME OCCUPATION — An occupation that is conducted within a dwelling primarily by the residents of the dwelling, which use is incidental and secondary to the use of the dwelling as a home, and which does not alter the residential character of the property.**[Amended by Ord. No. 2021-08, eff. 11-2-2021]**

HOTEL — A commercial establishment that offers lodging accommodations and additional services, such as restaurants, meeting rooms, entertainment, or recreational facilities, to transient guests in return for payment. Access to the lodging facilities is generally from indoor corridors.

JUNKYARD — A place where junk, waste, or discarded or salvaged materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including wrecked vehicles, used building materials, structural steel materials and equipment and other manufactured goods that are worn, deteriorated or obsolete.

KENNEL — Any land, building or structure where five or more cats and/or dogs over four months of age are boarded, housed or bred.

LOT — A piece or parcel of land occupied or intended to be occupied by a principal building or a group of such buildings and accessory structures, or utilized for a principal use and accessory uses, together with such open spaces as are required by this chapter.

LOT AREA — The total horizontal area within the lot lines of a lot. In the case of a waterfront lot, the lot area shall be measured to the 100-year floodplain elevation as depicted in the December 2011 Flood Insurance Rate Map (FIRM), as amended, issued by the United States Federal Emergency Management Agency. In determining lot area, land located within a public street right-of-way and/or a private road easement shall not be considered.

LOT LINE, FRONT — In the case of a lot not located on a corner, the line separating said lot from the street right-of-way. In the case of a corner lot, the front lot line shall be that line that separates said lot from the street which is designated as the front street on the site plan or which is designated as the front street on the site plan review application or request for a building permit.

LOT LINE, REAR — Ordinarily, that lot line which is opposite and most distant from the front lot line. In the case of irregular, triangular, or wedge-shaped lots or lots that are pointed at the rear, the rear lot line shall be an imaginary line parallel to the front lot line, not less than 10 feet in length, lying farthest from the front lot line and wholly within the lot.

LOT LINE, SIDE — Any lot line other than the front or rear lot lines. A side lot line separating a lot from a street is a side street lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.

LOT WIDTH — The horizontal distance between the side lot lines of a lot parallel to the front lot line. Lot width shall be measured at the front lot line and shall not be less than the minimum width required within the zoning district in which it is located continuously to the minimum depth necessary to meet the minimum lot area of the zoning district in which it is located.

LOT, IMPROVED — A property developed with a principal building, accessory structure, or combination thereof.

LOT, UNIMPROVED — A property left undisturbed in a natural state without a principal building, accessory structure, or combination thereof, or any other man-made feature.

MAJOR AUTOMOBILE REPAIR — General repair, rebuilding, or reconditioning of engines or vehicles, collision service, including body repair and frame straightening, painting or upholstering; or vehicle steam cleaning and undercoating.

MARINA — A place where any one or more of the following conditions exist:

(1) A commercial enterprise is operated for the sale, service or storage of boats or other watercraft; or

(2) A dock and/or mooring is extended into or over an inland lake or stream for use by the public and/or land, condominium or dock owners and more than four boats will be moored to any one dock and/or more than four moorings will be located.

MINOR AUTOMOBILE REPAIR — Minor repairs, incidental replacement of parts, or motor service to passenger automobiles and trucks not exceeding two tons' capacity; provided, however, there is excluded any repair or work included in the definition of the term "major automotive repair" in this section.

MOBILE HOME — A structure, transportable in one 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; excluding, however, a vehicle designed and used as temporary living quarters for recreational, camping or travel purposes, including a vehicle having its own motor power or a vehicle moved on or drawn by another vehicle.

(1) DOUBLE-WIDE — A combination of two mobile homes designed and constructed to be

connected along the longitudinal axis, thus providing double the living space of a conventional single-wide unit without duplicating any of the service facilities such as kitchen equipment or furnace.

(2) SINGLE-WIDE — A mobile home with a longitudinal width of no greater than 14 feet for its full length.

MOBILE HOME COMMISSION ACT — Michigan Public Act No. 96 of 1987 (MCL § 125.2301 et seq.), or other similar successor statute having similar licensing jurisdiction.

MOBILE HOME LOT — A measured parcel of land within a mobile home park which is delineated by lot lines on a final development plan and which is intended for the placement of a mobile home and the exclusive use of the occupants of such mobile home.

MOBILE HOME PAD — That portion of a mobile home lot reserved for the placement of a mobile home, appurtenant structures, or additions.

MOBILE HOME PARK — A parcel of land under single ownership which has been planned and improved for the placement of mobile homes on a rental basis for nontransient use.

MOBILE HOME SUBDIVISION — A mobile home park, except that the mobile home lots are subdivided, surveyed, recorded, and sold in accordance with Public Act No. 288 of 1967 (MCL § 560.101 et seq.).

MOTEL — A commercial establishment consisting of a building or group of buildings on the same lot, whether detached or in connected rows, which offers lodging accommodations and sleeping rooms to transient guests in return for payment. Access to the lodging facilities is generally from the outside.

MOTOR VEHICLE — Every vehicle that is self-propelled.

NET BUILDABLE ACREAGE — The area in acres in any PUD that is determined according to the requirements of Section 38-367(2).

NONCOMMERCIAL ORGANIZATION — An organization which does not produce an income for any person; a nonprofit organization which raises funds for itself and which has 15 or more stockholders or members shall be considered a noncommercial organization.

NURSING HOME — A facility licensed under Public Act No. 368 of 1978 (MCL § 333.1101 et seq.).

OUTDOOR POND — Any outdoor body of standing water accumulated in a natural or artificially constructed basin or depression in the earth, either above or below or partly above or partly below grade, capable of holding water to a depth of greater than two feet when filled to capacity.

OWNERSHIP INTEREST — A proprietary interest in land which confers certain rights and responsibilities, held by any individual, firm, association, syndicate, partnership, or corporation.

PARKING AREA, SPACE OR LOT — An off-street open area, the principal use of which is for the parking of automobiles, whether for compensation or not, or as an accommodation to clients, customers, visitors or employees. The term "parking area" includes access drives within the actual parking area. For purposes of this definition, and as used throughout this chapter, the term "off-street," when related to off-street parking requirements, includes both public streets and private roads, thereby requiring the parking area to be located off both public streets and private roads.

PARKING BAY — A hard surface area adjacent and connected to, but distinct from, a street or private road, intended for parking motor vehicles.

PIER — Concrete posts embedded in the ground to a depth below the frost line at regular intervals along the longitudinal distance of a mobile home and intended to serve as a base for supporting the frame of the

mobile home.

PRINCIPAL OR MAIN USE — The primary or predominant use of a lot.

PRODUCE — Fresh fruits, vegetables, grain, oats, and other similar products raised or cultivated from the earth.**[Added by Ord. No. 2023-01, eff. 4-15-2023]**

RECREATIONAL FIRE — An outdoor fire burning material other than rubbish where the fuel being burned is not contained in an incinerator, outdoor fireplace, barbecue grill or barbecue pit and has a total fuel area of three feet (914 mm) or less in diameter and two feet (610 mm) or less in height for pleasure, religious, ceremonial, cooking, warmth or similar purpose.**[Added by Ord. No. 2020-2, eff. 9-17-2020]**

RESORT — A commercial establishment, generally used as a vacation facility by the general public, which offers lodging accommodations, restaurants or meals, recreation and entertainment to transient guests in return for payment, and which provides on-site activities such as golfing, horseback riding, skiing, swimming, snowmobiling, hiking, biking, tennis, other court sports or other similar activities.

ROADSIDE MARKET STAND — A temporary building or structure designed or used for the display and/or sale of agricultural products produced on the premises upon which the stand is located.

SATELLITE DISH ANTENNA — A parabolic or spherical reflective type of antenna used for communications with a satellite-based system located in planetary orbit.

STREET — A publicly or privately owned and maintained right-of-way which affords traffic circulation and principal means of access to abutting property, including any avenue, place, way, drive, lane, boulevard, highway, road or other thoroughfare, except an alley. The street right-of-way shall include all land deeded or dedicated for street purposes, or, in the absence of a deed or dedication for street purposes, the street right-of-way shall be considered to be 66 feet in width.

STRUCTURE — Anything except a building, constructed or erected, the use of which requires permanent location on the ground or lake, river or stream bottom or attachment to something having a permanent location on the ground or lake, river or stream bottom.

SWIMMING POOL — A structure either above or below or partly above and partly below grade, located either in part or wholly outside of a permanently enclosed and roofed building, designed to hold water to a depth of greater than two feet when filled, and intended to be used for swimming purposes.

TEMPORARY LOCAL PRODUCE MARKET — A seasonal location operating 90 or fewer days per calendar year and consisting of over 200 square feet in total size including market tables or structures, where transactions and marketing activities between produce market vendors and customers take place on a neutral property not owned or controlled by the producer of the products offered for sale at the market.**[Added by Ord. No. 2023-01, eff. 4-15-2023]**

TOURIST HOME — A building, other than a hotel, boardinghouse, lodging house, or motel, where lodging is provided by a resident family in its home for compensation, mainly for transients.

TRAVEL TRAILER — A transportable unit intended for occasional or short-term occupancy as a dwelling unit during travel, recreational, or vacation use.

UNDIVIDED PERMANENT OPEN SPACE — Property that is contiguous (i.e., undivided by any road, street, etc.) and in common ownership that will perpetually remain as undeveloped open space via a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land.

USABLE FLOOR AREA — The floor area of a dwelling exclusive of garages, porches, basement or utility area.

VALUE-ADDED AGRICULTURAL PRODUCTS — Raw agricultural products that have been modified

or enhanced to have a higher market value and/or a longer shelf life, such as pies, salsas, jams, soaps, etc.**[Added by Ord. No. 2023-01, eff. 4-15-2023]**

VEHICLE — Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices propelled by human power or used exclusively upon stationary rails or tracks.

WATERFRONT LOT — A lot abutting or having frontage on either Lake Michigan or Lake Macatawa.

YARD — An open space, other than a court, unoccupied and unobstructed by any building or structure; provided, however, that fences, walls, poles, posts and other customary yard accessories, ornaments and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility. "Yards" or "minimum yards" as required in other provisions of this chapter shall be considered as "required yards," and allowable building projections shall be the same as defined in this section for building setbacks.

YARD, FRONT — A yard extending across the full width of the lot, the depth of which is the distance between the street right-of-way (or private road easement) line and the main wall of the building or structure. In the case of waterfront lots, the yard fronting on the street (or private road) shall be considered the front yard.

YARD, REAR — A yard, unoccupied except for accessory buildings, extending across the full width of the lot, the depth of which is the distance between the rear lot line and the rear wall of the main building.

YARD, SIDE — A yard between a main building and the side lot line, extending from the front yard to the rear yard, or any yard that is not considered a front or rear yard.

ZONING ACT — The Michigan Zoning Enabling Act, Public Act No. 110 of 2006 (MCL § 125.3101 et seq.).

Sec. 38-7. Violation. [Ord. No. Z, eff. 2-7-1974]

Any building or structure which is erected, moved, placed, reconstructed, razed, extended, enlarged, altered, maintained or used, or any use of a lot or land which is begun, maintained or changed in violation of any term or provision of this chapter, is hereby declared to be a nuisance per se. Any person who shall violate a provision of this chapter or shall to fail to comply with any of the requirements thereof, shall be responsible for a municipal civil infraction, subject to enforcement procedures as set forth in the municipal civil infraction ordinance adopted by the Township, and subject to a fine of $50, plus costs and other sanctions, for each infraction. Each day during which any violation continues after due notice has been served shall be deemed a separate and distinct offense. Increased civil fines may be imposed for repeat violations; a repeat violation means a second or subsequent municipal civil infraction violation committed by a person within any twelve-month period and for which a person admits responsibility or is determined to be responsible. An increased civil fine for repeat violation shall be as follows:

(1) The fine for any offense which is a first repeat offense shall be $250, plus costs and other sanctions;

(2) The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be $500, plus costs and other sanctions.

The Township Zoning Administrator is hereby designated as authorized Township official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the Township municipal chapter violations bureau) as provided by this chapter.

Sec. 38-8. through Sec. 38-30. (Reserved)

ARTICLE II
Administration And Enforcement

DIVISION 1
Generally

Sec. 38-31. Zoning administration. [Ord. No. Z, eff. 2-7-1974]

The provisions of this chapter shall be administered and enforced by the Zoning Administrator.

Sec. 38-32. Zoning Administrator. [Ord. No. Z, eff. 2-7-1974]

(a) The Zoning Administrator shall be appointed by the Township Board for such term and subject to such conditions and at such rate of compensation as the Township Board shall determine. To be eligible for appointment to the post of Zoning Administrator, the applicant must be:

(1) Generally informed of the provisions of this chapter;

(2) Have a general knowledge of the building arts and trades; and

(3) Be in good health and physically capable of fulfilling the duties of the Zoning Administrator.

(b) Said applicant shall have no interest whatsoever, directly or indirectly, in the sale or manufacture of any material, process, facility or device entering into or used in connection with building construction.

Sec. 38-33. Permits. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-16, eff. 9-7-1983; Ord. No. Z-17, eff. 6-14-1985; Ord. No. Z-18, eff. 2-13-1986; Ord. No. Z-20, eff. 8-7-1988; Ord. No. Z-30, eff. 11-1-1990; Ord. No. Z-56, eff. 8-22-2006]

(a) Permit required. No building or structure shall be erected, moved, placed, reconstructed, extended, enlarged or altered, except wholly interior alterations or repairs at a cost of $100 or less, unless a permit therefor has been issued by the Zoning Administrator. An application for a permit shall be in writing and upon duplicate printed forms furnished by the Township. A permit issued by the Zoning Administrator is nontransferable and must be obtained before any work, excavations, erection, alteration or movement is commenced. Satisfactory evidence of ownership of the lot or premises may be required by the Zoning Administrator and shall be furnished upon request. If the application is approved, the Zoning Administrator shall so mark both copies of the application over his signature and file one copy with the Township Clerk and return the other copy to the applicant. The Zoning Administrator shall also provide the applicant with a construction card signed by the Zoning Administrator stating the extent of the work authorized. This card shall be attached to and remain on the lot or premises during the progress of the work authorized.

(b) Contents of application. Each application shall include such reasonable information as may be requested by the Zoning Administrator in order to determine compliance with the terms and provisions of this chapter and shall include, as a minimum, the following information:

(1) The location and actual dimensions of the lot or premises to which the permit is to apply;

(2) The kind of building or structures to which the permit is to apply;

(3) The width of all abutting streets and private roads;

(4) The area, size and location of all buildings or structures to which the permit is to apply;

(5) The type of use to be made of the building or structure to which the permit is to apply;

(6) The use of buildings or structures on adjoining lands; and

(7) The estimated cost of the building or structure.

The Zoning Administrator, in the Zoning Administrator's discretion, may waive the inclusion of any of the foregoing information in an application if he shall determine that such information is not reasonably necessary for him to determine compliance with the terms and provisions of this chapter.

(c) Accessory buildings or structures. Accessory buildings or structures, when erected, moved, placed, reconstructed, extended, enlarged, or altered, at the same time as the principal building on the same lot or premises and when shown on the application for the permit for the principal building, shall not require the issuance of a separate permit. A separate permit shall be required if any accessory building or structure is erected, moved, place, reconstructed, extended, enlarged or altered separately or at a different time than the principal building on the same lot or premises.

(d) Issuance of permit. Within 10 days after the receipt of any application, the Zoning Administrator shall either issue a permit if the proposed work is in conformance with the terms and provisions of this article, or deny issuance of a permit and state the reason or cause for such denial in writing. In each case the permit or the written reason or cause for such denial shall be transmitted to the owner or his agent.

(e) Expiration of permits. A permit for any building or structure for which construction work has not begun within six months from the date of its issuance, or for which all construction work has not been completed within one year from the date of its issuance, shall expire automatically. A permit expiring automatically pursuant to this subsection shall, upon reapplication, be renewable once only upon payment of an additional fee as established by Township Board resolution. A renewed permit shall automatically expire if construction work has not begun within one year from the date of issuance of the original permit and shall also expire automatically if all construction work has not been completed within two years from the date of issuance of the original permit. **[Amended by Ord. No. 2020-001, eff. 1-27-2020**

(f) Cancellation of permits. The Zoning Administrator shall have the power to revoke and cancel any permit in the event of failure or neglect to comply with all of the terms and provisions of this article or in the event of any false statements or misrepresentations in the application for the permit. Notice of such cancellation and revocation shall be securely posted on the construction, such posting to be considered as service upon and notice to the permit holder of the cancellation and revocation of the permit.

(g) Fees. For each permit issued, the base permit fee established from time to time by Township Board resolution shall be paid to the Zoning Administrator, who shall remit to the Township treasurer. The payment of such fee is a condition precedent to the validity of the permit.

(1) The amount of the base permit fee shall be determined from the estimated cost of the building or structure as set forth in the application for the permit. If upon completion of the building or structure, the Zoning Administrator shall determine that the estimated cost does not represent a fair valuation of the cost of the structure; he shall notify the applicant in writing of the permit

deficiency and the building or structure shall not be used until such deficiency has been paid to the Zoning Administrator.

(2) In addition, special fees shall be paid to the Zoning Administrator as established from time to time by Township Board resolution. The Zoning Administrator shall remit all such fees to the Township treasurer. The payment of such fees is a condition precedent to the validity of such permit.

(h) Extraordinary fees. If work is commenced to erect, move, place, reconstruct, extend, enlarge or alter a building or structure without first having attained a permit as is required by this section, then the permit fee specified in Subsection (g) of this section shall be adjusted as follows:

(1) If it is the first time that this owner has commenced the erection, moving, placing, reconstructing, extending, enlarging or altering of a building or structure without first having obtained a permit, the permit fee shall be $100 or twice the amount of the permit fee as computed pursuant to Subsection (g) of this section, whichever is greater; and

(2) If it is the second time that this owner has commenced the erection, moving, placing, reconstruction, extending, enlarging or altering of a building or structure without first having obtained a permit, the permit fee shall be $250 or triple the amount of the permit fee as computed pursuant to Subsection (g) of this section, whichever is greater.

If a building contractor or other agent for an owner undertakes to obtain a permit for the owner, the imposition of extraordinary fees pursuant to this subsection, and specifically whether it is the first or second time that the erecting, moving, placing, reconstructing, extending, enlarging or altering of a building or structure has been undertaken without first obtaining a permit required therefor, shall consider prior occurrences with respect to the owner and also prior occurrences with respect to the building contractor or other agent.

(i) The provisions of this section shall not be construed to prohibit the Township from prosecuting pursuant to Section 38-7 any failure to obtain a permit as required by this article.

Sec. 38-34. Inspection of buildings and structures. [Ord. No. Z, eff. 2-7-1974]

(a) As work progresses under a permit, the holder thereof or his authorized agent shall cause the Zoning Administrator to be notified at the following stages of construction:

(1) Upon completion of the footing and foundation walls.

(2) Upon completion of the rough frame of the building or structure and the electrical wiring.

(3) Upon total completion of the work authorized by the permit and before occupancy or use.

(b) Should the permit holder fail to comply with all of the terms and provisions of this article at any stage of construction, the Zoning Administrator is authorized to revoke and cancel the permit and cause notice of such cancellation and revocation to be securely posted on the construction, such posting to be considered as service upon and notice to the permit holder of the cancellation and revocation of the permit. No further work shall be undertaken or permitted upon such construction until a new permit is issued for such work.

Sec. 38-35. Certification of compliance. [Ord. No. Z, eff. 2-7-1974]

No building or structure which is erected, moved, placed, reconstructed, extended, enlarged, or altered shall be used, in whole or in part, until the owner thereof shall have been issued a certificate by the Zoning Administrator affirming that such building or structure conforms in all respects to the provisions of this article. Such certificate shall be issued after the work is complete and final inspection has been made.

Sec. 38-36. Special use authorization. [Ord. No. Z, eff. 2-7-1974; amended by Ord. No. Z-14, eff. 4-19-1982; Ord. No. 2018-1, eff. 3-23-2018]

(a) Where special use authorization is required by a provision of this chapter, a site plan, which is in accordance with the requirements of Division 3 of Article II of this chapter, shall be required by the Planning Commission when reviewing the special use.

(b) Application for special use authorization shall be made on forms therefor provided by the Township and shall include such supporting materials as are reasonably necessary to evaluate the application. Notification of receipt of a request for special use authorization shall be given as required by the Michigan Zoning Enabling Act, PA 110 of 2006, as amended. A public hearing, with notice thereon as required by the Michigan Zoning Enabling Act, shall be held by the Planning Commission.

(c) The Planning Commission may deny, approve, or approve with conditions the special use request. The decision on a special use shall be incorporated in a written statement containing the conclusions relative to the special use under consideration that specifies the basis of the decision and any conditions imposed in conformance with the provisions of the Michigan Zoning Enabling Act that are determined to be necessary or appropriate.

(d) The Planning Commission shall review the particular circumstances and facts of each proposed special use in terms of the following standards and required findings, and with respect to any additional standards set forth in the zoning districts and general provisions herein. The Planning Commission shall find adequate evidence showing that the proposed use on the proposed lot generally satisfies the following:

(1) Will be harmonious, and in accordance with objectives, intent, and purposes of this chapter;

(2) Will be compatible with the natural environment and existing and future land uses in the vicinity;

(3) Will be compatible with the Township Master Plan;

(4) Will be served adequately by essential public facilities and services, such as, but not limited to, highways, streets, police and fire protection, drainageways and structures, and refuse disposal, unless the persons or agencies responsible for the establishment of the proposed use will be able to provide adequately any such service;

(5) Will not be detrimental, hazardous, or disturbing to existing and future neighboring uses, persons, property, or the public welfare; and

(6) Will not create additional requirements at public cost for public facilities and services that will be detrimental to the economic welfare of the community.

Sec. 38-37. Procedure. [Ord. No. Z, eff. 2-7-1974]

The Township Board, the Zoning Board of Appeals, the duly authorized attorney for the Township, the

Ottawa County prosecuting attorney, or any owners or occupants of any real estate within the Township may institute injunction, mandamus, abatement or any other appropriate action or proceedings to prevent, enjoin, abate or remove any violation of this chapter. The rights and remedies provided herein are cumulative and in addition to all other remedies provided by law.

Sec. 38-38. through Sec. 38-64. (Reserved)

DIVISION 2
Zoning Board of Appeals

Sec. 38-65. Creation. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-3, eff. 2-3-1977]

(a) There is hereby created under the Zoning Act a Zoning Board of Appeals, referred to in this division as the Zoning Board of Appeals.

(b) The Zoning Board of Appeals shall be constituted and appointed as provided in the Zoning Act and shall be comprised of five members.

Sec. 38-66. Jurisdiction and powers. [Ord. No. Z, eff. 2-7-1974; amended by Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-56, eff. 8-22-2006]

The Zoning Board of Appeals shall have all powers and jurisdiction granted by the Zoning Act, all powers and jurisdiction prescribed in other articles of this chapter and the following specific powers and jurisdiction:

(1) The jurisdiction and power to hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official or body charged with enforcement of this division; excluding, however, decisions regarding the authorization of special uses and planned unit developments which are made by the Township Board or Planning Commission. **[Amended by Ord. No. 2018-1, eff. 3-23-2018]**

(2) The jurisdiction and power to act upon all questions as they may arise in the administration and enforcement of this division, including interpretation of the Zoning Map.

(3) The jurisdiction and power to decide matters referred to the Zoning Board of Appeals for decision pursuant to Section 603 of the Zoning Act (MCL § 125.3603).

(4) The jurisdiction and power to authorize, upon appeal, a variance or modification of this chapter where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this chapter so that the spirit of this chapter shall be observed, public safety secured and substantial justice done.

Sec. 38-67. Adoption of rules of procedure. [Ord. No. Z, eff. 2-7-1974]

The Zoning Board of Appeals shall fix rules and regulations governing its procedures sitting as the Zoning Board of Appeals. Said rules and regulations shall be made available to the public and shall be in conformance with the terms of this chapter and the Zoning Act.

Sec. 38-68. Conditions. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982]

In granting a variance or in making any decision referred to it by this chapter, the Zoning Board of Appeals may impose and attach such conditions in conformance with the provisions of the Zoning Act as it shall determine are necessary and/or appropriate.

Sec. 38-69. Zoning Board of Appeals authorization. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-56, eff. 8-22-2006]

(a) Where Zoning Board of Appeals authorization is required by this chapter pursuant to the authority granted it by Section 603 of the Zoning Act (MCL § 125.3603) or where a variance has been

requested, the Zoning Board of Appeals may, in its discretion, require the preparation and filing of a site plan which is in accordance with the requirements of Division 3 of this article before application is made for a building permit.

(b) The Zoning Board of Appeals shall hold a public hearing concerning the project for which Zoning Board of Appeals authorization has been requested and give due notice thereof. The Zoning Board of Appeals shall state the grounds of each decision and shall otherwise comply with all procedural notice and other requirements of the Zoning Act.

Sec. 38-70. Variance standards and time limitations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-56, eff. 8-22-2006; Ord. No. Z-60, eff. 5-14-2009]

As noted in Section 38-66(4), the Zoning Board of Appeals has the authority to grant variances where there are practical difficulties or an unnecessary hardship in the way of carrying out the strict letter of this chapter.

(1) Non-use variances. A simple-majority vote of the members of the Board of Appeals is necessary to authorize a non-use variance. In determining whether there are practical difficulties in the way of carrying out the strict letter of this article, the Board of Appeals shall consider the following standards and shall make an affirmative finding as to each standard to authorize a non-use variance.

a. That strict compliance with the zoning ordinance regulating the minimum area, yard set backs, frontage, height, bulk, or density, or other regulation would render conformity with those restrictions of the zoning ordinance unnecessarily burdensome.

b. That granting the requested variance would do substantial justice to the applicant as well as to other property owners in the zoning district. If a lesser relaxation than that applied for would give substantial relief to the property owner and be more consistent with justice to other property owners in the district, the Board of Appeals may grant a lesser variance provided the other standards are met.

c. That the plight of the property owner/applicant is due to the unique circumstances of the property (e.g., an odd shape or a natural feature like a stream or a wetland) and not due to general conditions of the zoning district.

d. That the practical difficulties alleged are not self-created.

(2) Use variances. A 2/3 majority vote of the members of the Zoning Board of Appeals is necessary to authorize a use variance. In determining whether there is any unnecessary hardship in the way of carrying out the strict letter of this chapter, the Zoning Board of Appeals shall consider the following standards and shall make an affirmative finding as to each standard to authorize a use variance:

a. That the property cannot be used for any of the uses permitted in the zoning district in which it is located (i.e., none of the uses permitted in the zoning district as a matter of right or by special use permit would allow a reasonable economic return on the use of the property).

b. That the plight of the property owner is due to unique circumstances peculiar to the property (e.g., an odd shape, topography, or other natural feature like a stream or wetland) rather than to general neighborhood conditions.

c. That the proposed use requested by the variance would not alter the essential character of the surrounding neighborhood.

d. That the hardship problem is not self-created (i.e., is not necessitated as a result of any action or inaction by the applicant).

(3) Time limitations on variances. Any person who is granted a variance under this chapter must, within one year of the date on which the Zoning Board of Appeals takes action to grant the variance, take affirmative action to exercise the rights granted according to the variance. For purposes of this section, the term "affirmative action" means either commencing the use for which the variance has been granted, or obtaining all necessary permits in compliance with Section 38-33 for the construction of a building or structure authorized by the variance. Failure to take affirmative action in exercising the rights granted according to a variance within one year of the date on which the Zoning Board of Appeals takes action to grant the variance will result in the automatic cancellation of the variance granted. If the permit granted pursuant to Section 38-33 expires, or, if such permit is renewed, if the renewed permit expires, then the variance pursuant to which the permit was issued shall be automatically cancelled.

Sec. 38-71. Alternate members. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-49, eff. 3-22-2003]

The Township Board may appoint not more than two alternate members to serve the same term as regular members of the Zoning Board of Appeals. The alternate members shall be appointed by resolution of the Township Board. The chairperson of the Zoning Board of Appeals, or the acting chairperson, may call an alternate member to serve as a regular member of the Zoning Board of Appeals in the following situations:

(1) An alternate member may be called to serve as a regular member of the Zoning Board of Appeals in the absence of a regular member if that regular member is:

a. Absent from or will be unable to attend two or more consecutive meetings of the Zoning Board of Appeals; or

b. Absent from or will be unable to attend meetings of the Zoning Board of Appeals for a period of more than 30 consecutive days.

(2) An alternate member may be called to serve as a regular member of the Zoning Board of Appeals for the purpose of reaching a decision on a case in which the regular member has abstained from participating for reasons of a conflict of interest.

An alternate member called to serve as a regular member shall have the same voting rights as a regular member of the Zoning Board of Appeals. An alternate member called to serve on a Zoning Board of Appeals' case shall serve on that case until the Zoning Board of Appeals makes a final decision.

Sec. 38-72. through Sec. 38-100. (Reserved)

DIVISION 3
Site Plan

Sec. 38-101. Review. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-51, eff. 9-5-2003]

Notwithstanding the failure of this chapter to specifically provide elsewhere for site plan approval of a particular use, site plan review and approval is required in each of the following instances:

(1) A site plan shall be submitted to the Planning Commission for approval of any use or change of use permitted in the C-1 or C-2 Zoning District.

(2) A site plan shall be submitted to the Planning Commission for approval of any multifamily dwelling in an R-5 Zoning District.

(3) A site plan shall be submitted to the Zoning Administrator for approval of any two-family dwelling in an R-4 or R-5 Zoning District. The Zoning Administrator may, in his discretion, refer any such site plan to the Planning Commission for its review and approval.

(4) A site plan shall be submitted to the Planning Commission for approval of any church, public school or private or parochial school, or any public or private recreational facility to be constructed in the R-1, R-2, R-3, R-4, or R-5 Zoning Districts.

(5) For any special use and also for any planned unit development, provided that if the requirements for a site plan, as provided in this division, are met by plans and other documentation required in Article III, Division 8 of this chapter, then a separate site plan shall not be required pursuant to this division.

(6) When any other section of this chapter requires site plan approval.

Sec. 38-102. Content. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-51, eff. 9-5-2003; Ord. No. Z-56, eff. 8-22-2006]

A site plan shall include all of the following information unless the same is not reasonably necessary, as determined by the Planning Commission:

(1) A plot plan based on an accurate certified land survey showing:

a. Location, size and type of present buildings or structures to be retained or removed.

b. Location of all proposed buildings, structures or other improvements.

c. Location of existing and proposed streets, private roads, drives and parking lots.

d. Location of water and sewer lines.

e. Storm drainage.

f. Refuse and service areas.

g. Utilities with reference to location, availability and compatibility.

h. Screening and buffering with reference to type, dimensions and character.

i. Topographical features, including contour intervals no greater than five feet.

j. Ditches and watercourses.

k. Ground cover and other pertinent physical features of the site, including, but not limited to existing vegetation, trees, etc.

l. Proposed landscaping.

m. Location of existing improvements.

n. Location of lot lines.

o. Loading and unloading of facilities.

p. Exterior lighting and signs.

q. Location of existing structures on land immediately adjacent to the site within 100 feet of the site's parcel lines.

r. The date, north arrow, and scale. The scale shall not be less than one inch equals 50 feet if the subject property is less than three acres and one inch equals 100 feet if the subject property is three acres or more.

s. The name and address of the professional individual, if any, responsible for the preparation of the site plan.

(2) Preliminary architectural sketches and/or a general statement as to the type of construction and materials to be used in the proposed buildings or structures. Height and area of buildings and structures shall be provided. The height of buildings and structures shall be detailed from the existing grade (and proposed grade if there is to be any change in the grade), as well as from the crown of the street and/or private road adjoining the property upon which the building or structure will be erected.

(3) The period of time within which the project will be completed.

(4) Proposed staging of the project, if any.

(5) Gross areas of buildings and parking.

(6) Delineation of the one-hundred-year floodplain and any proposed uses therein.

(7) A description of all aspects of such plan that might have an adverse effect on public health, safety and welfare.

(8) Current proof of ownership of the land to be utilized or evidence of a contractual ability to acquire such land such as an option or purchase contract.

(9) Method of financing and commitments, or other proof of ability to obtain financing.

(10) Additional information which the body or official reviewing and approving the site plan may request which is reasonably necessary to evaluate the site plan.

The body or official review the site plan shall have the discretion to waive the inclusion in the site plan of any of the information referenced in this section.

Sec. 38-103. Standards. [Ord. No. Z, eff. 2-7-1974; amended by Ord. No. Z-14, eff. 4-19-1982; Ord.

No. 2018-1, eff. 3-23-2018]

In addition to any standards or requirements specified in other sections of this chapter which are relevant to the project for which site plan approval is sought, the following standards shall be considered in reviewing and approving site plans:

(1) The applicant may legally apply for site plan review.

(2) All required information has been provided.

(3) The proposed development conforms to all regulations of the zoning district in which it is located.

(4) The adequacy of streets, alleys, parking areas, loading zones, sidewalks, drainage, water and sewer lines, and traffic control for the proposed use, building, or structure.

(5) The adequacy of protection afforded lands and the surrounding neighborhood from adverse impact.

(6) All elements of the site plan shall be harmoniously and efficiently organized in relation to topography, the size and type of the lot, the character of adjoining property, and the type and size of buildings. The site shall be so developed as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this chapter.

(7) The landscape shall be preserved in its natural state, insofar as practical, by minimizing tree and soil removal, and by topographic modifications which result in maximum harmony with adjacent areas.

(8) Natural resources will be preserved to and protected to the maximum feasible extent, and organic, wet, or other soils which are not suitable for development will be undisturbed or will be modified in an acceptable manner.

(9) The proposed development will not cause soil erosion or sedimentation problems.

(10) The drainage plan for the proposed development is adequate to handle anticipated stormwater runoff and will not cause undue runoff onto neighboring property or overloading of watercourses in the area.

(11) The proposed development properly respects floodways and floodplains on or in the vicinity of the subject property.

(12) The plan meets the specifications of Park Township for water supply, sewage disposal or treatment, storm drainage, and other public facilities.

(13) With respect to vehicular and pedestrian circulation on the site, including walkways, interior drives, and parking; special attention shall be given to the location, number and spacing of access points; general interior circulation; separation of pedestrian and vehicular traffic; and the arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the design of the proposed buildings and structures, neighboring properties and flow of traffic on adjacent streets.

(14) All buildings or groups of buildings shall be so arranged as to permit emergency vehicle access by some practical means as required by the Township Fire Department.

(15) The site plan shall provide reasonable, visual, and sound privacy for all dwelling units located therein. Fences, walls, barriers, and landscaping shall be used, as appropriate, for the protection and enhancement of property and for the privacy of its occupants.

(16) All loading and unloading areas and outside storage of materials which face or are visible from

residential districts or public thoroughfares shall be screened by a vertical screen consisting of structural or plant materials. Also, outdoor storage of garbage and refuse shall be contained, screened from view, and located so as not to be a nuisance to the subject property or neighboring properties.

(17) All lighting shall meet the requirements of Section 38-488(b) and be shielded from any public right-of-way.

(18) Phases of development are in logical sequence so that any phase will not depend upon a subsequent phase for adequate access, public utility services, drainage, or erosion control.

(19) Site plans shall conform to all applicable requirements of state and federal statutes, and approval may be conditioned on the applicant receiving necessary state and federal permits before a building permit or occupancy permit is granted.

Sec. 38-104. Building permit. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982]

Where a site plan has been approved for any project, and building permit issued shall provide that the development be completed in accordance with the approved site plan and failure to conform with such site plan shall be a violation of this chapter and cause for revocation of the building permit.

Sec. 38-105. Conditions. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982]

In approving a site plan, the body or official granting approval may impose and attach such conditions and restrictions and require such improvements as shall be determined to be necessary and/or appropriate.

Sec. 38-106. Improvements; financial guarantees. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982; Ord. No. 2022-01, eff. 3-31-2022]

To ensure compliance with this chapter and any conditions imposed as part of a zoning approval, the body or official granting approval of a site plan, PUD, condominium development, plat, and special use authorization shall require a performance surety of a cash deposit, certified check, or irrevocable letter of credit in the amount of 110% of the construction costs of components covered. Specific improvements and costs to be covered by the performance surety shall be determined by the Township Engineer. The applicant shall prepare an itemized cost for review and acceptance by the Township Engineer prior to any earthmoving operations on the site. The following standards shall govern the Township Engineer's determination on the amount and extent of the performance surety.

(a) If the project in question contains infrastructure components that will burden the general public if left in an incomplete condition, a performance surety will be required to guarantee completion of the infrastructure components. Examples of such infrastructure include but are not limited to public roadways, sanitary sewer and water main systems, drainage systems, pathway improvements, site restoration, landscape or other site stabilization measures. A performance surety may be required to ensure completion of a specific infrastructure component by a date certain if specifically identified by the Planning Commission.

(b) If an applicant requests building permits or utility connections prior to completing the infrastructure, a performance surety will be required for incomplete or partially completed items. Examples of partially completed items are the final course of asphalt on streets, signage, parking improvements, pavement markings, site restoration, landscape or other site stabilization, site lighting, utility casting adjustments, off-site improvements, testing of utilities, televising of utilities, or other special conditions of utility approval.

(c) In the event that a letter of credit is used as the performance surety, the following conditions apply:

(1) The letter of credit shall be issued by a bank having an office in Ottawa County and shall allow draws from the office in Ottawa County. The letter of credit shall be in favor of Park Township.

(2) The letter of credit scope and completion date shall be approved by the Township. Phase dates may be considered by the Township.

(3) The applicant may reasonably request reduction in the letter of credit as agreed upon by the Township; however, the applicant must certify in writing that the work to be removed from the letter of credit has been completed.

Sec. 38-107. Expiration of approval. [Added by Ord. No. 2018-1, eff. 3-23-2018]

Approval of a final site plan will expire and be of no effect unless a building permit has been issued within one year of the date of the site plan approval. Extensions beyond the expiration date may be permitted by the Planning Commission provided the total extended time does not exceed one year.

Sec. 38-108. Amendments to approved site plan. [Added by Ord. No. 2018-1, eff. 3-23-2018]

A site plan may be amended upon application and in accordance with the procedures and requirements provided in Section 38-102 herein. Minor changes to a site plan may be made without following the procedures of Section 38-102 at the discretion of the Zoning Administrator. Minor changes include, but are not necessarily limited to, the reorientation of landscaping, modifications to dumpster enclosure materials and/or location, an increase in the number of parking spaces not requiring an alteration to the parking surface, the reduction of the size of any building, or other similar changes of a minor nature proposed to be made to the configuration, design, layout, or topography of the site plan which are deemed by the Zoning Administrator to not adversely affect the initial basis for granting approval. In the event the Zoning Administrator determines a change is major or cannot reasonably conclude that the changes will not adversely affect the initial basis for granting approval, the request for change shall be forwarded to the Planning Commission. The Zoning Administrator or Planning Commission may require, in case of minor changes to an approved site plan, that a revised site plan drawing(s) be submitted showing such minor changes for purposes of record.

Sec. 38-109. through Sec. 38-125. (Reserved)

DIVISION 4
Amendments

Sec. 38-126. Initiation. [Ord. No. Z, eff. 2-7-1974]

The Township Board may initiate amendments to this chapter by resolution or by any interested person by petition to the Township Board.

Sec. 38-127. Petition procedure. [Ord. No. Z, eff. 2-7-1974]

All petitions for amendment to this chapter shall be in writing signed, and filed in triplicate with the Township Clerk for presentation to the Township Board. Such petitions shall include the following:

(1) The petitioner's name, address, and interest in the petition as well as the name, address, and interest of every person having a legal or equitable interest in any land which is to be rezoned;

(2) The nature and effect of the proposed amendment;

(3) If the proposed amendment would require a change in the Zoning Map, a fully dimensioned map showing the land which would be affected by the proposed amendment, a legal description of such land, the present zoning district of the land, the zoning district of all abutting lands, and all public and private right-of-way and easements bounding and intersecting the land to be rezoned;

(4) The alleged error in the chapter which would be corrected by the proposed amendment, with a detailed explanation of such alleged error and detailed reasons why the proposed amendment will correct the same;

(5) The changed or changing conditions in the area or in the Township that make the proposed amendment reasonably necessary to the promotion of the public health, safety, and general welfare;

(6) All other circumstances, factors, and reasons that the petitioner offers in support of the proposed amendment.

Sec. 38-128. Procedure. [Ord. No. Z, eff. 2-7-1974]

After initiation, amendments to this chapter shall be considered as provided in the Zoning Act.

Sec. 38-129. Zoning Map amendments and rezoning procedures. [Ord. No. Z-59, eff. 2-26-2009]

The Township Board, at its own initiative, upon recommendation from the Planning Commission, or upon petition, may amend, supplement, or change the district boundaries of the Zoning Map, pursuant to the authority and procedures set forth in the Zoning Act.

(1) Application submission.

a. Applicants requesting an amendment to the Zoning Map (aka, a rezoning of property) shall submit an application to the zoning and planning department. The application materials for a rezoning shall include the following information at the time of submission:

1. The tax parcel identification number of the property to be rezoned;

2. A legal description of the property to be rezoned;

3. The current zoning district and master plan designation of the property to be rezoned,

along with the requested zoning district of the property to be rezoned;

4. A small scale sketch of all properties, streets, structures, and current uses within 1/4 mile of the property to be rezoned;

5. Proof of ownership of the property to be rezoned, or evidence of a contractual ability to acquire such property (such as an option, purchase contract, or affidavit); and

6. Any additional information that Township staff, the Planning Commission or the Township Board may request which is reasonably necessary to evaluate the proposed rezoning and its effect on the surrounding neighborhood and the Township in general.

(2) Procedures.

a. The Planning Commission shall hold a public hearing. After the public hearing has been held, the Planning Commission will consider the standards and criteria contained in Subsection (3) of this section in making its recommendation to the Township Board.

b. The Township Board will receive and review the written recommendation from the Planning Commission. At a public meeting the Township Board may approve, deny or amend the Planning Commission's recommendation. In making the decision to approve, deny or amend the Planning Commission's recommendations the Township Board shall consider the standards and criteria contained in Subsection (3) of this section.

(3) Rezoning criteria. The following criteria and standards shall be considered by the Planning Commission and Township Board prior to any Zoning Map amendment.

a. Whether there is consistency with the goals, policies and future land use map of the master plan, including any sub area or corridor studies. If conditions have changed significantly since the master plan was adopted, then consistency with recent development trends in the area shall also be considered.

b. Whether there is compatibility of the site's physical, geological, hydrological and other environmental features with the host of uses permitted in the proposed zoning district.

c. Whether there is evidence that if the current zoning remains enforced, the restriction may preclude the use of the property for any purpose to which it is reasonably adapted.

d. Whether there is compatibility of all the potential uses allowed in the proposed zoning district with the surrounding uses and zoning in terms of land suitability, impacts on the environment, density, nature of use, traffic safety impacts, aesthetics, infrastructure, utilities, potential influence on property values, and the general health, safety and welfare of the Township.

(4) Conditional rezoning. The Planning Commission in making its recommendation to the Township Board and the Township Board in making a decision to grant a requested Zoning Map amendment may consider conditions that are voluntarily offered in writing by the applicant in accordance with this section:

a. In addition to the criteria listed in Subsection (c) of this section, in the event a land owner voluntarily offers in writing any conditions regarding the use and/or development of the land as part of a rezoning request application, the Planning Commission and the Township Board shall also consider whether the request and the conditions voluntarily offered:

1. Bear a reasonable and rational connection and/or benefit to the property being proposed

for rezoning;

2. Are necessary to ensure that the property develops in such a way that protects the surrounding neighborhood and minimizes any potential impacts to adjacent properties;

3. Will lead to a development that is more compatible with abutting or surrounding uses than would have been likely if the property had been rezoned without the proposed voluntarily offered conditional zoning agreement, or if the property were left to develop under the existing zoning classification; and

4. Meet the basic requirements of the requested zoning district.

b. Any property that is conditionally rezoned must still nonetheless comply by ordinance, special use if permitted, or variance with all of the zoning requirements, including but not limited to use and yard setback requirements, of the zoning district to which the property has been rezoned. The approval of a conditional rezoning request does not guarantee or assume the approval of any special uses or variances. Site plan review in accordance with Subsection (1) of this section will be required where applicable.

c. Time limitations may be imposed as provided in the Zoning Act. If development and/or use does not occur within the time frame imposed by the Township the property shall revert to its former zoning district classification as set forth in the Zoning Act (see MCL § 125.3405).

d. If a property is conditionally rezoned and the approved development and/or use of the conditionally rezoned property does not comply with the conditions accepted by the Township it shall be a violation of the zoning ordinance. In the event that this violation is not corrected through the normal enforcement procedures of the Township the property shall revert to its former zoning district classification as set forth in the Zoning Act (see MCL § 125.3405).

e. In the event that a request for conditional rezoning is approved a copy of the conditions must be filed with the Ottawa County Register of Deeds within 30 days of the final approval.

Sec. 38-130. through Sec. 38-154. (Reserved)

ARTICLE III
District Regulations

DIVISION 1
Generally

Sec. 38-155. Zone districts. [Ord. No. Z, eff. 2-7-1974; amended by Ord. No. Z-14, eff. 4-19-1982; Ord. No. 2018-3, eff. 8-26-2018; Ord. No. 2020-2, eff. 9-17-2020; Ord. No. 2021-02, eff. 8-4-2021]

The Township is hereby divided into the following zoning districts:

(1) AG Agricultural and Permanent Open Space District.

(2) R-1 Rural Estate Residence District.

(3) R-2 Lakeshore Residence District.

(4) R-3 Low Density Single-Family Residence District.

(5) R-4 Medium Density Single- and Two-Family Residence District.

(6) R-5 Low Density Multifamily Residence District.

(7) C-1 Neighborhood Business District.

(8) C-2 Resort Service District.

(9) MP Macatawa Park Overlay District.

(10) OB Ottawa Beach Overlay District.

(11) LC Lake Court Overlay District.

(12) EB Edgewood Beach Overlay District.

Sec. 38-156. Zoning Map. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-15, eff. 1-18-1983]

The locations and boundaries of the zoning districts are hereby established as shown on a map, as the same may be amended from time to time, entitled "The Zoning Map of Park Township, Ottawa County, Michigan," which is on file in the office of the Township Clerk and is hereby made a part of this chapter. When uncertainty exists as to the boundaries of zoning districts as shown on the Zoning Map, the following rules of construction and interpretation shall apply.

(1) Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines.

(2) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

(3) Boundaries indicated as approximately following Township boundaries shall be construed as following Township boundaries.

(4) Boundaries indicated as following shorelines of Lake Michigan shall be construed as following such shorelines and in event of change in the location of such shorelines, shall be construed as moving

with the shoreline. The boundaries of all zoning districts having frontage on Lake Macatawa and rivers or streams shall be construed as extending to the center of the lake or the thread of the stream.

(5) Lines parallel to streets without indication of the depth from the street line shall be construed as having a depth of 200 feet from the front lot line.

(6) Boundaries indicated as approximately following property lines, section lines or other lines of government survey shall be construed as following such property lines, section lines or other lines of a government survey as they exist as of the effective date of the ordinance from which this chapter is derived or applicable amendment thereto.

Sec. 38-157. Areas not included within a district. [Ord. No. Z, eff. 2-7-1974]

In every case where land has not been included within a district on the Zoning Map, such land shall be in the AG Agricultural and Open Space District.

Sec. 38-158. through Sec. 38-182. (Reserved)

DIVISION 2
AG Agricultural and Permanent Open Space District

Sec. 38-183. Description and purpose. [Ord. No. Z, eff. 2-7-1974]

The AG Agricultural and Open Space District is intended for large tracts of land used for farming, animal husbandry, dairying, horticultural, or other agricultural activities.

Sec. 38-184. Use regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-18, eff. 2-13-1986; Ord. No. Z-56, eff. 8-22-2006; Ord. No. Z-61, eff. 7-9-2009]

Land, buildings or structures in the AG Agricultural and Open Space District may be used for the following purposes only:

(1) Farms for both general and specialized farming, together with farm dwellings and buildings and other installations necessary to such farms, including temporary housing for migratory workers provided such housing and its sanitary facilities are in conformance with all requirements of the Ottawa County Health Department and/or any other federal, state and/or local regulating agency having jurisdiction.

(2) Greenhouses, nurseries, orchards, vineyards, apiaries, chicken hatcheries, blueberry and poultry farms.

(3) Riding stables, where horses are boarded and/or rented, if there is a minimum lot area of 20 acres and a site plan that is in accordance with the requirements of Article II, Division 3, of this chapter is approved by the Planning Commission.

(4) Single-family dwellings.

(5) Publicly owned athletic grounds and parks.

(6) Business signs.

(7) Home occupations when authorized in accordance with Section 38-506.

(8) Removal and processing of topsoil, sand, gravel, or other such minerals when authorized by the Planning Commission in accordance with Section 38-505. **[Amended by Ord. No. 2020-001, eff. 1-27-2020**

(9) Kennels when authorized as a special use by the Planning Commission. In considering such authorization, the Planning Commission shall consider the following standards:

   a. The size, nature and character of the kennel;

   b. The proximity of the kennel to adjoining properties;

   c. The possibility of noise or other disturbance for adjoining properties and the surrounding neighborhood on account of the operation of the kennel;

   d. Potential traffic congestion on account of the kennel; and

   e. The nature and character of the buildings and structures to be utilized for the kennel operation.

(10) Roadside stands when authorized by the Zoning Administrator. The Zoning Administrator may, in his discretion, decline to decide such matter and refer decision thereon to the Planning Commission.

In considering such authorization, the following standards shall be considered:

a. The proposed location of the roadside stand;

b. The size, nature and character of the building and/or structure to be utilized for the roadside stand;

c. The type and kind of produce and goods to be sold at the roadside stand;

d. The proximity of the roadside stand to adjoining properties;

e. The time or season during which the roadside stand will operate;

f. The parking facilities provided for the roadside stand;

g. Any traffic congestion or hazards which would result from the roadside stand; and

h. The effect of the roadside stand on adjoining properties and the surrounding neighborhood.

(11) Adult foster care facilities that are subject to Township zoning jurisdiction and nursing homes are permitted if authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The number of residents who are to occupy the proposed facility;

b. The effect of the proposed facility on the immediate surrounding neighborhood;

c. Potential traffic that will be generated by the proposed facility;

d. Available parking for employees, visitors and others;

e. The adequacy of the recreational areas and the open space areas provided for the proposed facility; and

f. The proximity of the proposed facility to any other adult foster care facility or nursing home.

(12) Foster family homes, foster family group homes, family child care homes, and adult foster care family homes are permitted uses as required by the Zoning Act. Group child care homes are special uses to the extent required by the Zoning Act.

(13) Churches when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The size, character and nature of the church building;

b. The proximity of the church to adjoining properties;

c. The off-street parking that is to be provided for the church;

d. The potential traffic congestion and hazards that will be caused by the church use;

e. The degree with which the church harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood; and

f. The effect of the church on adjoining properties and the surrounding neighborhood.

(14) A building which has existed for at least five years may be used to store boats, trailers and other

recreational vehicles during off season as an accessory use to an on-going farming operation. No outdoor storage of such articles shall be permitted. Stored articles may not be used for living or recreational purposes while on the property. No sales of the stored articles shall be permitted while on the property. Except for watercraft stored on the property, no repairs, maintenance or other work shall be permitted on the stored articles while on the property. Repairs to, maintenance of, or any other work on watercraft stored on the property may only be conducted within the building. No signage advertising the storage activities shall be permitted on the property. The storage of such articles shall not adversely affect surrounding neighborhoods or adjoining properties, nor shall it adversely affect the environment. Buildings located closer than 200 feet from a residential zoning district must first obtain a special use permit from the Planning Commission before being used to store such items. In considering such authorization the Planning Commission shall consider the following standards:

a. The nature and character of the surrounding neighborhoods and adjoining properties, including the proximity of residential structures to the building to be used for such storage;

b. The effect of such use on surrounding neighborhoods and adjoining properties, such as but not limited to noise, screening, lights and fumes;

c. The ingress and egress to the property and the building to be used for such storage, including driveways and turnarounds;

d. The effect of increased traffic on the surrounding neighborhoods, including connections to major streets;

e. The nature and character of the building to be used for such storage, including but not limited to its architectural features, previous and/or current use;

f. The effect of current and/or increased outdoor storage of items and materials on the property, including parking of vehicles; and

g. The environmental effects of the requested use.

Sec. 38-185. Height regulations. [Ord. No. Z, eff. 2-7-1974]

No residential building or structure shall exceed 35 feet in height. All other buildings and structures shall not exceed their usual and customary heights.

Sec. 38-186. Area regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-23, eff. 7-17-1989]

No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area, and building coverage requirements:

(1) Front yard. There shall be a front yard of not less than 40 feet; provided, however, that there shall be a front yard of not less than 150 feet for all farm buildings and structures.

(2) Side yard. For residential buildings and structures, there shall be total side yards of not less than 50 feet; provided, however, that no side yard shall be less than 20 feet. For all other buildings, there shall be two side yards of not less than 60 feet each.

(3) Rear yard. There shall be a rear yard of not less than 50 feet.

(4) Lot area. The minimum lot area and width for residential uses shall be 10 acres and 330 feet

respectively; provided, however, that any lot which is platted or otherwise of record as of February 7, 1974, may be used for one single-family dwelling provided that lots not served with a public sewer shall have a minimum lot area and width of 15,000 square feet and 100 feet respectively, and that one lot may be created by division or splitting of any lot platted or otherwise of record as of February 7, 1974, if a single-family dwelling was located on the lot to be created by the splitting as of February 7, 1974, and is such lot created by the splitting is used for one single-family dwelling, has a minimum lot area of no less than one acre and a maximum lot area of no greater than three acres, has a minimum width of 100 feet, and the lot or parcel remaining after the split has an area of no less than 10 acres. The minimum lot area and width for a nonresidential building or structure shall be 10 acres and 100 feet respectively.

Sec. 38-187. Minimum floor area. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-18, eff. 2-13-1986]

(a) Each dwelling unit shall have a minimum of 1,000 square feet of usable floor area; provided, however, that all single-family dwellings with more than one floor level shall meet the following requirements: 1,100 square feet of usable floor area for a 1 1/2-story dwelling, 1,000 square feet of usable floor area in the main and upper level floors of a tri-level dwelling, and 1,400 square feet of usable floor area for a two-story dwelling.

(b) The basement floor area of a dwelling, or any portion thereof, may not be included for purposes of determining compliance with the floor area requirements of this section. Notwithstanding the requirements included in Subsection (a) of this section, on lots of record as of February 13, 1986, of less than 12,500 square feet, a single-floor dwelling may be constructed with a minimum of 864 square feet, provided it has an attached garage with a minimum width of 18 feet and 400 square feet in area.

Sec. 38-188. through Sec. 38-212. (Reserved)

DIVISION 3
R-1 Rural Estate District

Sec. 38-213. Description and purposes. [Ord. No. Z, eff. 2-7-1974]

The R-1 Rural Estate District is intended for large rural residential estates and farming.

Sec. 38-214. Use regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-6, eff. 9-7-1978; Ord. No. Z-12, eff. 12-4-1980; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-23, eff. 7-17-1989; Ord. No. Z-56, eff. 8-22-2006; Ord. No. Z-61, eff. 7-9-2009]

Land, buildings or structures in the R-1 Rural Estate District may be used for the following purposes only:

(1) Farms for both general and specialized farming, except livestock, feed lots and poultry farms, together with farm dwellings and buildings and other installations necessary to such farms. Temporary housing for migratory workers is prohibited.

(2) Greenhouses, nurseries, orchards, vineyards, or blueberry farms.

(3) Riding stables, where horses are boarded and/or rented, if there is a minimum lot area of 20 acres and a site plan that is in accordance with the requirements of Article II, Division 3, of this chapter is approved by the Planning Commission.

(4) Single-family dwellings.

(5) Home occupations when authorized in accordance with Section 38-506.

(6) Removal and processing of topsoil, sand, gravel, or other such minerals when authorized by the Planning Commission in accordance with Section 38-505. **[Amended by Ord. No. 2020-001, eff. 1-27-2020**

(7) Roadside stands when authorized as a special use. The same standards as are provided in Section 38-184(10) shall be considered. **[Amended by Ord. No. 2018-1, eff. 3-23-2018]**

(8) Publicly owned athletic grounds and parks.

(9) Business signs.

(10) Private and public schools, libraries, museums, art galleries, and similar uses, when owned and operated by a governmental agency or nonprofit organization and when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The size, nature and character of the proposed use;

b. The proximity of the proposed use to adjoining properties;

c. The parking facilities provided for the proposed use;

d. Any traffic congestion or hazards that will be occasioned by the proposed use;

e. How well the proposed use harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood; and

f. The effect of the proposed use on adjoining properties and the surrounding neighborhood.

(11) Churches when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The size, character and nature of the church building;

b. The proximity of the church to adjoining properties;

c. The off-street parking that is to be provided for the church;

d. The potential traffic congestion and hazards that will be caused by the church use;

e. The degree with which the church harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood; and

f. The effect of the church on adjoining properties and the surrounding neighborhood.

(12) Recreational or church camps with no travel trailers, when owned and operated by a governmental agency or by a nonprofit organization which has been determined by the United States Internal Revenue Service to an organization tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or similar successor statute. A site plan for the recreational or church camp or any expansion or extension thereof, which is in accordance with the requirements of Article II, Division 3, of this chapter, shall be approved by the Planning Commission before a building permit is issued.

(13) Adult foster care facilities that are subject to Township zoning jurisdiction and nursing homes are permitted if authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The number of residents who are to occupy the proposed facility;

b. The effect of the proposed facility on the immediate surrounding neighborhood;

c. Potential traffic that will be generated by the proposed facility;

d. Available parking for employees, visitors and others;

e. The adequacy of the recreational areas and the open space areas provided for the proposed facility; and

f. The proximity of the proposed facility to any other adult foster care facility or nursing home.

(14) Foster family homes, foster family group homes, family child care homes, and adult foster care family homes are permitted uses as required by the Zoning Act. Group child care homes are special uses to the extent required by the Zoning Act.

(15) Bed-and-breakfast operations when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The number of bed-and-breakfast sleeping rooms;

b. The effect of the proposed operation on the adjoining properties and the surrounding neighborhood;

c. Potential traffic that will be generated by the proposed bed-and-breakfast operation;

d. Available parking; and

e. The ability of the proposed bed-and-breakfast operation to comply with all requirements of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.

(16) A building which has existed for at least five years may be used to store boats, trailers and other recreational vehicles during off season as an accessory use to an on-going farming operation. No outdoor storage of such articles shall be permitted. Stored articles may not be used for living or recreational purposes while on the property. No sales of the stored articles shall be permitted while on the property. Except for watercraft stored on the property, no repairs, maintenance or other work shall be permitted on the stored articles while on the property. Repairs to, maintenance of, or any other work on watercraft stored on the property may only be conducted within the building. No signage advertising the storage activities shall be permitted on the property. The storage of such articles shall not adversely affect surrounding neighborhoods or adjoining properties, nor shall it adversely affect the environment. Buildings that are located closer than 200 feet from a residential structure on neighboring property, or which are on a lot less than five acres in size, must first obtain a special use permit from the Planning Commission before being used to store such items. In considering such authorization the Planning Commission shall consider the following standards:

a. The nature and character of the surrounding neighborhoods and adjoining properties, including the proximity of residential structures to the building to be used for such storage;

b. The effect of such use on surrounding neighborhoods and adjoining properties, such as but not limited to noise, screening, lights and fumes;

c. The ingress and egress to the property and the building to be used for such storage, including driveways and turnarounds;

d. The effect of increased traffic on the surrounding neighborhoods, including connections to major streets;

e. The nature and character of the building to be used for such storage, including but not limited to its architectural features, previous and/or current use;

f. The effect of current and/or increased outdoor storage of items and materials on the property, including parking of vehicles; and

g. The environmental effects of the requested use.

All bed-and-breakfast operations shall comply at all times with all requirements and other provisions of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.

Sec. 38-215. Height regulations. [Ord. No. Z, eff. 2-7-1974]

No residential building or structure shall exceed 35 feet in height. All other buildings and structures shall not exceed their usual and customary heights.

Sec. 38-216. Area regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-23, eff. 7-17-1989]

No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area, and building coverage requirements:

(1) Front yard. There shall be a front yard of not less than 40 feet; provided, however, that there shall be a front yard of not less than 150 feet for all farm buildings and structures.

(2) Side yard. For residential buildings and structures, there shall be a total side yard of not less than 50 feet; provided, however, that no side yard shall be less than 20 feet. For all other buildings, there shall be two side yards of not less than 60 feet each.

(3) Rear yard. There shall be a rear yard of not less than 50 feet.

(4) Lot area. The minimum lot area and width for all uses shall be two acres and 100 feet respectively; provided, however, that any lot which is platted or otherwise of record as of the effective date of the ordinance from which this chapter is derived may be used for one single-family dwelling if it complies with all the R-3 Low Density Single-Family Residence District requirements for side yards.

Sec. 38-217. Minimum floor area. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-16, eff. 9-7-1983; Ord. No. Z-18, eff. 2-13-1986]

(a) Each dwelling unit shall have a minimum of 1,000 square feet of usable floor area; provided, however, that all single-family dwellings with more than one floor level shall meet the following requirements: 1,100 square feet of usable floor area for a 1 1/2-story dwelling, 1,000 square feet of usable floor area in the main and upper level floors of a tri-level dwelling, and 1,400 square feet of usable floor area for a two-story dwelling.

(b) The basement floor area of a dwelling, or any portion thereof, may not be included for purposes of determining compliance with the floor area requirements of this section. Notwithstanding the requirements included in the Subsection (a) of this section, on lots of record as of February 13, 1986, of less than 12,500 square feet, a single-floor dwelling may be constructed with a minimum of 864 square feet, provided it has an attached garage with a minimum width of 18 feet and 400 square feet in area.

Sec. 38-218. through Sec. 38-242. (Reserved)

DIVISION 4
R-2 Lakeshore Residence District

Sec. 38-243. Description and purpose. [Ord. No. Z, eff. 2-7-1974]

The R-2 Lakeshore Residence District is intended for low density single-family residential uses and other seasonal residential uses along the Lake Michigan shoreline area in the Township.

Sec. 38-244. Use regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-6, eff. 9-7-1978; Ord. No. Z-12, eff. 12-4-1980; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-23, eff. 7-17-1989; Ord. No. Z-56, eff. 8-22-2006]

Land, buildings or structures in the R-2 Lakeshore Residence District may be used for the following purposes only:

(1) Single-family dwellings.

(2) Parks, playgrounds, community centers, governmental, administration, or service buildings which are owned and operated by a governmental agency or a noncommercial organization when authorized as a special use by the Planning Commission. In considering such authorization, the Planning Commission shall consider the following standards:

a. The necessity for such use for the surrounding neighborhood;

b. The proximity of the intended use to adjoining properties specifically including proximity to occupied dwellings;

c. The size, nature and character of the proposed use;

d. Potential traffic congestion that might be occasioned by the intended use,

e. Parking facilities to be provided for the proposed use; and

f. The effect of the proposed use on adjoining properties and the surrounding neighborhood.

(3) Private and public schools, libraries, museums, art galleries and similar uses, when owned and operated by a governmental agency or nonprofit organization and when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The size, nature and character of the proposed use;

b. The proximity of the proposed use to adjoining properties;

c. The parking facilities provided for the proposed use;

d. Any traffic congestion or hazards that will be occasioned by the proposed use;

e. How well the proposed use harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood; and

f. The effect of the proposed use on adjoining properties and the surrounding neighborhood.

(4) Churches when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The size, character and nature of the church building;

b. The proximity of the church to adjoining properties;

c. The off-street parking that is to be provided for the church;

d. The potential traffic congestion and hazards that will be caused by the church use;

e. The degree with which the church harmonizes, blends with and enhances the adjoining properties and the surrounding neighborhood; and

f. The effect of the church on adjoining properties and the surrounding neighborhood.

(5) Recreational or church camps with no travel trailers, when owned and operated by a governmental agency or by a nonprofit organization which has been determined by the United States Internal Revenue Service to be an organization tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or similar successor statute. A site plan for the recreational or church camp or any expansion or extension thereof, which is in accordance with the requirements of Article II, Division 3, of this chapter, shall be approved by the Planning Commission before a building permit is issued.

(6) Adult foster care facilities that are subject to Township zoning jurisdiction and nursing homes are permitted if authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The number of residents who are to occupy the proposed facility;

b. The effect of the proposed facility on the immediate surrounding neighborhood;

c. Potential traffic that will be generated by the proposed facility;

d. Available parking for employees, visitors and others;

e. The adequacy of the recreational areas and the open space areas provided for the proposed facility; and

f. The proximity of the proposed facility to any other adult foster care facility or nursing home.

(7) Foster family homes, foster family group homes, family child care homes, and adult foster care family homes are permitted uses as required by the Zoning Act. Group child care homes are special uses to the extent required by the Zoning Act.

(8) Bed-and-breakfast operations when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The number of bed-and-breakfast sleeping rooms;

b. The effect of the proposed operation on the adjoining properties and the surrounding neighborhood;

c. Potential traffic that will be generated by the proposed bed-and-breakfast operations;

d. Available parking; and

e. The ability of the proposed bed-and-breakfast operation to comply with all requirements of Chapter 8, pertaining to bed-and-breakfast establishments, as amended. All bed-and-breakfast

operations shall comply at all times with all requirements and other provisions of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.

(9) Home occupations when authorized in accordance with Section 38-506.

Sec. 38-245. Height regulations. [Ord. No. Z, eff. 2-7-1974]

No building or structure shall exceed 35 feet or 2 1/2 stories in height.

Sec. 38-246. Area regulations. [Ord. No. Z, eff. 2-7-1974; amended by Ord. No. ZO15, eff. 9-21-2015]

No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area, and building coverage requirements:

(1) Front yard. There shall be a front yard of not less than 40 feet.

(2) Side yard. For residential buildings, no side yard shall be less than 10 feet. For all other buildings, no side yard shall be less than 10 feet.

(3) Rear yard. There shall be a rear yard of not less than 50 feet; provided, however, that no buildings shall be located closer than 50 feet from the one-hundred-year elevation as depicted in the December 2011 Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency.

(4) Lot area and width. The minimum lot area and width for residential uses shall be 43,560 square feet and 100 feet, respectively. The minimum lot area and width for all other uses shall be three acres and 200 feet, respectively.

Sec. 38-247. Minimum floor area. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-16, eff. 9-7-1983; Ord. No. Z-18, eff. 2-13-1986]

(a) Each dwelling unit shall have a minimum of 1,000 square feet of usable floor area; provided, however, that all single-family dwellings with more than one floor level shall meet the following requirements; 1,100 square feet of usable floor area for a 1 1/2-story dwelling, 1,000 square feet of usable floor area in the main and upper level floors of a tri-level dwelling, and 1,400 square feet of usable floor area for a two-story dwelling.

(b) The basement floor area of a dwelling, or any portion thereof, may not be included for purposes of determining compliance with the floor area requirements of this section. Notwithstanding the requirements included in Subsection (a) of this section, on lots of record as of February 13, 1986 of less than 12,500 square feet, a single-floor dwelling may be constructed with a minimum of 864, provided it has an attached garage with a minimum width of 18 feet and 400 square feet in area.

DIVISION 4A
LC Lake Court Overlay District
[Amended by Ord. No. 2021-02, eff. 8-4-2021]

Sec. 38-248. Description and purpose.

(a) The LC Lake Court Overlay District is designed to promote the health, safety, and welfare of the Township through the following goals and objectives:

(1) Limit site improvements to blend with the existing topographic character of the earth.

(2) Allow for the modernization of existing single-family dwellings.

(3) Maintain a stable single-family neighborhood on Lake Court.

Sec. 38-249. Use regulations.

(a) The Lake Court Overlay District does not replace or restrict the range of land uses allowed in the underlying zoning district but provides additional development standards that must be met for any lot located partially or completely within the Lake Court Overlay District identified on the Zoning Map, which includes the lots listed within Section 38-252 of this chapter.

(b) Where the standards of the Lake Court Overlay District are less restrictive or more restrictive than the underlying zoning district or any other provision of this chapter, as determined by the Zoning Administrator, the standards of the Lake Court Overlay District shall control. Where the standards of the Lake Court Overlay District are silent, the general regulations and restrictions of the Zoning Ordinance, including, but not limited to, the underlying zoning district, shall control.

Sec. 38-250. Height regulations.

In no instance shall the maximum building height of any wall of any residential principal building on a lot abutting Lake Court exceed 35 feet. The maximum building height shall be established by the vertical distance measured at the main entrance within the front yard wall, measured three feet out from the structure, to the highest point of the roof surface. The height shall be measured from the existing grade established using the Ottawa County Geospatial Insights and Solutions Department, or successor department, 2018 contours. In the instance no entrance is located within the front yard wall, the maximum building height shall be measured from the average existing grade of only the front yard wall, measured three feet out from the structure, to the highest point of the roof surface. In either event, no other wall shall exceed that of the front wall.

Sec. 38-251. Area regulations.

(a) No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard requirements:

(1) Front yard. No front yard shall be less than 15 feet.

(2) Side yard. No side yard shall be less than five feet.

(3) Rear yard. No rear yard shall be less than five feet; provided, however, that no buildings shall be located closer than 50 feet from the 100-year floodplain elevation as depicted in the December 2011 Flood Insurance Rate Map (FIRM) issued by the Federal Emergency

Management Agency.

Sec. 38-252. Lots within the district.

70-15-09-148-010	70-15-09-148-030	70-15-09-148-031	70-15-09-148-013	70-15-09-148-032
70-15-09-148-019	70-15-09-148-011	70-15-09-184-009	70-15-09-184-005	70-15-09-184-010
70-15-09-184-036	70-15-09-148-012	70-15-09-184-002	70-15-09-184-001	70-15-09-148-018
70-15-09-184-035	70-15-09-184-003	70-15-09-184-006	70-15-09-184-032	70-15-09-148-014

Sec. 38-253. through Sec. 38-259. (Reserved)

DIVISION 4B
EB Edgewood Beach Overlay District
[Added by Ord. No. 2021-03, eff. 8-4-2021]

Sec. 38-260. Description and purpose.

(a) The EB Edgewood Beach Overlay District is designed to promote the health, safety, and welfare of the Township through the following goals and objectives:

(1) Limit densities that would compromise safe access by emergency vehicles, unnecessarily increase fire loads, and restrict the ability to provide adequate emergency service.

(2) Limit site improvements to blend with the existing topographic character of the earth.

(3) Allow for the modernization of existing single-family dwellings.

(4) Maintain a stable single-family neighborhood within Edgewood Beach.

Sec. 38-261. Use regulations.

(a) The Edgewood Beach Overlay District does not replace or restrict the range of land uses allowed in the underlying zoning district but provides additional development standards that must be met for any lot located partially or completely within the Edgewood Beach Overlay District identified on the Zoning Map, which includes the lots listed within Section 38-264 of this chapter.

(b) Where the standards of the Edgewood Beach Overlay District are less restrictive or more restrictive than the underlying zoning district or any other provision of this chapter, as determined by the Zoning Administrator, the standards of the Edgewood Beach Overlay District shall control. Where the standards of the Edgewood Beach Overlay District are silent, the general regulations and restrictions of the Zoning Ordinance, including, but not limited to, the underlying zoning district, shall control.

Sec. 38-262. Area regulations.

(a) No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard requirements:

(1) Front yard. No front yard shall be less than 35 feet.

(2) Rear yard. No rear yard shall be less than 10 feet; provided, however, that no buildings shall be located closer than 50 feet from the 100-year floodplain elevation as depicted in the December 2011 Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency.

Sec. 38-263. Preexisting principal building and reconstruction.

All setbacks for a principal building in existence prior to the adoption of this chapter shall be considered conforming. Any principal building destroyed by fire, wind, act of God, public enemy, or any other means not self-inflicted, except that for which a demolition permit has been issued by the Township, may be rebuilt and restored to its former building footprint.

Sec. 38-264. Lots within the district.

70-15-09-348-036	70-15-09-384-027	70-15-09-385-012	70-15-09-384-019	70-15-09-348-031
70-15-09-385-036	70-15-09-385-007	70-15-09-384-001	70-15-09-384-022	70-15-09-384-025
70-15-09-385-035	70-15-09-384-029	70-15-09-385-013	70-15-09-348-030	70-15-09-348-033
70-15-09-384-012	70-15-09-385-037	70-15-09-384-031	70-15-09-385-005	70-15-09-348-032
70-15-09-384-011	70-15-09-348-037	70-15-09-385-004	70-15-09-348-022	70-15-09-384-023
70-15-09-385-033	70-15-09-384-030	70-15-09-385-034	70-15-09-348-021	70-15-09-348-040
70-15-09-385-002	70-15-09-348-043	70-15-09-384-013	70-15-09-385-006	70-15-09-384-014
70-15-09-384-028	70-15-09-348-018	70-15-09-385-003		

Sec. 38-265. through Sec. 38-272. (Reserved)

DIVISION 5
R-3 Low Density Single-Family Residence District

Sec. 38-273. Description and purpose. [Ord. No. Z, eff. 2-7-1974]

The R-3 Low Density Single-Family Residence District is intended for low density single-family residential uses together with required recreational, religious and educational facilities.

Sec. 38-274. Use regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-23, eff. 7-17-1989; Ord. No. Z-56, eff. 8-22-2006]

Land, buildings or structures in the R-3 Low Density Single-Family Residence District may be used for the following purposes only:

(1) Single-family dwellings.

(2) Private and public schools, libraries, museums, art galleries and similar uses, when owned and operated by a governmental agency or nonprofit organization and when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The size, nature and character of the proposed use;

b. The proximity of the proposed use to adjoining properties;

c. The parking facilities provided for the proposed use;

d. Any traffic congestion or hazards that will be occasioned by the proposed use;

e. How well the proposed use harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood; and

f. The effect of the proposed use on adjoining properties and the surrounding neighborhood.

(3) Parks, playgrounds, community centers, governmental, administration, or service buildings which are owned and operated by a governmental agency or a noncommercial organization when authorized as a special use by the Planning Commission utilizing the same standards as are provided in Section 38-244(2).

(4) Churches when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The size, character and nature of the church building;

b. The proximity of the church to adjoining properties;

c. The off-street parking that is to be provided for the church;

d. The potential traffic congestion and hazards that will be caused by the church use;

e. The degree with which the church harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood; and

f. The effect of the church on adjoining properties and the surrounding neighborhood.

(5) Adult foster care facilities that are subject to Township zoning jurisdiction and nursing homes are permitted if authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The number of residents who are to occupy the proposed facility;

b. The effect of the proposed facility on the immediate surrounding neighborhood;

c. Potential traffic that will be generated by the proposed facility;

d. Available parking for employees, visitors and others;

e. The adequacy of the recreational areas and the open space areas provided for the proposed facility; and

f. The proximity of the proposed facility to any other adult foster care facility or nursing home.

(6) Foster family homes, foster family group homes, family child care homes, and adult foster care family homes are permitted uses as required by the Zoning Act. Group child care homes are special uses to the extent required by the Zoning Act.

(7) Bed-and-breakfast operations when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The number of bed-and-breakfast sleeping rooms;

b. The effect of the proposed operation on the adjoining proper ties and the surrounding neighborhood;

c. Potential traffic that will be generated by the proposed bed-and-breakfast operation;

d. Available parking; and

e. The ability of the proposed bed-and-breakfast operation to comply with all requirements of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.

(8) All bed-and-breakfast operations shall comply at all times with all requirements and other provisions of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.

(9) Home occupations when authorized in accordance with Section 38-506.

Sec. 38-275. Height regulations. [Ord. No. Z, eff. 2-7-1974]

No building or structure shall exceed 35 feet or 2 1/2 stories in height.

Sec. 38-276. Area regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-2, eff. 11-18-1974; amended by Ord. No. ZO16-1, eff. 6-16-2016]

No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area and building coverage requirements:

(1) Front yard. There shall be a front yard of not less than 40 feet.

(2) Side yard. No side yard shall be less than 10 feet.

(3) Rear yard. There shall be a rear yard of not less than 50 feet. **[Amended by Ord. No. 2018-1, eff. 3-23-2018]**

(4) Lot area and width. The minimum lot area and width for residential uses shall be 15,000 square feet and 90 feet, respectively. The minimum lot area for all other permitted uses shall be 15,000 square feet.

Sec. 38-277. Minimum floor area. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-16, eff. 9-7-1983; Ord. No. Z-18, eff. 2-13-1986]

(a) Each dwelling unit shall have a minimum of 1,000 square feet of usable floor area; provided, however, that all single-family dwellings with more than one floor level shall meet the following requirements: 1,100 square feet of usable floor area for a 1 1/2-story dwelling, 1,000 square feet of usable floor area in the main and upper level floors of a tri-level dwelling, and 1,400 square feet of usable floor area for a two-story dwelling.

(b) The basement floor area of a dwelling, or any portion thereof, may not be included for purposes of determining compliance with the floor area requirements of this section. Notwithstanding the requirements included in the Subsection (a) of this section, on lots of record as of February 13, 1986, of less than 12,500 square feet, a single-floor dwelling may be constructed with a minimum of 864 square feet, provided it has an attached garage with a minimum width of 18 feet and 400 square feet in area.

Sec. 38-278. through Sec. 38-302. (Reserved)

DIVISION 6
R-4 Medium Density Single- and Two-Family Residence District

Sec. 38-303. Description and purpose. [Ord. No. Z, eff. 2-7-1974]

The R-4 Medium Density Single- and Two-Family Residence District is intended for medium density single- and two-family uses.

Sec. 38-304. Use regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-23, eff. 7-17-1989; Ord. No. Z-56, eff. 8-22-2006]

Land, buildings or structures in the R-4 Medium Density Single- and Two-Family Residence District may be used for the following purposes only:

(1) Any use permitted in the R-3 Low Density Single-Family District, subject, except as specifically provided otherwise in this division, to the same conditions, restrictions and requirements as are provided in said R-3 Zoning District.

(2) Two-family dwelling.

(3) Home occupations when authorized in accordance with Section 38-506.

(4) Bed-and-breakfast operations when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The number of bed-and-breakfast sleeping rooms;

b. The effect of the proposed operation on the adjoining properties and the surrounding neighborhood;

c. Potential traffic that will be generated by the proposed bed-and-breakfast operation;

d. Available parking; and

e. The ability of the proposed bed-and-breakfast operation to comply with all requirements of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.

All bed-and-breakfast operations shall comply at all times with all requirements and other provisions of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.

Sec. 38-305. Height regulations. [Ord. No. Z, eff. 2-7-1974]

No building or structure shall exceed 35 feet or 2 1/2 stories in height.

Sec. 38-306. Area regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-2, eff. 11-18-1974; amended by Ord. No. ZO16-1, eff. 6-16-2016]

No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area and building coverage requirements:

(1) Front yard. There shall be a front yard of not less than 40 feet.

(2) Side yard. There shall be total side yards of not less than 20 feet; provided, however, that no yard

shall be less than seven feet.

(3) Rear yard. There shall be a rear yard of not less than 25 feet; provided, however, that in the case of lakefront lots, the rear yard shall be not less than 50 feet. **[Amended by Ord. No. 2018-1, eff. 3-23-2018]**

(4) Lot area and width (single-family). The minimum lot area and width for a single-family dwelling shall be 8,500 square feet and 85 feet, respectively; provided, however, that the minimum lot area and width for lots not served with public water and sewer shall be 15,000 square feet and 90 feet, respectively, and that the minimum lot area for lots served with public water but not served with public sewer shall be 10,000 square feet.

(5) Lot area and width (two-family). The minimum lot area and width for a two-family dwelling shall be 15,000 square feet and 100 feet, respectively; provided, however, that the minimum lot area and width for lots not served with public water and sewer shall be 30,000 square feet and 100 feet, respectively, and that the minimum lot area for lots served with public water but not served with public sewer shall be 20,000 square feet.

Sec. 38-307. Minimum floor area. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-6, eff. 9-7-1978; Ord. No. Z-16, eff. 9-7-1983; Ord. No. Z-18, eff. 2-13-1986]

(a) Single-family dwellings shall have a minimum of 1,000 square feet of usable floor area; provided, however, that all single-family dwellings with more than one floor level shall meet the following requirements: 1,100 square feet of usable floor area for a 1 1/2-story dwelling, 1,000 square feet of usable floor area in the main and upper level floors of a tri-level dwelling, and 1,400 square feet of usable floor area for a two-story dwelling. Each dwelling unit in a two-family dwelling shall have a minimum of 1,000 square feet of usable floor area; provided, however, if both units in the dwelling have an attached garage with 300 square feet of area, then the minimum usable floor area for each dwelling shall be 860 square feet.

(b) The basement floor area of a dwelling, or any portion thereof, may not be included for purposes of determining compliance with the floor area requirements of this section. Notwithstanding the requirements included in the Subsection (a) of this section, on lots of record as of February 13, 1986, of less than 12,500 square feet, a single-floor dwelling may be constructed with a minimum of 864 square feet, provided it has an attached garage with a minimum width of 18 feet and 400 square feet in area.

Sec. 38-308. through Sec. 38-319. (Reserved)

DIVISION 6A
MP Macatawa Park Overlay District
[Added by Ord. No. 2018-3, eff. 8-26-2018]

Sec. 38-320. Description and purpose.

(a) The MP Macatawa Park Overlay District is designed to promote the health, safety, and general welfare of the Township through the following goals and objectives:

(1) Limit densities that would compromise safe access by emergency vehicles, unnecessarily increase fire loads, and restrict the ability to provide adequate emergency service.

(2) Improve access on roads by lessening congestion.

(3) Provide for the safe movement of pedestrian and vehicular traffic.

(4) Protect woodlands, dune areas, and areas adjacent to Lake Macatawa and Lake Michigan, and other environmentally sensitive areas from overdevelopment.

(5) Limit site improvements to blend with the existing topographic character of the earth.

(6) Allow for the modernization of existing single-family and two-family dwellings.

(7) Maintain stable single-family and two-family neighborhoods within Macatawa Park.

Sec. 38-321. Use regulations.

(a) The Macatawa Park Overlay District does not replace or restrict the range of uses allowed in the underlying zoning districts but provides additional development standards that must be met for any lot located partially or completely within the Macatawa Park Overlay District identified on the Zoning Map, which includes the lots listed within Section 38-322 of this chapter.

(b) Where the standards of the Macatawa Park Overlay District are less restrictive or more restrictive than the underlying zoning district or any other provision of this chapter, as determined by the Zoning Administrator, the standards of the Macatawa Park Overlay District shall apply. Where the standards of the Macatawa Park Overlay District are silent, the general regulations and restrictions of this chapter, including, but not limited to, the underlying zoning district, shall control. No new planned unit developments within the Macatawa Park Overlay District shall be permitted.

(c) Permitted and special uses within the Macatawa Park Overlay District shall be regulated in the underlying zoning district subject to the following additional provisions:

(1) Improved lot. A lot containing a single-family dwelling or a two-family dwelling shall comply with the following:

a. Front yard averaging. The required front yard of the principal building may be reduced to 75% of the average depth of at least three front yards of existing principal buildings on lots within 300 feet of the lot in question and within the same block and within the same underlying zoning district; provided, however, if there are fewer than three such principal buildings within 300 feet of the lot in question, then the 300-foot distance shall be extended to the distance necessary to utilize a minimum of three such principal buildings for the purpose of determining the average depth, as established by a licensed surveyor or the Zoning Administrator.

b. Side yard averaging. The required side yard of the principal building may be reduced to 75% of the average depth of at least three side yards of existing principal buildings on lots within 300 feet of the lot in question and within the same block and within the same underlying zoning district; provided, however, if there are fewer than three such principal buildings within 300 feet of the lot in question, then the 300-foot distance shall be extended to the distance necessary to utilize a minimum of three such principal buildings for the purpose of determining the average depth, as established by a licensed surveyor or the Zoning Administrator.

c. Rear yard averaging. The required rear yard of the principal building may be reduced to 75% of the average depth of at least three rear yards of existing principal buildings on lots within 300 feet of the lot in question and within the same block and within the same underlying zoning district; provided, however, if there are fewer than three such principal buildings within 300 feet of the lot in question, then the 300-foot distance shall be extended to the distance necessary to utilize a minimum of three such principal buildings for the purpose of determining the average depth, as established by a licensed surveyor or the Zoning Administrator.

d. Mitigation. Any improved lot subject to a building permit that reduces the front yard to less than five feet or increases the building area within five feet of the street right-of-way shall provide means to mitigate hazards for vehicular and pedestrian traffic within the adjacent street to the satisfaction of the Zoning Administrator, who shall confer with the appropriate expert(s) regarding the proposed means to mitigate hazards, including, but not necessarily limited to, the Ottawa County Sheriff's Department, the Township Fire Chief, the Township Planner, the Township Attorney, or any other Township staff or consultant qualified to assess hazard mitigation. Alternatively, a professional study or studies containing evidence that mitigation is impossible shall be provided.

e. Automatic fire extinguishing system. Pursuant to Section 901.4.4 of the International Fire Code, as amended, because special hazards exist in addition to the normal hazards of occupancy, and access for fire apparatus is unduly difficult, the Park Township Fire Chief may require an automatic fire extinguishing system be installed within any single-family dwelling or two-family dwelling subject to a building permit.

f. Parking area. Any improved lot subject to a building permit shall provide an on-site parking area meeting the minimum number of parking spaces and the minimum dimensions for each parking space pursuant to Section 38-601 of this chapter. Alternatively, off-site parking or a combination of on-site parking and off-site parking, when located entirely within MP Overlay District, may be provided. In addition, for each 600 square feet of principal building floor area beyond the first 1,800 square feet of principal building floor area, one additional parking space shall be required.

g. Preexisting principal building and reconstruction. All setbacks for a principal building in existence prior to the adoption of this chapter shall be considered conforming. Any principal building destroyed by fire, wind, act of God, public enemy, or any other means not self-inflicted may be rebuilt and restored to its former building footprint. Reconstruction of a preexisting principal building is subject to Section 38-321(c)(1)f of this division.

(2) Unimproved lot. A lot vacant of a principal building, accessory structure or combination thereof shall comply with the following:

a. New construction. No new principal building shall be constructed on an unimproved or vacant lot unless the lot meets the minimum lot area and the minimum lot width of the underlying zoning district.

b. Front yard averaging. The required front yard of the principal building may be reduced to 75% of the average depth of at least three front yards of existing principal buildings on lots within 300 feet of the lot in question and within the same block and within the same underlying zoning district; provided, however, if there are fewer than three such principal buildings within 300 feet of the lot in question, then the distance 300-foot distance shall be extended to the distance necessary to utilize a minimum of three such principal buildings for the purpose of determining the average depth, as established by a licensed surveyor or the Zoning Administrator.

c. Side yard averaging. The required side yard of the principal building may be reduced to 75% of the average depth of at least three side yards of existing principal buildings on lots within 300 feet of the lot in question and within the same block and within the same underlying zoning district; provided, however, if there are fewer than three such principal buildings within 300 feet of the lot in question, then the 300-foot distance shall be extended to the distance necessary to utilize a minimum of three such principal buildings for the purpose of determining the average depth, as established by a licensed surveyor or the Zoning Administrator.

d. Rear yard averaging. The required rear yard of the principal building may be reduced to 75% of the average depth of at least three rear yards of existing principal buildings on lots within 300 feet of the lot in question and within the same block and within the same underlying zoning district; provided, however, if there are fewer than three such principal buildings within 300 feet of the lot in question, then the 300-foot distance shall be extended to the distance necessary to utilize a minimum of three such principal buildings for the purpose of determining the average depth, as established by a licensed surveyor or the Zoning Administrator.

e. Building footprint. The building footprint shall include all foundation walls and any cantilevered building faces together with any attached accessory buildings, but excluding decks and patios of 30 inches or less in height.

f. Automatic fire extinguishing system. Pursuant to Section 901.4.4 of the International Fire Code, as amended, because special hazards exist in addition to the normal hazards of occupancy, and access for fire apparatus is unduly difficult, the Park Township Fire Chief may require an automatic fire extinguishing system be installed within the entirety of any new single-family dwelling or two-family dwelling.

g. Parking area. Any unimproved lot subject to a building permit shall provide an on-site parking area meeting the minimum number of parking spaces and the minimum dimensions for each parking space pursuant to Section 38-601 of this chapter. In addition, for each 600 square feet of principal building floor area beyond the first 1,800 square feet of principal building floor area, one additional parking space shall be required.

Sec. 38-322. Lots within the district.

70-15-33-379-004	70-15-33-382-014	70-15-33-384-001	70-15-33-388-030	70-15-33-393-004
70-15-33-380-001	70-15-33-382-015	70-15-33-384-002	70-15-33-388-031	70-15-33-393-005
70-15-33-380-002	70-15-33-382-018	70-15-33-384-003	70-15-33-388-032	70-15-33-393-006
70-15-33-380-003	70-15-33-382-021	70-15-33-384-004	70-15-33-388-037	70-15-33-394-002
70-15-33-380-004	70-15-33-382-022	70-15-33-384-010	70-15-33-388-038	70-15-33-394-003
70-15-33-380-005	70-15-33-382-023	70-15-33-384-011	70-15-33-388-039	70-15-33-394-004
70-15-33-380-006	70-15-33-382-024	70-15-33-384-012	70-15-33-388-040	70-15-33-394-006
70-15-33-380-007	70-15-33-382-026	70-15-33-384-013	70-15-33-388-041	70-15-33-394-007
70-15-33-380-014	70-15-33-382-029	70-15-33-384-014	70-15-33-388-043	70-15-33-394-008
70-15-33-380-015	70-15-33-382-030	70-15-33-384-015	70-15-33-388-045	70-15-33-394-009
70-15-33-380-017	70-15-33-382-031	70-15-33-385-002	70-15-33-388-046	70-15-33-394-010
70-15-33-380-018	70-15-33-382-032	70-15-33-385-003	70-15-33-388-047	70-15-33-394-011
70-15-33-380-019	70-15-33-382-033	70-15-33-385-008	70-15-33-388-048	70-15-33-394-012
70-15-33-380-020	70-15-33-382-034	70-15-33-385-009	70-15-33-389-001	70-15-33-394-013
70-15-33-380-021	70-15-33-382-035	70-15-33-385-010	70-15-33-389-004	70-15-33-394-015
70-15-33-380-024	70-15-33-382-041	70-15-33-386-001	70-15-33-389-005	70-15-33-394-016
70-15-33-380-026	70-15-33-382-045	70-15-33-386-002	70-15-33-389-009	70-15-33-394-017
70-15-33-380-027	70-15-33-382-046	70-15-33-386-003	70-15-33-389-010	70-15-33-394-018
70-15-33-380-032	70-15-33-382-047	70-15-33-386-004	70-15-33-389-011	70-15-33-394-019
70-15-33-380-033	70-15-33-382-049	70-15-33-386-007	70-15-33-389-012	70-15-33-394-020
70-15-33-380-034	70-15-33-382-052	70-15-33-386-008	70-15-33-389-013	70-15-33-394-021
70-15-33-380-035	70-15-33-382-053	70-15-33-386-014	70-15-33-389-015	70-15-33-394-023
70-15-33-381-001	70-15-33-382-054	70-15-33-387-004	70-15-33-389-016	70-15-33-394-024
70-15-33-381-002	70-15-33-382-055	70-15-33-387-009	70-15-33-390-001	70-15-33-394-025
70-15-33-381-003	70-15-33-382-057	70-15-33-387-021	70-15-33-390-003	70-15-33-460-006
70-15-33-381-004	70-15-33-382-058	70-15-33-387-027	70-15-33-390-004	70-15-33-461-001
70-15-33-381-005	70-15-33-382-059	70-15-33-387-028	70-15-33-390-007	70-15-33-461-010
70-15-33-381-007	70-15-33-382-060	70-15-33-388-001	70-15-33-392-002	70-15-33-461-011
70-15-33-381-008	70-15-33-382-061	70-15-33-388-002	70-15-33-392-004	70-15-33-461-015
70-15-33-381-009	70-15-33-382-062	70-15-33-388-003	70-15-33-392-005	70-15-33-461-016
70-15-33-381-011	70-15-33-382-063	70-15-33-388-006	70-15-33-392-007	
70-15-33-382-002	70-15-33-383-003	70-15-33-388-007	70-15-33-393-001	
70-15-33-382-003	70-15-33-383-006	70-15-33-388-008	70-15-33-393-002	

70-15-33-382-009 70-15-33-383-008 70-15-33-388-024 70-15-33-393-003

DIVISION 6B
OB Ottawa Beach Overlay District
[Added by Ord. No. 2020-2, eff. 9-17-2020]

Sec. 38-323. Description and purpose.

The OB Ottawa Beach Overlay District is designed to promote the health, safety, and general welfare of the Township through the following goals and objectives:

(1) Limit densities that would compromise safe access by emergency vehicles, unnecessarily increase fire loads, and restrict the ability to provide adequate emergency service.

(2) Improve access on roads by lessening congestion.

(3) Provide for the safe movement of pedestrian and vehicular traffic.

(4) Prohibit the expansion of commercial uses to protect and promote the historic residential character and lessen the congestion of streets and pedestrian pathways.

(5) Protect woodlands, dune areas, and areas adjacent to Lake Macatawa and Lake Michigan, and other environmentally sensitive areas from overdevelopment.

(6) Limit site improvements to blend with the existing topographic character of the earth.

(7) Allow for the modernization of existing single-family and two-family dwellings.

(8) Maintain stable single-family and two-family neighborhoods within Ottawa Beach.

Sec. 38-324. Use regulations.

(a) The Ottawa Beach Overlay District does not replace or restrict the range of land uses allowed in the underlying zoning districts but provides additional development standards that must be met for any lot located partially or completely within the Ottawa Beach Overlay District identified on the zoning map, which includes the lots listed within Section 38-325 of this division.

(b) Where the standards of the Ottawa Beach Overlay District are less restrictive or more restrictive than the underlying zoning district or any other provision of this chapter, as determined by the Zoning Administrator, the standards of the Ottawa Beach Overlay District shall apply. Where the standards of the Ottawa Beach Overlay District are silent, the general regulations and restrictions of the Zoning Ordinance, including but not limited to the underlying zoning district, shall control. Except for home occupations, no new commercial uses within the Ottawa Beach Overlay District shall be permitted.

(c) Permitted and special uses within the Ottawa Beach Overlay District shall be regulated in the underlying zoning district subject to the following additional provisions:

(1) Improved Lot. A Lot containing a single-family dwelling or a two-family dwelling shall comply with the following:

a. Side Yard Averaging. Where the average depth of at least two side yards of existing buildings within 300 feet of the lot in question and within the same block on the same side of the street is less than the minimum side yard depth of the underlying zoning district, then the required side yard shall be modified to be no less than the average depth of the existing adjacent buildings, as established by a licensed surveyor or the Zoning

Administrator; provided, however, that the depth of the side yard shall not be less than five feet, in any event.

b. Principal Building Character Height. The maximum principal building height shall not exceed the average height of all principal buildings of the same use on lots within 300 feet of the lot in question within the same block and on the same side of the street, or the maximum height of the underlying zoning district, whichever is less.

c. Parking Area. Any Improved lot subject to a building permit shall provide an on-site parking area meeting the minimum number of parking spaces and the minimum dimensions for each parking space pursuant to Section 38-601 of this chapter. Alternatively, off-site parking or a combination of on-site parking and off-site parking, when located entirely within the OB Overlay District, may be provided.

d. Pre-Existing Principal Building and Reconstruction. All setbacks for a principal building in existence prior to the adoption of this chapter shall be considered conforming. Any principal building destroyed by fire, wind, act of God, public enemy, or any other means not self-inflicted, except that for which a demolition permit has been issued by the Township, may be rebuilt and restored to its former building footprint. Reconstruction of a pre-existing principal building is subject to Section 38-324(c)(1)c of this division and may be expanded pursuant to Section 38-324(c)(1)a through d.

e. Any earth change or grade change that involves more than 100 cubic yards will be permitted only as a special use subject to the review and approval of the Planning Commission. In making its decision, the Planning Commission shall consider the following standards:

1. The nature of the proposed change, including, without limitation, whether materials are to be excavated and removed from, or imported to, or moved upon the parcel and the purpose for the proposed change, together with the clearing of the land.

2. The proposed change in the topography of the parcel. The change shall not cause significant change in the natural topography or have an adverse or destructive impact on the environment, a natural resource, adjoining properties, or the neighborhood.

3. The effect and impact of such change on neighboring parcels and whether such change can be conducted in a manner harmonious with the neighboring uses of property.

4. The potential of the change to create safety concerns or hazards, to cause problems with noise, fumes, dust, lights and vibrations, to create erosion problems, to alter the groundwater table in the vicinity, to cause flooding or diversion of water, to result in the creation of sand blows, stagnant water pools, bogs and other similar problems affecting the adjacent properties and environment in the neighborhood.

5. The change must not create or cause a safety hazard, erosion by wind or water, alteration of groundwater tables and other similar problems. The change must not cause or create any sand blows, stagnant water pools, bogs or any similar type circumstances that cause injury to adjoining properties or the neighborhood.

6. The types of trucks and other equipment to be used and the potential for traffic congestion, damage to roads, noise and debris, and safety hazards resulting from

trucks and equipment used in the change activities. The change shall not result in traffic congestion, road safety hazards or other similar problems.

7. Whether the change activities comply with all applicable federal, state, county and local laws, ordinances, rules, regulations, permits and requirements.

(2) Unimproved Lot. A lot vacant of a principal building, accessory structure or combination thereof shall comply with the following:

a. New Construction. No new principal building shall be constructed on an unimproved or vacant lot unless the lot meets the minimum lot area and the minimum lot width of the underlying zoning district.

b. Principal Building Character Height. The maximum principal building height shall not exceed the average height of all principal buildings of the same use on lots within 300 feet of the lot in question within the same block and on the same side of the street, or the maximum height of the underlying zoning district, whichever is less.

c. Side Yard Averaging. Where the average depth of at least two side yards of existing buildings within 300 feet of the lot in question and within the same block on the same side of the street is less than the minimum side yard depth of the underlying zoning district, then the required side yard shall be modified to be no less than the average depth of the existing adjacent buildings, as established by a licensed surveyor or the Zoning Administrator; provided, however, that the depth of the side yard shall not be less than five feet, in any event.

d. Building Footprint. The building footprint shall include all foundation walls and any cantilevered building faces together with any attached accessory buildings, but excluding decks and patios of 30 inches or less in height.

e. Parking Area. Any unimproved lot subject to a building permit shall provide an on-site parking area meeting the minimum number of parking spaces and the minimum dimensions for each parking space pursuant to Section 38-601 of this chapter. Alternatively, off-site parking or a combination of on-site parking and off-site parking, when located entirely within the OB Overlay District, may be provided.

f. Any earth change or grade change that involves more than 100 cubic yards will be permitted only as a special use subject to the review and approval of the Planning Commission. In making its decision, the Planning Commission shall consider the following standards:

1. The nature of the proposed change, including, without limitation, whether materials are to be excavated and removed from, or imported to, or moved upon the parcel and the purpose for the proposed change, together with the clearing of the land.

2. The proposed change in the topography of the parcel. The change shall not cause significant change in the natural topography or have an adverse or destructive impact on the environment, a natural resource, adjoining properties, or the neighborhood.

3. The effect and impact of such change on neighboring parcels and whether such change can be conducted in a manner harmonious with the neighboring uses of property.

4. The potential of the change to create safety concerns or hazards, to cause problems with noise, fumes, dust, lights and vibrations, to create erosion problems, to alter the groundwater table in the vicinity, to cause flooding or diversion of water, to result in the creation of sand blows, stagnant water pools, bogs and other similar problems affecting the adjacent properties and environment in the neighborhood.

5. The change must not create or cause a safety hazard, erosion by wind or water, alteration of groundwater tables and other similar problems. The change must not cause or create any sand blows, stagnant water pools, bogs or any similar type circumstances that cause injury to adjoining properties or the neighborhood.

6. The types of trucks and other equipment to be used and the potential for traffic congestion, damage to roads, noise and debris, and safety hazards resulting from trucks and equipment used in the change activities. The change shall not result in traffic congestion, road safety hazards or other similar problems.

7. Whether the change activities comply with all applicable federal, state, county and local laws, ordinances, rules, regulations, permits and requirements.

(d) Recreational fires. All recreational fires shall be prohibited except for not more than one recreational fire on a lot, which complies with following:

(1) Located no less than 25 feet from any structure, other combustible material, lot line, roadway, bike path, sidewalk, boardwalk, alleyway, or fence. When contained within a portable outdoor fireplace, as defined by the International Fire Code, as amended, the recreational fire may be located no less than 15 feet from any structure, other combustible material, lot line, roadway, bike path, sidewalk, boardwalk, alleyway, or fence.

(2) Located no less than 20 feet from tree branches and overhead wires.

(3) Fire rings must be built or lined with noncombustible material, such as brick, rock, or metal, or be otherwise designed for recreational fires with a fire grate or cover approved by the Park Township Fire Department.

(4) No greater than three feet in diameter and two feet in height.

(5) Contains a fire grate as defined by this chapter.

(6) Only seasoned wood may be burned. Leaves, yard waste such as grass clippings, dune grass, ornamental grass, household waste, construction materials, commercial or industrial waste, or any other material that would cause a public nuisance is prohibited to be burned.

(7) A reliable water supply able to extinguish the fire shall be readily available any time a fire is present, which includes, but is not necessarily limited to, a portable fire extinguisher or garden hose connected to an active water service.

(8) Wind speeds shall be of 10 miles per hour or less when a fire is present. Any fire that is present in wind speeds greater than 10 miles per hour shall be immediately extinguished.

(9) Any fire shall be extinguished prior to midnight or when directed by the Park Township Fire Department or their designee.

(10) Any fire shall be attended by a competent person of 18 years or older until fully extinguished.

(11) Recreational fires are prohibited on an unimproved lot.

(12) All recreational fire locations shall be subject to approval by the Park Township Fire Department.

Sec. 38-325. Lots within the district.

70-15-33-275-011	70-15-33-296-020	70-15-33-298-008	70-15-33-179-017	70-15-33-180-003
70-15-33-298-005	70-15-33-177-005	70-15-33-330-007	70-15-33-290-017	70-15-33-290-025
70-15-33-296-015	70-15-33-180-009	70-15-33-179-013	70-15-33-298-006	70-15-33-425-003
70-15-33-201-013	70-15-33-275-023	70-15-33-290-005	70-15-33-290-027	70-15-33-283-001
70-15-33-275-006	70-15-33-273-005	70-15-33-296-011	70-15-33-290-014	70-15-33-179-020
70-15-33-290-030	70-15-33-296-012	70-15-33-291-003	70-15-33-177-011	70-15-33-424-001
70-15-33-290-033	70-15-33-290-023	70-15-33-275-014	70-15-33-291-004	70-15-33-274-009
70-15-33-180-006	70-15-33-275-022	70-15-33-279-005	70-15-33-298-001	70-15-33-290-020
70-15-33-290-010	70-15-33-146-024	70-15-33-283-007	70-15-33-177-012	70-15-33-291-006
70-15-33-275-011	70-15-33-425-006	70-15-33-274-021	70-15-33-425-002	70-15-33-295-005
70-15-33-290-008	70-15-33-283-010	70-15-33-296-002	70-15-33-285-010	70-15-33-290-012
70-15-33-290-013	70-15-33-296-001	70-15-33-146-025	70-15-33-290-001	70-15-33-272-001
70-15-33-290-018	70-15-33-281-013	70-15-33-290-006	70-15-33-272-005	70-15-33-279-003
70-15-33-181-003	70-15-33-201-006	70-15-33-181-004	70-15-33-272-009	70-15-33-284-007
70-15-33-275-017	70-15-33-279-001	70-15-33-179-016	70-15-33-179-012	70-15-33-330-003
70-15-33-179-014	70-15-33-281-004	70-15-33-425-008	70-15-33-201-004	70-15-33-426-001
70-15-33-179-004	70-15-33-179-018	70-15-33-180-008	70-15-33-177-004	70-15-33-424-003
70-15-33-295-006	70-15-33-428-001	70-15-33-275-005	70-15-33-296-004	70-15-33-272-003
70-15-33-281-002	70-15-33-146-006	70-15-33-275-009	70-15-33-297-001	70-15-33-296-010
70-15-33-283-011	70-15-33-296-006	70-15-33-274-008	70-15-33-274-005	70-15-33-428-002
70-15-33-298-003	70-15-33-179-005	70-15-33-281-012	70-15-33-274-014	70-15-33-201-005
70-15-33-283-008	70-15-33-290-007	70-15-33-298-002	70-15-33-284-014	70-15-33-296-003
70-15-33-275-026	70-15-33-295-009	70-15-33-274-015	70-15-33-290-003	70-15-33-296-019
70-15-33-290-024	70-15-33-275-021	70-15-33-291-008	70-15-33-291-007	70-15-33-330-001
70-15-33-295-004	70-15-33-283-005	70-15-33-272-002	70-15-33-296-013	70-15-33-275-007
70-15-33-180-010	70-15-33-275-012	70-15-33-290-022	70-15-33-283-012	70-15-33-284-010
70-15-33-281-011	70-15-33-291-001	70-15-33-177-009	70-15-33-275-015	70-15-33-274-006
70-15-33-179-006	70-15-33-177-010	70-15-33-179-024	70-15-33-274-012	70-15-33-284-006
70-15-33-275-020	70-15-33-181-002	70-15-33-283-015	70-15-33-180-002	70-15-33-275-028
70-15-33-296-007	70-15-33-290-034	70-15-33-180-005	70-15-33-275-019	70-15-33-295-002

70-15-33-275-024	70-15-33-274-019	70-15-33-275-025	70-15-33-291-009	70-15-33-296-014
70-15-33-274-023	70-15-33-275-013	70-15-33-290-029	70-15-33-330-006	
70-15-33-290-026	70-15-33-201-012	70-15-33-290-032	70-15-33-281-015	
70-15-33-284-008	70-15-33-283-014	70-15-33-295-001	70-15-33-296-005	
70-15-33-290-002	70-15-33-281-017	70-15-33-274-013	70-15-33-296-016	
70-15-33-296-018	70-15-33-290-015	70-15-33-297-002	70-15-33-298-009	
70-15-33-281-018	70-15-33-290-011	70-15-33-275-018	70-15-33-290-019	
70-15-33-424-002	70-15-33-291-002	70-15-33-290-009	70-15-33-330-004	
70-15-33-428-003	70-15-33-298-010	70-15-33-179-025	70-15-33-272-004	
70-15-33-285-009	70-15-33-275-016	70-15-33-180-001	70-15-33-290-021	
70-15-33-290-031	70-15-33-279-004	70-15-33-296-009	70-15-33-275-027	
70-15-33-275-010	70-15-33-275-003	70-15-33-296-008	70-15-33-274-018	
70-15-33-180-004	70-15-33-274-007	70-15-33-274-022	70-15-33-283-002	
70-15-33-290-016	70-15-33-181-001	70-15-33-281-014	70-15-33-275-008	
70-15-33-290-035	70-15-33-201-011	70-15-33-180-011	70-15-33-180-007	
70-15-33-298-007	70-15-33-298-004	70-15-33-296-017	70-15-33-283-009	
70-15-33-290-028	70-15-33-201-003	70-15-33-425-001	70-15-33-295-003	
70-15-33-425-007	70-15-33-272-008	70-15-33-179-007	70-15-33-279-002	
70-15-33-290-004	70-15-33-146-007	70-15-33-281-005	70-15-33-284-009	
70-15-33-179-015	70-15-33-291-005	70-15-33-275-004	70-15-33-281-003	
70-15-33-295-008	70-15-33-284-013	70-15-33-295-007	70-15-33-271-003	

Sec. 38-326. through Sec. 38-332. (Reserved)

DIVISION 7
R-5 Low Density Multifamily Residence District

Sec. 38-333. Description and purpose. [Ord. No. Z, eff. 2-7-1974]

The R-5 Low Density Multifamily Residence District is intended for low density residential and group housing.

Sec. 38-334. Use regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-23, eff. 7-17-1989; Ord. No. Z-56, eff. 8-22-2006]

Land, buildings or structures in the R-5 Low Density Multifamily Residence District may be used for the following purposes only:

(1) Any use permitted in the R-4 Medium Density Single- and Two-Family Residence District, subject, except as specifically provided otherwise in this division, to the same conditions, restrictions and requirements as are provided in the said R-4 Zoning District.

(2) Multifamily dwellings provided they are served by public water.

(3) Home occupations when authorized in accordance with Section 38-506.

(4) Bed-and-breakfast operations when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The number of bed-and-breakfast sleeping rooms;

b. The effect of the proposed operation on the adjoining properties and the surrounding neighborhood;

c. Potential traffic that will be generated by the proposed bed-and-breakfast operation;

d. Available parking; and

e. The ability of the proposed bed-and-breakfast operation to comply with all requirements of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.

All bed-and-breakfast operations shall comply at all times with all requirements and other provisions of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.

Sec. 38-335. Height regulations. [Ord. No. Z, eff. 2-7-1974]

No building or structure shall exceed 35 feet or 2 1/2 stories in height.

Sec. 38-336. Area regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-2, eff. 11-18-1974; amended by Ord. No. ZO16-1, eff. 6-16-2016]

No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area and building coverage requirements:

(1) Front yard. There shall be a front yard of not less than 40 feet.

(2) Side yard. There shall be total side yards as follows:

a. For single- and two-family dwellings, the total side yards shall be not less than 20 feet; provided, however, that no side yard shall be less than seven feet.

b. For multifamily dwellings and all other permitted uses, each side yard shall be not less than 20 feet.

(3) Rear yard. There shall be a rear yard of not less than 25 feet provided, however, that in the case of lakefront lots, the rear yard shall be not less than 50 feet. **[Amended by Ord. No. 2018-1, eff. 3-23-2018]**

(4) Lot area and width (single-family). The minimum lot area and width for a single-family dwelling shall be 8,500 square feet and 85 feet, respectively; provided, however, that the minimum lot area and width for lots not served with public water and sewer shall be 15,000 square feet and 90 feet, respectively, and that the minimum lot area for lots served with public water but not served with public sewer shall be 10,000 square feet.

(5) Lot area and width (two-family). The minimum lot area and width for a two-family dwelling shall be 15,000 square feet and 100 feet, respectively; provided, however, that the minimum lot area and width for lots not served with public water and sewer shall be 30,000 square feet and 100 feet, respectively, and that the minimum lot area for lots served with public water but not served with public sewer shall be 20,000 square feet.

(6) Lot area and width (other than one- and two-family). The minimum lot width shall be 100 feet. The minimum lot area for multifamily dwellings shall be 4,500 square feet per dwelling unit; provided, however, that the minimum lot area for multifamily dwellings not served with public sewer shall be 10,000 square feet per dwelling unit. The minimum lot area for all other permitted uses shall be 15,000 square feet.

Sec. 38-337. Minimum floor area. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-16, eff. 9-7-1983; Ord. No. Z-18, eff. 2-13-1986]

(a) Each single-family and two-family dwelling shall have minimum usable floor area as is required by Section 38-307. Each multifamily dwelling shall have minimum usable floor area as follows: one-bedroom unit, 650 square feet per unit; two-bedroom unit, 750 square feet per unit; three-bedroom unit, 900 square feet per unit; additional bedrooms require an additional 100 square feet of usable floor area for each additional bedroom.

(b) The basement floor area of a dwelling, or any portion thereof, may not be included for purposes of determining compliance with the floor area requirements of this section. Notwithstanding the requirements included in the Subsection (a) of this section, on lots of record as of February 13, 1986, of less than 12,500 square feet, a single-floor dwelling may be constructed with a minimum of 864 square feet, provided it has an attached garage with a minimum width of 18 feet and 400 square feet in area.

Sec. 38-338. through Sec. 38-362. (Reserved)

DIVISION 8
Planned Unit Development (PUD)[1]

Sec. 38-363. Description and purpose. [Ord. No. ZO17-1, eff. 5-15-2016]

(a) The purpose of planned unit development ("PUD") regulations is to encourage and allow more creative and innovative design of land development and use than is possible under conventional zoning district regulations. Planned unit developments are intended to allow flexibility in planning and in designing development proposals, which ideally results in a development that contains more amenities through preservation of natural and cultural resources, and through providing a combination of complementary uses. The result is ultimately a development that is more desirable than one produced in accordance with conventional zoning ordinance and subdivision controls.

(b) Through proper design and review, each PUD should substantially meet the following objectives:

(1) To allow a mix of uses, structures, facilities, housing types and open space that is compatible with existing and planned uses on nearby properties.

(2) To encourage land development that, to the greatest extent possible, preserves natural vegetation, respects natural topographic conditions, and preserves natural resources such as wetlands, forests, floodplains, natural drainage patterns, agricultural lands, wildlife habitats and other natural site features.

(3) To provide for the regulation of lawful and reasonable land uses not otherwise authorized within this chapter.

(4) To provide for single- or mixed-use developments which respect the goals and objectives of this chapter and the Park Township Master Plan.

(5) To encourage the provision of open space and the development of recreational and other support facilities in generally central locations or within a reasonable distance of all dwellings or uses.

(6) To implement the vision of the Park Township Master Plan in order to provide a high standard of quality of life, varied housing options, and richness of natural assets.

Sec. 38-364. Authorization and permitted uses. [Ord. No. ZO17-1, eff. 5-15-2016]

(a) The Township Board may approve a PUD in any location within Park Township, provided the property meets the qualifying conditions set forth in Section 38-365.

(b) Any land use allowed by this chapter may be approved by the Township Board within a PUD as a principal or accessory use subject to adequate provisions for the public health, safety, and welfare within the PUD, except manufactured housing communities may only be approved within a PUD in areas recommended in the Park Township Master Plan for high-density residential and zoned R-4 Medium Density Single- and Two-Family Residence District prior to consideration as a PUD.

(c) Private roads are allowed in a PUD subject to the requirements of Section 38-512 herein.

Sec. 38-365. Qualifying conditions. [Ord. No. ZO17-1, eff. 5-15-2016]

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1. **Editor's Note: Pursuant to Ord. No. ZO17-1, former §§ 38-377 through 38-401 of this division were moved to Art. IX, former §§ 38-403 through 38-405 of this division were moved to Art. X, and former § 38-402 was repealed. The remainder of this division was amended and restated as follows.**

(a) Minimum PUD area size. In order to be eligible for a PUD, the area proposed for a PUD shall consist of a minimum of two contiguous acres; with the exception that, in the C-1 Neighborhood Business District and the C-2 Resort Service District, the minimum size shall be one contiguous acre.

(b) Completion of PUD as approved. Upon the transfer of ownership or control of the entire PUD or individual properties within the PUD, all requirements approved by the Township Board shall continue to be met and the development shall be completed in its entirety as approved.

Sec. 38-366. Development requirements for all uses. [Ord. No. ZO17-1, eff. 5-15-2016]

The lot area, lot width, building height, setback, and other dimensional and yard requirements, supplemental regulations, landscaping, signs, lighting and parking regulations and other development regulations which would otherwise be applicable to the type of land use being requested for the PUD shall be determined by the Township Board following a recommendation from the Planning Commission in order to achieve the objectives of this division. Criteria which shall be used in making these determinations shall include the following:

(1) Number, location, size, and type of dwelling units.

(2) Type, location, and amount of nonresidential uses proposed.

(3) Proximity and impact of the PUD on adjacent existing and future land uses.

(4) Preservation of existing vegetation or other natural features on site.

(5) Topography of the site.

(6) Provision of public and/or community water, sanitary sewer and storm sewer or approval of the Ottawa County Health Department for on-site well and septic systems.

(7) Access for emergency vehicles to all buildings and areas.

(8) Provisions for pedestrian circulation, recreational amenities, and open space.

(9) Traffic circulation and safety.

Sec. 38-367. Development requirements for PUDs with residential uses. [Ord. No. ZO17-1, eff. 5-15-2016; amended by Ord. No. 2020-001, eff. 1-27-2020]

For planned unit developments which will devote all or a portion of the site to residential use, the following requirements shall apply, in addition to the requirements of Section 38-366:

(1) Number of dwellings permitted. An area which is requested for approval to a PUD shall be developed in accordance with the density determined by using the minimum lot size required by the current zoning district for the area for residential uses according to the requirements of Section 38-367(2).

(2) Formula to determine number of dwellings on net buildable acreage. The number of dwellings which may be constructed within a PUD shall be determined as follows:

a. Determine gross site acreage. The gross site acreage may include the public road rights-of-way to which the site abuts only if the legal description for the land includes the road rights-of-way.

b. Subtract all the areas of existing wetlands, creeks, streams, ponds, lakes, or other water bodies, floodplains, critical dunes, and slopes of 20% or greater.

c. If requested by the Planning Commission or the Township Board, the determination of the existence of wetlands or floodplain areas on a parcel shall be demonstrated through a written determination by the Michigan Department of Natural Resources, or by a professional biologist, ecologist, environmental engineer or similar professional person deemed acceptable to the Planning Commission or the Township Board and in compliance with the standards for wetlands or floodplains established by the Michigan Department of Natural Resources at the time of the review.

d. Subtract acreage proposed to be devoted to nonresidential uses, except those areas proposed for, but not limited to, parks, playgrounds, and dedicated open space, which shall not be subtracted.

1. Facilities proposed for, but not limited to, community buildings, indoor recreational facilities, and similar facilities shall be considered nonresidential uses and shall be subtracted to determine net buildable acreage.

2. Streets, alleys, drives, or similar improvements internal to the site designed for the circulation of traffic, with or without a right-of-way, shall be subtracted to determine net buildable acreage. The area for these improvements shall be calculated using a width of no less than 66 feet by their total length. Driveways generally perpendicular to the street, alley, drive, or similar improvement shall not be included within this calculation.

e. The number of acres remaining shall be the net buildable acreage.

f. Multiply the net buildable acreage by the number of dwelling units per acre that results using the minimum residential lot size required by the current zoning district.

(3) Additional dwellings. Additional dwellings above those authorized by Section 38-367(1) and (2) may be allowed at the discretion of the Township Board following a recommendation by the Planning Commission if the development provides additional amenities or preserves additional dedicated open space, beyond that required by Section 38-368, which would result in a significant recognizable benefit to the Township and residents of the PUD. In considering whether the PUD will result in a significant recognizable benefit to the Township and the residents of the PUD, the Planning Commission and Board shall consider whether the PUD includes one or more of the following items as well as similar items:

a. Recreational facilities such as playground areas with play equipment, ball fields, bike paths, constructed lake, community building or similar recreation facilities, with the exception of golf courses.

b. Additional landscaping to preserve or enhance the views along the roadway.

c. Enhancement of existing wetlands, or creation of lakes or ponds which are not designed solely to function as retention or detention facilities, but are designed primarily as recreational or visual amenities, subject to applicable regulations.

d. Provision of additional unique dedicated open space or mature stands of trees which would be of recognizable benefit to Township residents and residents of the PUD.

e. Provision of a public or private community water and/or sanitary sewer system.

f. If additional dwelling units are to be allowed, the maximum number of dwelling units shall be determined according to the formula in Section 38-367(2)a and f by utilizing the gross site acreage. In no case shall the number of dwelling units exceed that allowed by this subsection.

(4) Mixed-use developments.

a. Where a mix of commercial, residential, or other combinations of land uses are proposed for one PUD, the density of the residential portion of the PUD site shall be calculated based upon the net buildable acreage of only that portion of the site where residential uses are permitted by the underlying zoning district.

b. The formula to determine additional dwellings for a mixed-use PUD shall be based upon the gross site acreage of only that portion of the PUD site where residential uses are permitted by the underlying zoning district.

Sec. 38-368. Dedicated open space requirements. [Ord. No. ZO17-1, eff. 5-15-2016; amended by Ord. No. 2020-001, eff. 1-27-2020]

(a) A PUD with residential uses shall provide and maintain the following minimum amount of dedicated open space in accordance with the standards of this article. The Planning Commission shall have the discretion to recommend to the Township Board more than the minimum amount of dedicated open space required by the following, if such recommendation is made pursuant to the Planning Commission finding that the purpose and the objectives of the PUD District as required by Section 38-363 are met.

(1) For land zoned AG, a minimum of 40% of the gross site area devoted to residential use shall be permanently preserved as dedicated open space.

(2) For land zoned R-1, R-2 or R-3, a minimum of 20% of the gross site area devoted to residential use shall be permanently preserved as dedicated open space.

(3) For land zoned R-4 or R-5 and not served with public or private sewer, a minimum of 20% of the gross site area devoted to residential use shall permanently be preserved as dedicated open space. For land zoned R-4 or R-5 and served with public or private sewer, and for those uses proposed for multifamily development, a minimum of 15% of the gross site area devoted to residential use shall be permanently preserved as dedicated open space.

(4) For land zoned R-4 or R-5 and proposed for manufactured housing community, the regulations of Article IX of this chapter regarding minimum dedicated open space shall apply.

(b) Areas not considered dedicated open space. The following land areas shall not be considered, allowed, or approved as dedicated open space for the purposes of this section:

(1) The area within any public or private road easement or right-of-way or within streets, alleys, drives, or similar improvements pursuant to Section 38-367(2)d.2 of this chapter.

(2) Any easement for overhead utility lines, unless adjacent to qualified dedicated open space.

(3) Only 50% of the area of any existing floodplain, streams, wetlands, lakes, ponds, and slopes which are 20% or greater shall be counted as dedicated open space.

(4) The area within a platted lot or site condominium lot.

(5) The area of required setbacks or required distances between buildings.

(6) Proposed detention and retention ponds. Stormwater management facilities such as rain gardens, bioswales, vegetated filter strips, constructed wetlands, and similar facilities may be considered, allowed, or approved as dedicated open space upon recommendation of the Planning

Commission and approval by the Township Board based upon a review of the purpose and objectives in Section 38-373 and the standards in Section 38-373(i).

(7) Community drain fields if such areas are not completely underground.

(8) Any area devoted to a golf course.

(9) Landscaping buffers and greenbelts as required by ordinance.

Sec. 38-369. Standards for dedicated open space. [Ord. No. ZO17-1, eff. 5-15-2016]

The following standards shall apply to the dedicated open space provided in a PUD:

(1) Dedicated open space shall be located so as to preserve significant natural resources, natural features, scenic or wooded conditions, bodies of water, wetlands, or significant cultural features, such as existing landmark structures or vegetation.

(2) A portion of the dedicated open space may be required to be located along the public road frontage abutting the site. This area shall be left in its natural condition or landscaped to provide a view compatible with the existing or desired character of the area. When required, the depth of this area shall be recommended by the Planning Commission and as approved by the Township Board, but in no case shall it be less than 30 feet, and it shall not include the road right-of-way.

(3) If the site contains a lake, stream, or other body of water, the Township Board, following a recommendation from the Planning Commission, may require a portion of the dedicated open space to abut the body of water.

(4) Dedicated open space areas shall be linked with adjacent open spaces, public parks, bicycle paths or pedestrian paths where practicable.

(5) Grading in the dedicated open space shall be minimal, with the intent to preserve existing topography where practicable.

(6) Dedicated open space may consist of ballfields, tennis courts, children's play area, skate parks, swimming pools and related buildings, community buildings, and similar recreational facilities. No more than 50% of the dedicated open space may be devoted to these uses.

(7) The dedicated open space shall be available and usable for all residents of the PUD, subject to reasonable rules. Safe and convenient pedestrian access to the dedicated open space shall be provided.

(8) The dedicated open space shall be designed to be used primarily by residents of the PUD, but this shall not prohibit non-PUD residents from utilizing these accessory uses, provided rules for such use are set forth in the open space agreement required by Section 38-371 herein.

(9) Noncontiguous dedicated open space. If requested by the applicant, the Planning Commission may recommend and the Township Board may approve dedicated open space that is not contiguous with the rest of the PUD. In determining whether to approve noncontiguous dedicated open space, one or more of the following criteria shall apply:

a. The noncontiguous dedicated open space is located such that residents of the PUD can reasonably access and use the noncontiguous dedicated open space.

b. The noncontiguous dedicated open space will be open to use by the residents of the PUD and the general public.

c. The dedicated open space contains unique features not found on the lands contiguous to the PUD, and the noncontiguous dedicated open space will be open to use or observation by the residents of the PUD and the general public.

Sec. 38-370. Dedicated open space for nonresidential uses. [Ord. No. ZO17-1, eff. 5-15-2016]

The intent of this section is to ensure that each PUD that proposes nonresidential uses (such as commercial or institutional uses) shall provide permanent dedicated open space for the nonresidential portion of the PUD site in the form of civic space, such as a central green for sitting or viewing of small outdoor events, or provide objects or areas of interest such as a fountain or plaza, or provide rain gardens or other bioretention areas for the purpose of stormwater detention which shall also function as a visual amenity.

(1) Dedicated open space areas shall be arranged and designed to contribute to the attractiveness and function of the PUD and shall, insofar as reasonably possible, be interspersed throughout the site.

(2) At least one dedicated open space area shall be a central green, plaza, or civic square which functions as a focal point for the nonresidential portions of the PUD and serves as an area where social, civic, or passive activities can take place. This area shall be of sufficient size and design to serve as a visual and functional civic amenity for sitting, viewing, dining, or other similar outdoor activity and which, in the opinion of the Township Board, satisfies the intent of this section.

Sec. 38-371. Guarantee and maintenance of dedicated open space. [Ord. No. ZO17-1, eff. 5-15-2016]

(a) The applicant shall provide an open space preservation and maintenance agreement to the Township guaranteeing that all dedicated open space portions of the PUD shall always be maintained in the manner approved. The agreement shall permanently bind all successors and future owners in title. This provision shall not prohibit a transfer of ownership or control of all or any part of the PUD, provided notice of such transfer is provided to the Township and the land uses continue as approved in the PUD plan, unless an express amendment is approved by the Township Board.

(b) The agreement will be subject to the review and approval of the Township Board and may consist of a recorded deed restriction, covenants that run perpetually with the land, or a conservation easement established according to the Michigan Conservation and Historic Preservation Act, Public Act 197 of 1980, as amended.

(c) The agreement shall:

(1) Indicate the permitted use(s) of the dedicated open space.

(2) Require that the dedicated open space be maintained by parties who have an ownership interest in the dedicated open space.

(3) Provide for scheduled maintenance of the dedicated open space, including necessary pruning, mowing, replacement of dead or diseased vegetation, and harvesting of trees and new plantings.

(4) Provide for scheduled maintenance of any structures or facilities located within the dedicated open space, including trails.

(5) Provide that maintenance may be undertaken by Park Township in the event that the dedicated open space is inadequately maintained or is determined by the Township to be a public nuisance. The agreement shall also provide that any costs incurred by the Township in providing such maintenance, including, but not limited to, all costs of labor (wages and benefits), materials, equipment, and administrative costs, shall be proportionately assessed to the owners of the

properties within the PUD and that any unpaid assessment will become a lien against the property.

Sec. 38-372. Public and private street connections to adjacent property. [Ord. No. ZO17-1, eff. 5-15-2016]

(a) Public or private streets may be required to be extended to an adjacent property line by the Township Board following a recommendation from the Planning Commission. In making such a decision and recommendation, the Township Board and Planning Commission shall consider the following standards:

(1) The road extension is a logical method to achieve the safe and efficient movement of vehicles and pedestrians between residential areas and to reduce the amount of vehicle trips which would otherwise need to utilize the street system to access adjoining residential areas. In making this determination, the Township Board and Planning Commission shall consider the likelihood of the adjacent property being developed, whether the natural site features on the adjacent property preclude or present difficulty in extending the public or private road, and if the adjacent site is already developed so as to prevent the extension of the public or private road.

(2) The road extension would not result in future traffic from off site creating unsafe situations for the residents of the project proposed by the applicant.

(b) If such a connection is required, the applicant shall construct the road to the adjacent property line at the time that the public or private road is built or the applicant shall grant an appropriate easement to the adjoining property for the road connection and illustrate that easement for the future road on the approved PUD site plan, and shall record an agreement (subject to the approval by the Township) to construct the road connection within the easement when the adjacent property develops and the Planning Commission determines the necessity of the road connection. The Township Board may require the applicant to provide a bond, letter of credit, or other financial guarantee at the time of the PUD approval to ensure that the road is extended as required.

Sec. 38-373. Procedures. [Ord. No. ZO17-1, eff. 5-15-2016]

(a) Preapplication conference and presentation.

(1) Before submitting an application for PUD approval, the applicant shall meet with the Zoning Administrator, who may request the attendance of the Township Planner, Township Engineer, or other professional or Township official.

(2) The applicant shall provide a conceptual drawing or other information about the development of the property.

(3) The purpose of the preapplication meeting is to explain the PUD review process to the applicant along with site design requirements in order to assist the applicant in preparing a PUD site plan for review by the Planning Commission.

(4) No formal action may be taken at a preapplication conference, nor will any statements made at the preapplication conference be legally binding commitments.

(5) The applicant shall, upon request by the Zoning Administrator or other Township official, make a preapplication presentation to the Planning Commission. This presentation shall include a conceptual drawing and other information sufficient to inform the Planning Commission of the

proposal and to provide the applicant with preliminary comments from the Planning Commission. No formal action may be taken at a preapplication presentation, nor will any statements made at the preapplication presentation be legally binding commitments.

(b) Submit PUD application materials. Following the preapplication conference, the applicant shall submit an application for PUD approval that shall include a completed application form and 10 sets of the preliminary PUD development plan, including an electronic file of the development plan. The application materials shall be submitted to the Zoning Administrator in accordance with the submittal schedule established by the Planning Commission, along with the fee or fees as set by resolution of the Township Board. The application shall at a minimum contain all of the following information:

(1) The applicant's name, address, and phone number.

(2) Proof that the applicant is the owner of the property or has a sufficient legal or financial interest in the property.

(3) The name, address and phone number of the owner(s) of record if different than the applicant.

(4) The address of the property.

(5) Legal description of the property.

(6) Current zoning of the property.

(7) Project description.

(8) Size of the property in acres, and any information deemed necessary by the Planning Commission to determine gross site acreage and net buildable acreage.

(9) Signature of the applicant and owner of the property.

(10) A narrative describing:

a. The objectives of the PUD and how it relates to the intent of the PUD District as described in Section 38-363.

b. The relationship of the PUD to the Park Township Master Plan.

c. Phases of development and approximate time frame for each phase.

d. Proposed deed restrictions, covenants, or similar legal instruments to be used within the PUD.

e. Anticipated start and completion of construction.

f. Location, type, and size of areas to be dedicated open space.

g. All proposed modifications from the zoning regulations which would otherwise be applicable to the uses and structures of the current zoning of the property in the absence of a PUD.

(c) Preliminary PUD development plan. The preliminary PUD development plan shall be drawn at a scale of not more than one inch equals 100 feet and shall contain all of the information as required by Section 38-102 of this chapter and the following information, unless specifically waived by the Planning Commission:

(1) Small scale sketch of properties with parcel lines, streets, zoning, and uses of land within 1/2 mile of the site. This sketch shall be sufficient to illustrate the character of the area surrounding the proposed PUD.

(2) Significant natural features and other natural characteristics on the site and within 100 feet of the site, including, but not limited to, open space, stands of trees, bodies of water, brooks, streams, wetlands, floodplains, slopes of 20% or greater, and similar natural features.

(3) Significant cultural amenities, such as historic sites or structures, fence rows of trees, specimen trees, or other culturally significant features.

(4) Proposed lots, with lot line dimensions and the area of all lots or site condominium units, and all proposed setbacks. Notes on the PUD development plan shall state all proposed modifications from the zoning regulations which would otherwise be applicable to the uses and structures of the current zoning of the property in the absence of a PUD.

(5) All driveways opposite the site.

(d) Environmental impact assessment. The Planning Commission may require an environmental impact assessment as part of the preliminary or final PUD development plan.

(e) Review of preliminary PUD development plan. The Planning Commission shall review the preliminary development plan and make recommendations to the applicant regarding the PUD, together with any recommended changes or modifications thereof.

(f) Final PUD development plan.

(1) After receiving the recommendations of the Planning Commission on the preliminary PUD development plan, the applicant for a PUD shall submit a final PUD development plan to the Township in accordance with the requirements for submittal of the preliminary PUD development plan, along with the fee or fees as set by resolution of the Township Board.

(2) The final PUD development plan shall contain all of the information required for preliminary PUD plan review (unless specifically waived by the Planning Commission as not being reasonably necessary for the consideration of the PUD), plus the following:

a. All of the drawings, narrative, studies, assessments, and other information and materials comprising the preliminary PUD development plan, including all of the recommendations of the Planning Commission thereon; or if the applicant has not incorporated all of such recommendations, the final PUD development plan shall indicate such fact and shall state the basis or grounds upon which such recommendations have not been included.

b. Projected time for completion of the entire PUD, proposed phasing, if any, of the PUD, and the projected time for completion of each phase.

c. Any other information reasonably required by the Planning Commission or Township Board in connection with the review of the PUD and consideration of the approval of development of the lands in accordance with the PUD plan.

(g) Planning Commission review of final PUD development plan. The Planning Commission shall prepare a report containing its recommendation to the Township Board concerning the PUD request. The report shall state the conclusions of the Planning Commission concerning the PUD request, the basis for the Planning Commission's recommendation, and any conditions recommended for approval

of the PUD.

(h) Planning Commission public hearing on final PUD development plan. Prior to making a recommendation to the Township Board, the Planning Commission shall hold an advisory public hearing on the final PUD development plan. The giving of public notice for the public hearing shall be as required by the Michigan Zoning Enabling Act, PA 110 of 2006, as amended.[2]

(i) Standards for approval. The recommendation of the Planning Commission and the decision of the Township Board to approve a PUD shall be based on a finding that the application meets all of the following standards:

(1) The PUD will result in a recognizable and substantial benefit to ultimate users of the project and to the community, and the benefit would otherwise be unfeasible or unlikely to be achieved.

(2) The PUD will not result in a significant increase in the need for public services and facilities and will not place a significant burden upon surrounding lands or the natural environment, unless the resulting adverse effects are adequately provided for or mitigated by features of the PUD as approved.

(3) The PUD will be generally compatible with the Master Plan and consistent with the intent and objectives of this Chapter 38, Article III, Division 8, and this chapter.

(4) The PUD will not result in significant adverse effects upon nearby or adjacent lands and will be generally compatible with the character of the surrounding area.

(5) The PUD will protect all floodplains and wetlands from filling, except as approved for essential services or recreation amenities.

(6) The PUD will preserve and maintain mature woodlands, fields, pastures, and meadows and create sufficient buffer areas to minimize conflicts between residential and agricultural uses.

(7) The PUD will leave scenic views and vistas unblocked or uninterrupted, particularly as seen from public road rights-of-way, insofar as practicable.

(8) The PUD will protect the rural roadside character where desirable.

(9) Pedestrian walkways may be provided so that pedestrians can walk safely and easily throughout the site.

(10) The individual lots, buildings, roadways, and open space areas are designed to minimize the alteration of natural and environmental site features.

(11) The PUD will be adequately served by public utilities and services such as police and fire protection or public or on-site community water or sanitary sewer.

(12) The PUD shall be in compliance with all applicable federal, state, county, and Township laws, ordinances, and regulations.

(13) If a PUD is to be completed in phases, the PUD shall be designed so that each phase is complete in and of itself, in terms of services, facilities and open spaces, and so that each phase contains all of the features necessary to ensure the protection of natural resources and the health, safety and welfare of the users of the PUD and the occupants of the surrounding area. The Planning

2. **Editor's Note: See MCL § 125.3101 et seq.**

Commission may recommend and the Township Board may require that neighborhood amenities such as recreational facilities, walkways, and similar facilities be completed upon occupancy of a determined number or percentage of dwelling units or nonresidential uses.

(j) Public hearing and final consideration of the PUD by Township Board.

(1) The Township Board shall review the final PUD development plan and the recommendations submitted by the Planning Commission. The Township Board shall conduct a public hearing and provide notice as required by the Michigan Zoning Enabling Act, PA 110 of 2006, as amended.

(2) Following the public hearing, the Township Board shall determine whether the final PUD development plan complies with the standards of Section 38-673(i) and with the conditions recommended by the Planning Commission; whether the PUD promotes the intent and purpose of this chapter; and whether the PUD will be consistent with the public health, safety, and welfare needs of the Township.

(3) Upon a determination that a proposed project meets all such standards, conditions, and requirements, the Township Board shall approve the final PUD development plan and may impose reasonable conditions on approval as provided in Subsection (k) below.

(k) Conditions of approval.

(1) The Township Board may impose reasonable conditions upon any PUD approval. Such conditions may include those reasonably necessary to ensure that public services and facilities affected by a PUD will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to ensure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:

a. They shall be designed to protect natural resources; the health, safety, and welfare and the social and economic well-being of those who will use the PUD; residents, and landowners immediately adjacent to the PUD; and the community as a whole.

b. They shall be related to the valid exercise of the police power and the purposes which are affected by the PUD.

c. They shall be reasonably necessary to meet the intent and purpose of this chapter, be related to the standards established in this Chapter 38, Article III, Division 8, for the proposed PUD under consideration, and be necessary to ensure compliance with those standards.

(2) The conditions imposed with respect to the approval of a PUD shall be recorded in the record of the approval action and shall remain unchanged except upon the mutual written consent of the Township Board and the property owner. The Township Board shall maintain a record of all conditions which are imposed.

Sec. 38-374. Planned unit developments subject to land division, subdivision, condominium and site condominium regulations. [Ord. No. ZO17-1, eff. 5-15-2016]

(a) Applications for planned unit developments proposed as land divisions or subdivisions shall be subject to the Park Township regulations for land divisions and subdivisions of Chapter 18, Land

Divisions and Subdivisions.

(b) Applications for planned unit developments proposed as condominiums shall be subject to the requirements of the State of Michigan Condominium Act, Act 59 of 1978, as amended.[3]

Sec. 38-375. Amendments to an approved PUD. [Ord. No. ZO17-1, eff. 5-15-2016]

An approved final PUD development plan (and any conditions imposed upon final PUD approval) shall not be changed except upon the mutual written consent of the Township Board and the applicant as required by this section.

(1) Minor amendments. A minor change may be approved by the Zoning Administrator, who shall notify the Planning Commission of the minor change and shall indicate that such change does not substantially change the basic design or alter the conditions required for the PUD. The following items shall be considered as minor changes:

a. Reduction of the size of any building and/or sign.

b. Movement of buildings and/or signs by no more than 10 feet.

c. Plantings approved in the landscape site plan may be replaced by similar types of landscaping.

d. Changes in floor plans which do not alter the character of the use.

e. Internal rearrangement of a parking lot which does not affect the number of parking spaces or alter access locations or design.

f. Changes required or requested by the Township for safety reasons.

g. Changes which will preserve the natural features of the site without changing the basic site layout.

h. Other similar changes of a minor nature proposed to be made to the configuration, design, layout or topography of the site plan which are deemed by the Zoning Administrator to be not material or significant in relation to the entire site and which the Zoning Administrator determines would not have any significant adverse effect on adjacent or nearby lands or the public health, safety and welfare.

(2) The Zoning Administrator may refer any decision regarding any proposed change to an approved PUD to the Planning Commission for review and approval regardless of whether the change may qualify as a minor change. In making a determination whether a proposed change is a minor change, or whether to refer a proposed change to the Planning Commission for approval, the Zoning Administrator may consult with the Chairperson of the Planning Commission.

(3) If the Zoning Administrator determines that the requested modification to the approved PUD is not minor, resubmission to the Planning Commission for a formal amendment shall be required and shall be conducted in the same manner as an original application. Adding additional land to an approved PUD may not be deemed a minor change but will always require an amendment to the approved PUD.

Sec. 38-376. Performance guarantees. [Ord. No. ZO17-1, eff. 5-15-2016]

The applicant may be required to provide a bond, letter of credit, escrow deposit, or other reasonable

3. **Editor's Note: See MCL § 559.101 et seq.**

performance guarantees or assurances deemed satisfactory to the Township Board in the circumstances and as authorized by law. The amount and form of the performance guarantee shall be determined by the Township Board and may be based upon a recommendation from the Planning Commission.

Sec. 38-377. Time limitations on development. [Ord. No. ZO17-1, eff. 5-15-2016]

(a) Each PUD shall be under substantial construction within one year after the date of approval of the final PUD development plan and adoption by the Township Board of a PUD resolution that includes a report stating all conditions of approval of the PUD. If the requirement for substantial construction within one year is not met, following a review and recommendation of the Planning Commission, the Township Board may, in its discretion, grant an extension not exceeding one year, provided that the applicant submits reasonable evidence to the Township showing that unforeseen difficulties or special circumstances have been encountered, causing delay in commencement of the PUD.

(b) If the PUD has not been commenced within the above-stated period of time, or within any authorized extension thereof, any building permits issued for the PUD (or any part thereof) shall be of no further effect, and all approvals of the PUD shall be void.

(c) If the PUD has been approved with more than one phase, and substantial construction on any phase has not commenced within one year from the period of completion of the preceding phase, or within any authorized extension thereof, following a review and recommendation of the Planning Commission, the Township Board may, in its discretion, grant an extension not exceeding one year, provided that the applicant submits reasonable evidence to the Township showing that unforeseen difficulties or special circumstances have been encountered, causing delay in commencement of the phases of the PUD. If approval of any extensions for construction of phases of the PUD are denied, any building permits issued for the PUD (or any part thereof) shall be of no further effect, and all approvals of the PUD shall be void.

Sec. 38-378. Appeal or variance. [Ord. No. ZO17-1, eff. 5-15-2016]

The Zoning Board of Appeals shall not have jurisdiction to accept appeals or to grant variances with respect to an approved PUD. Variances within a PUD that is within a subdivision shall be subject to the requirements of Chapter 18, Article II, Division 5, Section 18-151, of the Code of Ordinances.

Sec. 38-379. Existing approved PUDs. [Ord. No. ZO17-1, eff. 5-15-2016]

(a) Planned unit developments that were given either preliminary or final PUD development plan approval prior to May 22, 2017, shall be considered to be conforming uses and shall continue to be regulated by the approved preliminary or final PUD development plan and any conditions imposed for that particular PUD.

(b) A minor change to a planned unit development that was given either preliminary or final PUD development plan approval prior to May 22, 2017, may be approved by the Zoning Administrator according to the requirements of Section 38-375. Any change that is not a minor change shall be resubmitted to the Township in the same manner as the original application and shall be subject to the requirements of Division 8 of Article III as of the effective date of May 22, 2017.

Sec. 38-380. through Sec. 38-421. (Reserved)

DIVISION 9
C-1 Neighborhood Business District

Sec. 38-422. Description and purpose. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-51, eff. 9-5-2003]

The C-1 Neighborhood Business District is for neighborhood convenience shopping, including retail businesses or service establishments that supply commodities or perform services that meet the daily needs of the neighborhood.

Sec. 38-423. Use regulations. [Ord. No. Z, eff. 2-7-1974; amended by Ord. No. Z-51, eff. 9-5-2003; Ord. No. Z-58, eff. 12-13-2007; Ord. No. 2018-1, eff. 3-23-2018]

Land, buildings or structures in the C-1 Neighborhood Business District may be used for the following purposes only:

(1) Those nonresidential uses which are permitted in the residential zoning districts, subject, except as specifically provided otherwise in this chapter, to the same conditions, restrictions and requirements as are provided in the residential zoning districts.

(2) Bakery goods store.

(3) Banks, loan and/or finance offices.

(4) Barbershop or beauty shop.

(5) Book, stationery or gift store.

(6) Candy store, soda foundation and/or ice cream store.

(7) Clothes cleaning and/or laundry pickup station.

(8) Clothing and dry goods store.

(9) Delicatessen store.

(10) Dress shop.

(11) Drugstore.

(12) Florist and gift shop without nursery.

(13) Funeral home.

(14) Grocery store and meat market.

(15) Hardware store.

(16) Household appliance store.

(17) Jewelry store.

(18) Nursery school and day nurseries.

(19) Paint and wallpaper store.

(20) Parking lots.

(21) Photographer.

(22) Radio and television store.

(23) Restaurants and/or cafes without dancing, floor shows or drive-in service.

(24) Laundromats.

(25) Service stations, including minor auto repairs, if all repair work is conducted wholly within a completely enclosed building, when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The size, nature and character of the gas station;

b. The proposed location of the gas station;

c. The location of entrance drives and access to the gas station with respect to potential traffic congestion or hazards;

d. How well the gas station harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood;

e. The need and necessity for the products and services of the gas station at the proposed location; and

f. The effect of the gas station on adjoining properties and the surrounding neighborhood.

(26) Shoe repair shop.

(27) Tailor and/or dressmaker.

(28) Variety store, including notions and "5 and 10" stores.

(29) Other similar retail business or service establishments when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The size, nature and character of the proposed use;

b. The proximity of the proposed use to adjoining properties;

c. The parking facilities provided for the proposed use;

d. How well the proposed use harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood; and

e. The effect of the proposed use on adjoining properties and the surrounding neighborhood.

(30) Churches when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The size, character and nature of the church building;

b. The proximity of the church to adjoining properties;

c. The off-street parking that is to be provided for the church;

d. The potential traffic congestion and hazards that will be caused by the church use;

e. The degree with which the church harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood; and

f. The effect of the church on adjoining properties and the surrounding neighborhood.

(31) Offices for businesses that are consistent with a Neighborhood Business District.

(32) Single-family dwelling units combined with nonresidential units in the same building, if the building conforms to Chapter 10, Buildings and Building Regulations.

(33) Temporary local produce markets when approved by the Planning Commission in accordance with Section 38-520. An enclosed building is not required for this use, and the requirement for public water may be waived. Setback requirements are as described in Section 38-520. **[Added by Ord. No. 2023-01, eff. 4-15-2023]**

Sec. 38-424. Required conditions. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-51, eff. 9-5-2003]

(a) With the exception of automobile parking and off-street parking, all business, service or processing shall be conducted wholly within a completely enclosed building.

(b) All uses permitted in the C-1 Neighborhood Business District shall be serviced with public water.

(c) The Planning Commission shall approve a site plan for any permitted use in this zoning district, which is in accordance with the requirements of Article II, Division 3, of this chapter, before a building permit is issued.

(d) Lighting facilities shall be equipped with shielding so as to reflect the light downward and away from adjoining properties.

Sec. 38-425. Height regulation. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-51, eff. 9-5-2003]

No building or structure shall exceed 35 feet in height.

Sec. 38-426. Area regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-51, eff. 9-5-2003; Ord. No. Z-56, eff. 8-22-2006]

No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area and building coverage requirements.

(1) Front yard. Except as otherwise provided in Section 38-494, there shall be a front yard of not less than 75 feet.

(2) Side yard.

a. Where the side of a lot in a C-1 Neighborhood Business Zoning District abuts upon the side of a lot in any R or AG Zoning District, each side yard shall be not less than 25 feet.

b. There shall be a side yard of not less than 50 feet on the public street side or private road side of a corner lot.

c. No side yard shall be required when directly abutting other commercial uses or land included in a C Zoning District.

(3) Rear yard.

a. Where the rear of a lot in a C-1 Zoning District abuts any R Zoning District or AG Zoning District, there shall be a rear yard of not less than 25 feet; provided, however, that where a public alley separates the rear of a C-1 Zoning District lot from the side yard of a lot in any R Zoning District or AG Zoning District, the full width of the alley shall be considered as part of the rear yard in determining its depth. This shall apply to all structures and accessory buildings.

b. In all other cases, there shall be a rear yard of not less than 10 feet.

(4) Screening and buffering. Side yards and rear yards adjoining any lot in an R or AG Zoning District shall be screened by a solid-wall or tight-board fence six feet in height or equivalent screening with vegetative plantings. A green space of not less than 15 feet deep shall be maintained along each public street and private road to act as a buffer.

(5) Lot area. The minimum lot area shall be 1/2 acre; provided, however, that all private sewage disposal systems not connected to a public sewer must be approved by the Ottawa County Health Department. The minimum lot width shall be 125 feet.

Sec. 38-427. through Sec. 38-450. (Reserved)

DIVISION 10
C-2 Resort Service District

Sec. 38-451. Description and purpose. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-51, eff. 9-5-2003]

The C-2 Resort Service District is for commercial uses that primarily serve tourists and seasonal residents.

Sec. 38-452. Use regulations. [Ord. No. Z, eff. 2-7-1974; amended by Ord. No. Z-51, eff. 9-5-2003; Ord. No. Z-58, eff. 12-13-2007; Ord. No. 2018-1, eff. 3-23-2018]

Land, buildings, or structures in the C-2 Resort Service District may be used for the following purposes only:

(1) Amusement enterprises.

(2) Bakery goods store.

(3) Barbershop or beauty shop.

(4) Book, stationery or gift store.

(5) Campgrounds when authorized as a special use by the Planning Commission. In considering such authorization, the Planning Commission shall consider the following standards:

a. The proposed location for the campground;

b. The size, nature and character of the campground and any buildings or structures to be utilized with the campground;

c. The proximity of the campground to adjoining properties;

d. The parking facilities provided for the campground;

e. The location of entrances and access to the campground in terms of any traffic congestion or hazards which will be occasioned by the campground; and

f. The effect of the campground on adjoining properties and the surrounding neighborhood.

(6) Candy store, soda fountain, ice cream store.

(7) Delicatessen store.

(8) Drive-in car eating places when authorized as a special use by the Planning Commission. In considering such authorization, the Planning Commission shall consider the following standards:

a. The proposed location for the drive-in;

b. The size, nature and character of the buildings and structures to be utilized for the drive-in;

c. The proximity of the drive-in to adjoining properties;

d. The parking facilities provided for the drive-in;

e. The location of entrances and drives in terms of any traffic congestion or hazards which will be occasioned by the drive-in;

f. How well the drive-in harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood;

g. The hours of drive-in operation and any potential disturbance or nuisance of the drive-in operation for adjoining properties and the surrounding neighborhood; and

h. The effect of the drive-in on adjoining properties and the surrounding neighborhood.

(9) Drugstore.

(10) Florist, gift and antique shop, but not including nursery.

(11) Grocery store and meat market.

(12) Hotels and motels.

(13) Laundromats.

(14) Liquor store, including beer and wine sales.

(15) Lodge hall, private clubs, and banquet facilities.

(16) Single-family, two-family, or multifamily dwellings combined with nonresidential units in the same building if the building conforms to Chapter 10, Buildings and Building Regulations; multifamily dwelling units that comply with Division 7 of this article (R-5 Low Density Multifamily Residence District) if the development is five acres or less.

(17) Parking lots.

(18) Photographer.

(19) Resorts, if the development is four acres minimum.

(20) Restaurants, cafes, cocktail lounges.

(21) Service stations when authorized as a special use by the Planning Commission, including minor auto repairs, provided all repair work is conducted wholly within a completely enclosed building. In considering such authorization, the Planning Commission shall consider the same standards as are provided in Section 38-423(25).

(22) Theater, except drive-in theater.

(23) Marinas when authorized as a special use by the Planning Commission. In considering such authorization, the Planning Commission shall consider the following standards:

a. The size, nature and character of the marina;

b. The proposed location of the marina;

c. The location of entrances and drives leading to the marina with respect to potential traffic congestion or hazards;

d. The parking facilities to be provided for the marina;

e. The location and character of the storage areas and facilities to be provided by the marina for boats, cradles, and other boat accessories;

f. The facilities to be provided by the marina for the display of new and used boats for sale;

g. How well the marina harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood;

h. Any potential disturbance or nuisance from the marina operation for adjoining properties and the surrounding neighborhood; and

i. The effect of the marina on adjoining properties and the surrounding neighborhood.

(24) Other similar retail business, offices, or service establishments when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The size, nature and character of the proposed use;

b. The proximity of the proposed use to adjoining properties;

c. The parking facilities provided for the proposed use;

d. How well the proposed use harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood; and

e. The effect of the proposed use on adjoining properties and the surrounding neighborhood.

(25) Churches when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

a. The size, character and nature of the church building;

b. The proximity of the church to adjoining properties;

c. The off-street parking that is to be provided for the church;

d. The potential traffic congestion and hazards that will be caused by the church use;

e. The degree with which the church harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood; and

f. The effect of the church on adjoining properties and the surrounding neighborhood.

(26) Temporary local produce markets when approved by the Planning Commission in accordance with Section 38-520. The requirement for public water may be waived. Setback requirements are as described in Section 38-520. **[Added by Ord. No. 2023-01, eff. 4-15-2023]**

Sec. 38-453. Required conditions. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-51, eff. 9-5-2003]

(a) A site plan for any permitted use in the C-2 Resort Service District, which is in accordance with the requirements of Article II, Division 3, of this chapter, shall be approved by the Planning Commission before a building permit is issued.

(b) Lighting facilities shall be equipped with shielding so as to reflect the light downward and away from adjoining properties.

(c) All uses permitted in this zoning district shall be serviced with public water.

Sec. 38-454. Height regulation. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-51, eff. 9-5-2003]

No building or structure shall exceed 35 feet in height.

Sec. 38-455. Area regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-51, eff. 9-5-2003; Ord. No. Z-56, eff. 8-22-2006]

No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area and building coverage requirements.

(1) Front yard. Except as otherwise provided in Section 38-494, there shall be a front yard of not less than 75 feet.

(2) Side yard.

a. Where the side of a lot in a C-2 Resort Service District abuts upon the side of a lot in any R or AG Zoning District, each side yard shall be not less than 25 feet.

b. There shall be a side yard of not less than 50 feet on the public street side or private road side of a corner lot.

c. No side yard shall be required when directly abutting other commercial uses or land included in a C Zoning District.

(3) Rear yard.

a. Where the rear of a lot in a C-2 Zoning District abuts any R Zoning District or AG Zoning District, there shall be a rear yard of not less than 25 feet; provided, however, that where a public alley separates the rear of a C-2 Zoning District lot from the side yard of a lot in any R Zoning District or AG Zoning District, the full width of the alley shall be considered as part of the rear yard in determining its depth. This shall apply to all structures and accessory buildings.

b. In all other cases, there shall be a rear yard of not less than 10 feet.

(4) Screening and buffering. Side yards and rear yards adjoining any lot in an R or AG Zoning District shall be screened by a solid-wall or tight-board fence six feet in height or equivalent screening with vegetative plantings. A green space of not less than 15 feet deep shall be maintained along each public street or private road to act as a buffer.

(5) Lot area. The minimum lot area shall be 1/2 acre; provided, however, that all private sewage disposal systems not connected to a public sewer must be approved by the Ottawa County Health Department. The minimum lot width shall be 125 feet.

Sec. 38-456. Hotel, motel, resort regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-51, eff. 9-5-2003]

(a) Minimum unit size. No hotel, motel, or resort unit may be less than 250 square feet.

(b) Density requirements.

(1) A hotel, motel, or resort that is served by both public water and sewer shall comply with the following density requirements by meeting the minimum lot area established in the following table.

Density for Facilities Served by Public Water and Sewer

Unit Size Interior Dimensions (square feet)	Minimum Lot Area (square feet per unit)
250	2,500
400	3,500
650	4,500

(2) A hotel, motel, or resort that is not served by both public water and sewer shall comply with the following density requirements by meeting the minimum lot area established in the following table.

Density for Facilities Not Served by Public Water and Sewer

Unit Size Interior Dimensions (square feet)	Minimum Lot Area (square feet per unit)
250	5,000
400	7,000
650	9,000

(c) Kitchen regulations.

(1) Any hotel, motel or resort unit that is between 250 square feet and 500 square feet in size may have a microwave and refrigerator installed within the unit, but shall have neither a kitchen sink nor a stove/oven.

(2) Any hotel, motel or resort unit that is more than 500 square feet in size may have a kitchen. If a kitchen is installed in any hotel, motel or resort unit, there must be a designated eating area, a stove, a kitchen sink, and a refrigerator.

(d) General requirements. All hotels, motels, and resorts shall have an on-site manager and shall provide housekeeping services.

DIVISION 11
P Public Lands and Open Space District
[Added by Ord. No. 2021-1, eff. 4-24-2021]

Sec. 38-457. Description and purpose.

The Public Lands and Open Space District is designed to provide area and apply guidelines for buildings and facilities that are used to provide governmental or public services. This zoning district also provides for public park and recreational facilities, natural areas, trails, wetlands, and similar types of open space, through the following goals and objectives:

(1) To acknowledge the publicly owned properties that presently exist within the Township as assets to the community intended to remain as such for future generations.

(2) To immediately include any properties currently owned or acquired by Park Township that are used or authorized for public use and/or are reserved as open space or for public recreation.

(3) To accommodate dedicated areas of open space.

(4) To accommodate dedicated areas for government buildings and uses.

(5) To accommodate dedicated areas for institutional uses.

(6) To accommodate dedicated areas for recreational use.

(7) To promote public land usage and development that are compatible with the preservation of natural amenities and open space areas.

Sec. 38-458. Use regulations.

Land, buildings, or structures in the Public Lands and Open Space District shall be used for the following purposes only:

(1) Public conservation areas and structures for the development, protection, and conservation of open space, watersheds, water, soil, forests, and wildlife resources;

(2) Noncommercial public recreational facilities, including parks, playgrounds, camps, centers, parkways, and other similar recreational facilities;

(3) Public buildings and public service installations;

(4) Public cemeteries;

(5) Parking lots to serve a use provided for within the P District;

(6) Wireless and broadcast communication facilities;

(7) Accessory uses or structures, clearly incidental to any of the above permitted uses, and subject to Section 38-491; and

(8) Other similar uses of a public or open space nature, when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

EXHIBIT 3

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a. The size, nature and character of the proposed use;

b. The proximity of the proposed use to adjoining properties;

c. The parking facilities provided for the proposed use;

d. How well the proposed use harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood; and

e. The effect of the proposed use on adjoining properties and the surrounding neighborhood.

Sec. 38-459. Required conditions.

(a) The Planning Commission may approve a site plan for any permitted use in this zoning district, which is in accordance with the requirements of Article II, Division 3, of this chapter, before a building permit is issued.

(b) Lighting facilities shall be equipped with shielding so as to reflect the light downward and away from adjoining properties.

Sec. 38-460. Height regulation.

No building or structure shall exceed 35 feet in height, except when authorized pursuant to Section 38-458(6) herein.

Sec. 38-461. Area regulations.

No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area, and building coverage requirements.

(1) Front yard. No requirement, except when abutting a residential zoning district, in which case the front yard setback to the building or parking area shall be the required setback of the abutting residential zoning district.

(2) Side yard. No requirement, except when abutting a residential zoning district, in which case the side yard setback to the building or parking area shall be 10 feet.

(3) Rear yard. No requirement, except when abutting a residential zoning district, in which case the rear yard setback to the building or parking area shall be 10 feet.

(4) Lot area. No requirement.

Sec. 38-462. through Sec. 38-479. (Reserved)

ARTICLE IV
Supplemental Regulations

Sec. 38-480. Provisions apply to all districts.

These general provisions shall apply to all zoning districts.

Sec. 38-481. The effect of zoning. [Ord. No. Z, eff. 2-7-1974]

Zoning applies to every building, structure or use. No building, structure or land shall be used or occupied, and no building or structure or part thereof shall be erected, moved, placed, reconstructed, extended, enlarged, or altered, except in conformity with this article.

Sec. 38-482. Restoration of unsafe buildings. [Ord. No. Z, eff. 2-7-1974]

Subject to the provisions of Article VIII of this chapter, pertaining to nonconforming uses, buildings or structures, nothing in this article shall prevent the strengthening or restoring to a safe condition of any part of any building or structure that is unsafe.

Sec. 38-483. Area, height and use conditions and exceptions. [Ord. No. Z, eff. 2-7-1974; amended by Ord. No. Z-3, eff. 2-3-1977; Ord. No. Z-9, eff. 4-3-1980; Ord. No. Z-14, eff. 4-191982; Ord. No. Z-20, eff. 7-8-1988; Ord. No. Z-27, eff. 1-15-1990; Ord. No. Z-56, eff. 8-22-2006; Ord. No. ZO16-1, eff. 6-16-2016]

(a) Required area or space. A lot, yard, court, parking area or other space shall not be divided, altered or reduced so as to make it not in conformance with the minimum requirements of this article. If already less than the minimum requirements of this article, a lot, yard, court, parking area or other space shall not be divided, altered or reduced so as to increase its noncompliance with such minimum requirements.

(b) Existing lots of record. If a lot in an agricultural or residential zoning district which is platted or otherwise of record as of the effective date of the ordinance from which this chapter is derived does not comply with the area and/or width requirements of its zoning district, then such lot may be used for single-family use only and then only if such single-family use is first authorized by the Zoning Board of Appeals as a matter for the Zoning Board of Appeals decision pursuant to Section 603 of the Zoning Act (MCL § 125.3603); provided, however, that a lot which is platted or otherwise of record as of the effective date of the ordinance from which this chapter is derived which is located in an AG, R-1, R-2, R-3 or R-4 Zoning District may be used for single-family use only without authorization from the Zoning Board of Appeals if the lot has a minimum lot area of 6,500 square feet and if there is compliance with all yard requirements for the R-3 Low Density Single-Family Residence District or there is compliance with any specific exception to the area and/or width requirements of the particular zoning district in which the lot is located. In considering such authorization, the Zoning Board of Appeals shall consider the following standards:

(1) The size, character and nature of the residential building and accessory buildings to be erected and constructed on the lot:

a. The maximum height of the residential building shall be reduced by the same percentage the total area of the lot or parcel of land bears to 6,500 square feet, or 20 feet, whichever is greater.

b. Side yards may be reduced by the same percentage the total area of the lot or parcel of land bears to the minimum lot area requirement of the zoning district, or five feet, whichever is greater;

(2) The effect of the proposed use on adjoining properties and the surrounding neighborhood;

(3) The effect of the proposed use on light and air circulation of adjoining properties;

(4) The effect of any increased density of the intended use on the surrounding neighborhood; and

(5) All off-street parking requirements are met.

(c) If the lot in a commercial zoning district which is platted or otherwise of record as of the effective date of the ordinance from which this chapter is derived does not comply with the area and/or width requirements of the commercial zoning district, then such lot may be used only if first authorized by the Zoning Board of Appeals as a matter for Zoning Board of Appeals decision pursuant to Section 603 of the Zoning Act (MCL § 125.3603); provided, however, that a lot which is platted or otherwise of record as of the effective date of the ordinance from which this chapter is derived may be used for a commercial use without authorization of the Zoning Board of Appeals if the lot has a minimum area of 12,000 square feet and if there is compliance with all yard requirements for the commercial zoning district. In considering such authorization, the Zoning Board of Appeals shall consider the following standards:

(1) The size, character and nature of the commercial building and accessory buildings to be constructed on the lot;

(2) The effect of the proposed use on adjoining properties and the surrounding neighborhood;

(3) The effect of the increased density of the intended use on the surrounding neighborhood; and

(4) Available parking for the intended use.

(d) Contiguous lots under common ownership.

(1) Subject to Subsection (d)(4) below, if two or more lots, or combination of lots or portions of lots, located adjacent to each other are at any time held in common ownership, and if all or part of such lots do not satisfy the minimum requirements for a buildable lot in the zoning district in which they are located, then all of such lots shall automatically be considered to be combined into one conforming lot, or one lot that is more nearly conforming than the individual lots.

(2) Each individual lot which has been combined under Subsection (d)(1) shall cease to be considered a separate lot of record and shall no longer be considered to be a buildable lot.

(3) Lots combined under Subsection (d)(1) shall not thereafter be split, redivided, or otherwise reduced in area unless all of the resulting lots comply with the minimum lot area requirement for a buildable lot in the district in which the land is located.

(4) The Planning Commission may allow contiguous lots of record under the same ownership to be merged into a lot less than the minimum requirement of the zoning district in which it is located, but equal to or similar to existing lots in the surrounding neighborhood, as a special use. In considering this authorization, the Planning Commission shall consider the following standards, in addition to Subsection (b) of this section:

a. The size, character, and nature of any buildings to be erected and constructed on the lot;

b. The effect of the proposed use on adjoining properties and the surrounding neighborhood;

c. Available parking for the intended use; and

d. The size of the lot in question compared to the lots in the surrounding neighborhood.

(e) Building setback exceptions. **[Amended by Ord. No. 2018-1, eff. 3-23-2018]**

(1) The following projections are exempt from setback requirements:

a. Bay windows, chimneys, awnings and architectural design embellishments of dwellings that do not house or enclose habitable floor area and project not more than three feet into the required setback.

b. Roof overhangs that do not project more than two feet into the required setback.

c. Steps and small entrance landings or porches, including porticos corresponding to the area of the porch, provided that such porches and porticos do not project more than four feet into the required setback.

(2) Any building or structure built to a legally established building setback line before July 1, 2016, shall be considered as meeting the required setback from the adjacent lot line existing at that time. Additions or enlargements along or within existing setbacks shall only be allowed if approved by the Zoning Board of Appeals as a matter for Zoning Board of Appeals decision pursuant to Section 603 of the Zoning Act (MCL § 125.3603). In granting such authorization, the following standards shall be considered by the Zoning Board of Appeals:

a. The proportion of the main wall which has been altered by the addition;

b. The overall effect of the proposed addition on adjoining properties and the character of the surrounding neighborhood; and

c. The addition shall not be less than five feet from the side and rear lot lines and shall not be less than 10 feet from the front lot line.

(f) Exceptions.

(1) The following buildings and structures shall be exempt from height regulations in all zoning districts: parapet walls not exceeding four feet in height, chimneys, cooling towers, elevator bulkheads, fire towers, grain elevators, silos, stacks, elevated water towers, stage towers, monuments, cupolas whose length and width, or diameter, are each less than five feet, domes, spires, penthouses housing necessary mechanical appurtenances, and television and radio reception and transmission antennas and towers which do not exceed 50 feet in height. Additions to existing buildings and structures which now exceed the height limitations of their zoning district up to the height of an existing building or structure on the same lot are permitted if the lot is large enough to encompass a circular area with a radius at least equal to the height of the structure or building. The height of any cupola that has a length, width, or diameter greater than five feet must be approved by the Zoning Board of Appeals as a matter for Zoning Board of Appeals decision pursuant to Section 603 of the Zoning Act (MCL § 125.3603). In granting such authorization, the following standards shall be considered by the Zoning Board of Appeals:

a. The area and height of the cupola;

b. The area and height of the cupola in relation to the building on which it is to be placed;

c. Whether or not the cupola will affect light and air circulation of the adjoining property; and

d. The height of other buildings on adjoining properties and in the general neighborhood.

(2) Notwithstanding the first sentence of this Subsection (f), all towers and antennas regulated by Article V of this chapter, pertaining to wireless communications towers and antennas, shall be subject to all height limitations contained in that article.

(g) Mobile homes. Mobile homes are not permitted as an accessory use to a permitted principal use. Mobile homes are permitted only in approved mobile home parks and as specifically authorized by §§ 38-489 and 38-507.

(h) Transition zoning. When first authorized by the Planning Commission as a special use, the first lot in an R-3 or R-4 Zoning District, which has a side yard adjacent to a lot in a commercial zoning district, without any street or private road intervening, may be used for transition zoning as is hereinafter provided. This transition zoning for such first lot shall not extend more than 150 feet from the commercial zoning district. If this first lot is in the R-3 Zoning District, it may be used for the uses permitted and as regulated in the R-4 Zoning District. If this first lot is in the R-4 Zoning District, it may be used for the uses permitted and as regulated in the R-5 Zoning District. In considering such authorization, the following standards shall be considered: **[Amended by Ord. No. 2018-1, eff. 3-23-2018]**

(1) The intended use of the lot;

(2) Ingress and egress to the lot and the proposed buildings or structures to be located thereon;

(3) Potential traffic congestion;

(4) The nature and character of buildings and structures or properties in the surrounding neighborhood;

(5) Effect of the intended use on light and air circulation for properties which are both adjoining and in the surrounding neighborhood; and

(6) Effect of any increased density of the intended use on the surrounding neighborhood.

(i) Mechanical appurtenances, such as blowers, ventilating fans and air-conditioning units, must be attached to the principal building or, if not attached to the principal building, the mechanical appurtenance shall be screened to reasonably limit the audible and visual impact of the mechanical appurtenance from neighboring property.

(j) Mechanical work on trucks of one ton or more, on race cars, stock or otherwise, and on dune buggies owned by the occupant of a lot or on any vehicles not owned by an occupant of the lot is prohibited in all residential zoning districts. Any permitted work on vehicles must be performed entirely within a building.

(k) Private fallout shelters for a particular lot are permitted in any zoning district as an accessory use, provided there is compliance with all yard and coverage requirements of the zoning district. Community fallout shelters are permitted in any zoning district as a special use when this use is authorized by the Planning Commission. In considering such authorization, the Planning Commission shall consider the following standards:

(1) Size, proposed location, type and kind of construction and general architectural character of the

shelter;

(2) Unanimity of surrounding neighborhood participation in the shelter; and

(3) The effect of the shelter on the surrounding neighborhood.

(l) In all residential zoning districts, all motor vehicles (except passenger motor vehicles, including motor homes, snowmobiles and motorcycles) shall only be parked in a building or covered structure.

(m) No boat, travel trailer, camper, or similar vehicle parked or stored in a residential zoning district shall be used as a sleeping quarters, be connected to utilities or be used for human habitation in any manner.

(n) No semitrailer shall be parked or stored in a residential zoning district.

Sec. 38-484. Razing of buildings. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982]

No building or structure, excluding farm buildings and structures, shall be razed unless a permit therefore has first been obtained from the Zoning Administrator. Such razing shall be completed within such reasonable time period as shall be specified by the Zoning Administrator in the razing permit. Such razing shall be completed in such a manner that:

(1) It shall not be obnoxious to occupants of surrounding properties on account of dust, noise, vibration, traffic and the like;

(2) Adequate provision shall be made for the safety of person and property;

(3) All waste materials shall be removed from the razing site;

(4) All debris and rubble, including concrete and brick, shall be removed from the razing site; and

(5) The razing site shall be restored at a level grade The Zoning Administrator may, in his discretion, require that a cash deposit, certified check, irrevocable bank letter of credit, or surety bond acceptable to the Township be deposited with the Township Clerk by the razing permit applicant to guarantee compliance by the applicant with all the requirements of this section and completion of the razing and all required cleanup and removal within the time specified in the permit. The amount of such financial guarantee shall be determined by the Zoning Administrator but shall in no event be greater than $1,000 for each 1,000 square feet or fraction thereof of floor area of the building or structure to be razed.

Sec. 38-485. Essential service. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-38, eff. 1-8-1998]

(a) The erection, construction, alteration or maintenance, by public utilities or municipal departments, boards or commissions, of overhead or underground gas, electrical, steam or water distribution or transmission systems, collection, communication, supply or disposal systems including mains, drains, sewers, pipes, conduits, wires, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, poles, electrical substations, gas regulator stations, telephone exchange buildings, public utility buildings including maintenance and repair shops, vehicle or equipment storage buildings, outdoor vehicle or equipment storage yards, and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such public utility or municipal department or commission or for the public health or safety or general welfare shall be permitted, as authorized or regulated by law and other ordinances of the Township in any district, it being the intention hereof to except such erection, construction, alteration and maintenance from the application of this article. However, all towers and antennas regulated by Article V of this chapter,

pertaining to wireless communications towers and antennas, are not permitted or authorized pursuant to the provisions of this section but are, instead, permitted only as is provided in Article V of this chapter.

(b) Notwithstanding the exceptions contained in the immediately preceding sentence:

(1) Electrical substations and/or gas regulator stations shall be enclosed with a fence or wall six feet high and adequate to obstruct passage of persons or materials.

(2) Public utility facilities in any zoning district are required to be constructed and maintained in a neat and orderly manner. Any building that is constructed shall be landscaped and shall conform with the general character of the architecture of the surrounding neighborhood.

Sec. 38-486. Outdoor storage and waste disposal. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-8, eff. 9-6-1979; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-15, eff. 1-18-1983; Ord. No. Z-28, eff. 3-15-1990; Ord. No. Z-56, eff. 8-22-2006; Ord. No. Z-60, eff. 5-14-2009]

(a) All outdoor storage facilities utilized in connection with nonresidential activities shall be enclosed by a solid fence or wall of not less than six and no more than 10 feet in height that is adequate to conceal such facilities from adjacent properties and from public view.

(b) If materials or wastes are stored outside which might cause fumes, odors and dust or which constitute a fire hazard or which may be edible by rodents or insects, then such materials shall be stored only in closed containers and screened from public view and adjacent properties.

(c) No materials or wastes shall be deposited on a lot or property in such form or manner that they may be moved off the lot or property by natural causes or forces.

(d) Waste materials shall not be allowed to accumulate on a lot or property in such a manner as to be unsightly, constitute a fire hazard or contribute to unsanitary conditions.

(e) All outdoor storage facilities for fuel, raw materials and products located less than 100 feet from any other property shall be enclosed by a solid fence or wall of not less than six nor more than 10 feet in height.

(f) In all residential zoning districts, during the time period beginning November 1 and ending the last day of February of each year, all utility trailers, boats, boat trailers, boat cradles, portable boat docks, shore stations, travel trailers, camper or similar vehicles, (specifically excluding motor homes) shall be stored in back of the front building fine or at least 100 feet back from the street right of way (or private road easement) line which is adjacent to the front yard, whichever requires a lesser setback. In the case of a corner lot, during the time period beginning November 1 and ending the last day of February of each year, such items shall be stored in back of the front and street/road side building lines or at least 100 feet back from the front and side street right of way (or private road easement) lines, whichever requires a lesser setback. In addition, with respect to any multifamily dwelling in any zoning district, no boat cradle, boat trailer, portable boat dock, shore station, boat or other watercraft shall at any time be located, placed or stored on the lot used for such multifamily dwelling, except for boats and other watercraft located on trailers legal for use on public highways without special permit.

Sec. 38-487. Required yard or lot. [Ord. No. Z, eff. 2-7-1974]

All lots, yards, parking areas or other spaces created after the effective date of the ordinance from which

this chapter is derived shall comply with the minimum requirements of the zoning district in which they are located.

Sec. 38-488. Control of heat, glare, fumes, dust, noise, vibration and odors. [Ord. No. Z, eff. 2-7-1974; amended by Ord. No. ZO16-1, eff. 6-16-2016]

(a) Every use shall be so conducted and operated that it is not obnoxious or dangerous by reason of heat, glare, fumes, odors, dust, noise, or vibration beyond the lot on which the use is located.

(b) Lighting facilities shall be equipped with shielding so as to reflect the light downward and away from adjoining properties.

Sec. 38-489. Temporary uses or structures requiring Zoning Administrator authorization. [Ord. No. Z, eff. 2-7-1974]

(a) Upon application, the Zoning Administrator shall issue a permit for a temporary office building or yard for construction materials and/or equipment which is both incidental and necessary to construction at the site where located. Each permit shall be valid for a period of not more than six calendar months and shall be renewed by the Zoning Administrator for four additional successive periods of six calendar months or less at the same location if such building or yard is still incidental and necessary to construction at the site where located.

(b) Upon application, the Zoning Administrator shall issue a permit for a temporary office that is both incidental and necessary for the sale or rental or real property in a new subdivision or housing project. Each permit shall specify the location of the office and area and shall be valid for a period of not more than six calendar months and shall be renewed by the Zoning Administrator for four additional successive periods of six calendar months or less at the same location if such office is still incidental and necessary for the sale or rental of real property in a new subdivision or housing project.

Sec. 38-490. Accessory uses. [Ord. No. Z, eff. 2-7-1974; amended by Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-56, eff. 8-22-2006; Ord. No. Z-58, eff. 12-13-2007; Ord. No. Z-60, eff. 5-14-2009; Ord. No. 2019-2, eff. 1-31-2019]

(a) In any zoning district, accessory uses, incidental only to a permitted use, are permitted when located on the same lot; provided, however, that such accessory uses shall not involve the conduct of any business, trade or industry.

(b) The keeping of household pets, including cats, dogs, household fish and household birds, is expressly permitted as an accessory use in any zoning district; provided, however, that no more than four adult dogs or cats or any combination thereof shall be kept or housed in or at one dwelling unit.

(c) The keeping of any other animals or poultry in any zoning district except the AG Agricultural and Permanent Open Space District, or as a part of a riding stable in the R-1 Rural Estate Residence District, is prohibited except when authorized by a permit from the Zoning Administrator. The Zoning Administrator may, in his discretion, decline to decide such matter and refer decision thereon to the Zoning Board of Appeals as a matter for Zoning Board of Appeals decision pursuant to Section 603 of the Zoning Act (MCL § 125.3603). In considering such authorization, the following standards shall be considered:

(1) The land area where such animals are to be housed;

(2) The location of adjacent property;

(3) Whether or not noise or odors are likely to adversely affect the use of adjoining properties or the surrounding neighborhood;

(4) For properties less than one acre in area, the slaughter of animals shall be prohibited; and

(5) Poultry and fowl shall be permitted as follows:

Number of Poultry and Fowl Permitted

Area of Lot	Total Number of Poultry and Fowl Permitted	Setback From Adjoining Dwelling (feet)
8,500 square feet to 14,999 square feet	4 poultry/fowl	50
15,000 square feet to 24,999 square feet	6 poultry/fowl	50
25,000 square feet to 1 acre	10 poultry/fowl	100
Over 1 acre	15 poultry/fowl	100

a. Poultry and fowl shall not be free range and shall be securely contained within a fenced area so as to restrict such animals to the lot on which they are kept.

b. The fenced area where the poultry and fowl are kept shall be located within the rear yard and shall be at least 10 feet from any side or rear lot line.

c. Poultry and fowl coops shall contain no less than four square feet per hen.

d. Poultry and fowl runs shall contain no less than four square feet per hen.

e. If poultry and fowl are caged, each cage shall be no less than one square foot in area.

f. The area where the poultry and fowl are kept shall be kept clean so as to prevent noxious odors.

g. Food for the poultry and fowl shall be stored in enclosed containers.

h. Roosters shall not be permitted.

i. The keeping of poultry and fowl is not permitted at multifamily residences.

(d) The keeping of any animal or poultry as an accessory use in a residential zoning district shall not be authorized unless it is for recreational purposes only.

(e) The keeping of horses as an accessory use shall only be permitted if all of the following requirements are met:

(1) The grazing area upon which the horses are kept shall be a minimum of one acre in area. For purposes of this section, "grazing area" shall mean the fenced open pasture land used for grazing by the horses and the accessory building required in Subsection (e)(2) of this section immediately below, and shall specifically exclude the portion of the lot occupied by the principal building and its accessory structures and/or buildings as well as all required front, side, and rear yards.

(2) An accessory building shall be erected in compliance with all requirements and restrictions of Section 38-491 to be used as a shelter for the horses.

(3) The accessory building and the grazing area upon which the horses are kept must be entirely fenced. All gates in the fence should be kept locked. The fencing must comply with Section 38-498 and be adequate in height, strength, and general design to prevent a horse from escaping from the grazing area.

(4) The number of horses permitted shall be limited to the ratio of one large horse per full acre, or two miniature horses per full acre, as shown in the following table. For purposes of this section, a large horse shall be any horse whose size is greater than 38 inches in height (including a foal of a large mare, regardless of the size of the foal), and a miniature horse shall be any horse (except for the foal of a large mare) whose size is less than or equal to 38 inches in height.

Number of Horses Permitted for Parcels Smaller Than Eight Acres

Size of Grazing Area	Total Number of Horses Permitted	Possible Combinations Permitted
5 acres to	5 large or 10 mini	(2 large + 4 mini) (1 large + 6 mini) (0 large + 8 mini) (5 large + 0 mini) (4 large + 2 mini) (3 large + 4 mini) (2 large + 6 mini) (1 large + 8 mini) (0 large + 10 mini)
6 acres to	6 large or 12 mini	(6 large + 0 mini) (5 large + 2 mini) (4 large + 4 mini) (3 large + 6 mini) (2 large + 8 mini) (1 large + 10 mini) (0 large + 12 mini)
7 acres to	7 large or 14 mini	(7 large + 0 mini) (6 large + 2 mini) (5 large + 4 mini) (4 large + 6 mini) (3 large + 8 mini) (2 large + 10 mini) (1 large + 12 mini)

Number of Horses Permitted for Parcels Smaller Than Eight Acres

Size of Grazing Area	Total Number of Horses Permitted	Possible Combinations Permitted
		(0 large + 14 mini)

(f) In addition to initial authorization by the Zoning Administrator or the Zoning Board of Appeals, the housing of nonhousehold pets, animals, fish or birds in any zoning district except the AG Agricultural and Permanent Open Space District, or as a part of a riding stable in the R-1 Rural Estate Residence District shall require a nontransferable permit to be issued by the Zoning Administrator for one year when authorization is first granted with renewal annually thereafter. In renewing such permit, the Zoning Administrator shall determine whether or not the permit holder is in compliance with the requirements of this chapter and any requirements, conditions, or restrictions established when authorization was granted.

(g) The permit may be revoked upon violation of any of the regulations stated above.

Sec. 38-491. Accessory buildings. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-48, eff. 9-1-2002; Ord. No. Z-53, eff. 10-22-2003; Ord. No. Z-56, eff. 8-22-2006; Ord. No. Z-58, eff. 12-13-2007; amended by Ord. No. ZO16-1, eff. 6-16-2016]

(a) Attached garages.

(1) Attached garages are permitted in any zone district. A garage shall be considered an attached garage when it is connected to the principal building with a roof structure.

(2) An attached garage shall meet the setback and yard requirements for a principal building of the zone district in which it is located.

(3) The footprint of an attached garage must not exceed 75% of the footprint of the usable floor area of the dwelling unit to which it is attached.

(b) Detached accessory buildings.

(1) General requirements.

a. No accessory building shall be allowed on any lot that does not have a principal structure located on the lot.

b. Except as provided in Subsection (b)(1)b.1 through 5 of this section, only one accessory building will be allowed on any lot, provided that the accessory building does not exceed the greater of 200 square feet or 2% of the calculated lot size, up to a maximum accessory building size of 2,500 square feet.

1. On lots equal to or greater than two acres, the total allowable accessory building square footage may be split into two accessory buildings.

2. One additional accessory building used exclusively as a pool storage building (i.e., to house equipment and supplies necessary to operate and maintain an on-site swimming pool and for a toilet and/or shower) is permitted, provided the pool storage building has a maximum height of 16 feet, and a maximum area of 100 square feet for lots equal to one acre or less in size and 200 square feet for lots exceeding one acre in size.

3. One additional accessory building used exclusively as a pump house (i.e., to house a pump and related equipment for sprinkling purposes) is permitted, provided the pump house has a maximum height of four feet, and a maximum area of 16 square feet for lots equal to one acre or less in size and 36 square feet for lots exceeding one acre in size.

4. One additional accessory building used exclusively as a decorative gazebo is permitted, provided the gazebo has a maximum area of 144 square feet and a maximum height of 12 feet. For purposes of this subsection, an accessory building will be deemed a gazebo only if a minimum of 50% of each sidewall is left open and/or is covered only with either a screen or transparent glass.

5. An additional 576 square feet is permitted on a lot when there is not an attached garage on the principal building. This may be as an additional accessory building, or additional square footage allowed to an accessory building.

c. No accessory building or structure shall include residential or living quarters for human beings.

(2) Location and height limitations.

a. The height of an accessory building shall not exceed that listed in the table in Subsection (b)(2)e of this section.

b. The roof pitch of an accessory building shall not be less than 3/12.

c. An accessory building must be at least 10 feet away from any other building.

d. An accessory building shall meet the setback requirements listed in the table in Subsection (b)(2)e of this section.

e. Table.

Building Size (square feet)	Maximum Height of Building (feet)	Minimum Front Yard (feet)	Minimum Side Yard (feet)	Minimum Rear Yard (feet)
< 240	14	40	5	5
240 - 350	16	40	5	5
351 - 700	18	40	10	25
701 - 1,050	20	60	10	25
1,051 - 1,400	22	80	25	35
> 1,400	24	100	25	50

f. On lots abutting Lake Michigan and Lake Macatawa, no accessory building shall be placed between the principal building and the water's edge.

g. The Zoning Board of Appeals may authorize lesser front, rear, or side yard setbacks or the placement of an accessory building between the principal building and the water's edge as an administrative approval on lots abutting Lake Michigan or Lake Macatawa. In

establishing such yard requirements, the Zoning Board of Appeals shall consider the following standards:

1. The location of buildings on the lot or adjoining properties;

2. The effect of the proposed accessory building on adjoining properties in relation to view, light and air circulation, noise, etc.; and

3. The character of the proposed accessory building and the effect on the surrounding neighborhood.

h. The Zoning Board of Appeals may authorize an accessory building in excess of the height limitations as an administrative approval. In considering such a request, the Zoning Board of Appeals shall consider the following standards: **[Amended by Ord. No. 2021-07, eff.11-2-2021]**

1. The height of the accessory building in relation to the size of the lot on which it is to be placed;

2. The height of the accessory building in relation to the principal building on the lot on which the accessory building is to be placed;

3. The location of the accessory building in relation to other buildings on adjoining lots and in relation to the principal building on the lot;

4. Whether or not the accessory building will affect light and air circulation of any adjoining property; and

5. Whether the accessory building will adversely affect the adjoining property or the view from the adjoining property.

i. Exceeding square foot limitations. **[Added by Ord. No. 2021-07, eff.11-2-2021]**

1. The Zoning Administrator may authorize one or more accessory buildings in excess of the square footage limitations as an administrative approval. In considering such a request, the Zoning Administrator shall consider the following standards:

[a] The area of the accessory building in relation to the size of the lot on which it is to be placed;

[b] The area of the accessory building in relation to the principal building on the lot on which the accessory building is to be placed;

[c] The location of the accessory building in relation to other buildings on adjoining lots and in relation to the principal building on the lot;

[d] Whether or not the accessory building will affect light and air circulation of any adjoining property; and

[e] Whether the accessory building will adversely affect the adjoining property or the view from the adjoining property.

2. Prior to reviewing the request, the Zoning Administrator shall mail a notice of the request to all real properties within 300 feet of the subject lot informing them of their option to request a public hearing within 15 days of the date of the letter. The notice

shall indicate that if a request is not provided, the Zoning Administrator shall proceed without public comment.

3. The Zoning Administrator may defer any request to the Zoning Board of Appeals.

Sec. 38-492. Swimming pools. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-6, eff. 9-7-1978; Ord. No. Z-56, eff. 8-22-2006; amended by Ord. No. ZO16-1, eff. 6-16-2016; Ord. No. 2020-001, eff. 1-27-2020]

(a) No swimming pool (referred to as "pool" in this section) shall be constructed, erected or installed on any lands in the Township unless a permit therefor has first been obtained from the Zoning Administrator.

(b) The outside edge of the pool wall shall not be located nearer than four feet to any lot line; provided, however, that if any part of the pool wall is more than two feet above the surrounding grade level, then the outside edge of the pool wall shall not be placed nearer than 10 feet to any lot line.

(c) A pool of which any wall, including retaining walls designed to structurally support the pool, is greater than 30 inches above grade shall not be located in the required rear yard of a waterfront lot. Any fence used as a barrier for a pool located in the rear yard of a waterfront lot shall be glass, or other see-through material approved by the Zoning Administrator, which results in minimal visual obstruction. Any retaining walls that structurally support a pool shall result in minimal visual obstruction of waterfront lots.

Sec. 38-493. Principal building on lot. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-29, eff. 4-9-1990]

In the agricultural and all Residence (R) Zoning Districts, no more than one single-family dwelling and/or two-family dwelling shall be placed on any lot or parcel of land. If it is proposed that more than one single-family dwelling and/or two-family dwelling will be located on any lot or parcel of land, then such proposal may only be approved if authorized as a planned unit development as provided in Article III, Division 8, of this chapter.

Sec. 38-494. Front yard and rear yard averaging. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-51, eff. 9-5-2003; Ord. No. Z-56, eff. 8-22-2006; amended by Ord. No. ZO16-1, eff. 6-16-2016]

(a) Residential front yard averaging. In any residential zoning district where the average depth of at least two front yards of existing adjacent buildings within 300 feet of the lot in question and within the same block on the same side of the street or private road is less than the minimum front yard depth prescribed for the residence zoning district in which the lot is located, then the required front yard shall be modified to be no less than the average depth of the existing adjacent buildings, as established by a licensed surveyor or the Zoning Administrator; provided, however, that the depth of the front yard shall not be less than 10 feet in any event.

(b) Residential rear yard averaging. In any residential zoning district where the average depth of at least two rear yards of existing adjacent buildings within 300 feet of the lot in question and within the same block on the same side of the street or private road is less than the minimum rear yard depth prescribed for the residence zoning district in which the lot is located, then the required rear yard shall be modified to be no less than the average depth of the existing adjacent buildings, as established by a licensed surveyor or the Zoning Administrator; provided, however, that the depth of the rear yard shall not be less than 10 feet in any event.

(c) Commercial front yard averaging. In any commercial zoning district (the C-1 Neighborhood Business District and the C-2 Resort Service District) where the average depth of at least two front yards of

existing commercial buildings within 300 feet of the lot in question and within the same block on the same side of the street or private road is less than the minimum front yard depth prescribed for the commercial zoning district in which the lot is located, then the required front yard shall be modified to be no less than the average depth of the existing commercial buildings as established by a licensed surveyor or the Zoning Administrator; provided, however, that the depth of the front yard shall not be less than 50 feet in any event. For purposes of this section, if an existing commercial building has a varying front yard setback, then the average of the closest point front setback and the farthest point front setback shall be used as the front yard setback for that building when calculating the average front yard setbacks to determine the minimum front yard for the new building.

Sec. 38-495. Rear yard abutting a body of water. [Ord. No. ZA, eff. 2-7-1974; Ord. No. Z-14A, eff. 4-19-1982; Ord. No. Z-32A, eff. 5-20-1991; amended by Ord. No. ZO15-1, eff. 9-21-2015]

In addition to the district regulations of Article III, the following requirements shall apply to lots abutting Lake Michigan or Lake Macatawa:

(1) Lake Michigan. Most of the Lake Michigan shoreline is under regulation of the Michigan Department of Environmental Quality (MDEQ) as a critical dune, and/or a high-risk erosion area (HREA). In the event that the MDEQ would ever authorize a setback less than the distance required in Article III, the requirements of Article III shall be met. For lots abutting Lake Michigan not under MDEQ regulation, the setback shall be established using the median distance of ten adjacent buildings which are not under MDEQ regulation, to the one-hundred-year elevation as depicted in the December 2011 Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency.

(2) Lake Macatawa. In an area of nonconforming lots abutting Lake Macatawa, the Zoning Board of Appeals may authorize a lesser rear yard setback. In establishing the setback, the Zoning Board of Appeals shall consider the following standards:

a. The location of buildings on adjoining properties;

b. The effect of construction on the lot in question on the view from adjoining properties;

c. The potential effect of erosion and flooding from high water on the lot in question;

d. The effect, if any, of the proposed building and any related improvements on existing seawall or other flood control or erosion devices located on adjoining properties;

e. The relative proximity of the proposed building to adjoining properties, specifically including proximity to occupied dwellings; and

f. The effect of the proposed building on adjoining properties and the surrounding neighborhood.

Sec. 38-496. Double frontage lots. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-56, eff. 8-22-2006]

Buildings on lots having frontage on two intersecting or nonintersecting streets or private roads, or combination of streets and private roads, shall comply with front yard requirements on both such streets or roads.

Sec. 38-497. Additional setbacks for structures adjacent to major streets. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-54, eff. 4-21-2004]

Notwithstanding any other provision of this article to the contrary, no building shall be constructed, erected or enlarged on a lot abutting a primary arterial road (i.e., a road designated in the Township general land

use and circulation plan, as a road that collects traffic and channels traffic into or out of the Township, as the plan may be amended from time to time), unless the building meets the minimum setback of 83 feet as measured from the center line of the road right-of-way, or 40 feet as measured from the end of the road right-of-way, whichever is greater.

Sec. 38-498. Fences. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-48, eff. 9-1-2002; amended by Ord. No. ZO16-1, eff. 6-16-2016]

(a) General requirements. General requirements regarding fences are as follows:

(1) No fence, hedge, or other landscaping shall be erected, constructed, located or maintained in any zoning district which constitutes a traffic hazard because of obstruction of visibility or any other reason.

(2) No fence shall contain barbed wire unless the fence is used as a part of a farming operation.

(3) A fence used in connection with the keeping of horses shall be constructed or erected as a split-rail fence, a three-board fence, or an electric-wire fence.

(4) Every electric-wire fence, whether or not used in connection with the keeping of horses, shall be labeled as an electric fence at intervals of not less than once every 100 feet.

(b) Height limitations. No fence in excess of six feet in height shall be erected, constructed, located or maintained in any residential zoning district. In addition, no fence in excess of 36 inches in height shall be erected, constructed, located or maintained in a front yard in any residence zoning district or in the front or rear yard of any waterfront lot in any residence zoning district, except that fences required for the keeping of horses pursuant to § 38-490(b) shall be four feet in height in the front yard and shall be no less than four feet in all other yards. The Zoning Administrator may, in his discretion, authorize fences of a height greater than six feet or fences of a height greater than 36 inches as an administrative approval. In granting such authorization, the Zoning Administrator shall consider the following standards:

(1) The effect upon the adjoining properties;

(2) Whether it will affect the light and air circulation of any adjoining properties;

(3) Whether it will adversely affect the view from any adjoining property;

(4) The reason for the request to construct the fence higher than permitted by this chapter;

(5) The size, type and kind of construction, proposed location and general character of the fence; and

(6) The size of other fences on properties that are adjoining and in the surrounding neighborhood.

Sec. 38-499. Minimum frontage and lot width. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-4, eff. 5-5-1977; Ord. No. Z-6, eff. 9-7-1978; Ord. No. Z-24, eff. 9-7-1989; Ord. No. Z-25, eff. 9-7-1989; Ord. No. Z-56, eff. 8-22-2006]

(a) Every principal building and use shall be located on a lot that has a minimum of 85 feet of frontage on either a public street or a private road authorized as a special use pursuant to Section 38-512; provided, however, that lots located on the curve portion of a curved public street or private road or on the curved portion of a cul-de-sac public street or private road may have a lot width at the front lot

line of less than 85 feet if the lot is not less than 85 feet wide at a distance of 35 feet from the front lot line. The minimum frontage and minimum lot width required by this section shall be provided with land that is owned by the lot owner; land over which the lot owner has an easement, license or other nonownership interest may not be used to meet the minimum frontage or minimum lot width required by this section.

(b) The provisions of this section requiring a minimum frontage on a public street or private road of 85 feet shall not apply to any lot which was platted or otherwise of record as of July 17, 1989, or if an owner or other party in interest in the land has proposed the creation of the lot to the Township and received tentative approval of the creation of the lot from the Township Supervisor or Township employee on or before July 17, 1989.

Sec. 38-500. Moving of building. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982]

(a) No existing building or structure of any type or kind shall be moved into the Township or moved from one lot in the Township to another lot in the Township unless authorization therefor as a special use is obtained from the Planning Commission. In considering the granting of such authorization, the following standards shall be considered: **[Amended by Ord. No. 2018-1, eff. 3-23-2018]**

(1) The type and kind of construction of the existing structure or building in relation to its strength and whether or not said structure or building might be a fire hazard;

(2) The type and kind of buildings and structures adjoining and in the neighborhood surrounding the lot to which the structure or building is to be moved and whether or not the type and age of the building or structure to be moved is in keeping with the type and age of such buildings and structures which are adjoining and in the surrounding neighborhood; and

(3) The type and kind of materials used in the construction of the structure or building desired to be moved as such construction materials relate and compare to the type and kind of materials used in the construction of other buildings and structures adjoining and in the neighborhood surrounding the lot to which the building or structure is to be moved.

(b) No existing building or structure utilizing balloon construction shall be moved into the Township or moved from one lot in the Township to another lot in the Township in any event. This section shall not apply to the moving of mobile homes.

Sec. 38-501. Repair and cleanup of damaged or destroyed buildings. [Ord. No. Z, eff. 2-7-1974]

The owner of any building or structure that has been damaged or destroyed by fire, windstorm or other casualty shall repair such damage within one year after its occurrence. In the event the building or structure is damaged beyond repair, any part left standing after such damage or destruction shall be razed pursuant to a permit therefor to be granted pursuant to Section 38-484.

Sec. 38-502. Governmental improvements. [Ord. No. Z, eff. 2-7-1974]

The provisions of this article shall be applicable to and enforceable against the Township itself and all other governmental agencies and units, federal, state or local.

Sec. 38-503. Health Department approval. [Ord. No. Z, eff. 2-7-1974]

No permit shall be issued for the construction of a building or structure which is to have drinking water and/or sanitary facilities located therein and which is to be located on a lot which is not served by both

public water and sewer facilities if its water supply and/or sewage disposal facilities, as the case may be, does not comply with the rules and regulations governing waste and sewage disposal of Ottawa County.

Sec. 38-504. Ponds. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-44, eff. 2-28-2000; Ord. No. Z-56, eff. 8-22-2006; amended by Ord. No. 2020-001, eff. 1-27-2020]

(a) Required authorization. No pond shall be constructed, erected, installed, located, deepened, expanded, reconstructed, or widened unless it has first been authorized, as is provided in this section, by either the Zoning Administrator or by the Planning Commission. If an existing pond is to be expanded or widened beyond its existing footprint, the pond shall be brought into full compliance with all requirements of this section. If an existing pond is to be reconstructed within its existing footprint (e.g., deepened, cleaned out, etc., but not expanded or widened), the pond shall not be required to be brought into full compliance with all requirements of this section; provided, however, that an existing pond that is reconstructed within its existing footprint shall have a slope no steeper than 1:3. For purposes of this subsection, the term "existing pond" means a pond that was constructed, erected, installed, or otherwise located on a lot prior to February 10, 2000. All ponds that are constructed, erected, installed, or otherwise located on a lot on or after February 28, 2000, must, at all times, comply fully with all requirements of this section, including, without limitation, if and when the pond is deepened, expanded, reconstructed, or widened.

(b) Application. An application for authorization of a pond shall be made to the Township. The application shall include the following:

(1) The name of the person who will be the owner of the pond. If the owner of the pond will be someone other than a natural person, the application shall indicate the name of the president/ chief executive officer of the firm, association, partnership, joint venture, corporation, limited liability company, or other equivalent entity that will be the owner of the pond. If the owner of the pond will be a trust or an estate, the application shall indicate the name of the trustee or personal representative.

(2) The location of the proposed pond or the existing pond that is to be deepened, expanded, reconstructed, or widened.

(3) A statement of purpose or use of the pond.

(4) The safety precautions to be taken to protect those persons making use of the pond or who might be in danger thereby. These safety precautions shall address not only those persons who are anticipated to utilize the pond and its adjoining lands but also any third parties who may elect to utilize the pond and its adjoining lands without authorization from the owner.

(5) A survey map shall contain the following:

a. The dimensions of the pond.

b. The distances from the pond to the parcel's boundaries, to any existing or proposed structures on the parcel, to any septic system, to any existing ponds, lakes, streams or other watercourses located within the parcel and/or on adjacent properties, and to any buildings and structures on adjacent parcels.

(6) Drawings of the pond prepared by an engineer licensed by the state showing or otherwise stating the following information:

a. The depth of the pond.

b. The surface area of the pond at the normal water elevation.

c. The surface area of the pond that meets the minimum depth requirement contained in Subsection (d)(6)b of this section.

d. The contour of the pond's side slopes and of the area in the general vicinity of the pond.

e. The volume of soil to be excavated for the pond and the volume of that soil which will be kept on the site of the pond.

f. Plans regarding excavation for the pond, including equipment access and the placement of soil on the parcel, if applicable.

g. Landscaping to be installed around the pond, including any berms, fencing or screening.

h. The effect of the pond on the water table of the parcel to be occupied by the pond, the water table of parcels in the vicinity of the pond, and on the quality and quantity of water available from wells on parcels in the vicinity of the pond. This information and analysis shall specifically address the consequences of any dewatering planned in conjunction with the construction, erection, installation, expansion, reconstruction, deepening, or widening of an outdoor pond. In its discretion, the Planning Commission may require that the engineer's statement concerning the matters included in Subsection (b)(6)h of this section state that it can be relied upon by the Township and by the owners of all lands within the vicinity of the pond.

i. Provisions for maintenance of the pond, including equipment such as bubblers, aerators, fountains, etc., and the method of filtration and treatment of the pond water, if applicable.

(7) A soil borings report showing soil borings on the proposed site of the pond. There shall be a minimum of one soil boring for each full pond acre for the first five acres of pond coverage and, thereafter, one additional soil boring for each additional five acres or fraction thereof of pond coverage, i.e., six borings for a pond with coverage of more than five acres but no more than 10 acres, seven borings for a pond with coverage of more than 10 acres but no more than 15 acres, etc. All soil borings shall be reasonably distributed so as to give comprehensive coverage of the proposed pond area and shall be at least to the anticipated depth of the pond in the vicinity where the soil boring is taken. A geotechnical engineer licensed by the state shall prepare the soil borings report.

(8) A statement concerning the hours of operation relating to the construction of the pond and the duration of the pond construction project.

(9) Drawings showing the low-water clearance level over stumps and other materials constituting an underwater hazard.

(10) Such additional information as the Zoning Administrator or the Planning Commission may request in order to evaluate the application.

(c) Procedure. The following procedures shall apply to applications for ponds:

(1) An application for pond approval for a pond that is less than 1 1/2 acres in size, covers less than 25% of the area of the lot on which it is to be located, and is the only pond on the lot shall be considered and decided by the Zoning Administrator. In considering the approval of such a pond, the Zoning Administrator may, in his discretion, waive any of the application

requirements contained in Subsection (b)(6) and/or (b)(7) of this section. The Zoning Administrator may, in his discretion, decline to make a decision on a pond approval application and refer the decision thereon to the Planning Commission. No pond shall be approved pursuant to this subsection unless the pond meets all of the restrictions and requirements contained in Subsection (d) of this section.

(2) An application for pond approval for a pond that is not subject to Zoning Administrator consideration and approval pursuant to Subsection (c)(1) of this section shall be heard and decided by the Planning Commission as a special use. No pond shall be approved pursuant to this subsection unless the pond meets all of the restrictions and requirements contained in Subsection (d) of this section.

(d) Restrictions and requirements. The following restrictions and requirements shall apply to all ponds, and ponds may only be located as follows:

(1) Landscaping and visual enhancement of the parcel: all zoning districts.

(2) Recreation, swimming and boating: AG, R-1, R-2, R-3, R-4, R-5 and C-2 Zoning Districts only as an accessory use to a permitted principal use of the parcel.

(3) Livestock watering and fish production for commercial purpose: AG Zoning District only.

(4) Wildlife habitat, not used for any commercial purposes: all zoning districts.

(5) Source of water for irrigation, spraying or fire suppression: AG Zoning District and for a planned unit development if included as an approved accessory use in the planned unit development.

(6) Stormwater retention, detention, or drainage: all zoning districts.

a. The pond shall comply with all of the yard requirements for the zoning district in which it is located. As part of the authorization of a pond, the Zoning Administrator or the Planning Commission may approve the location of a pond in a front yard.

b. Each pond shall have a required depth over a minimum of 15% of the area of the pond as follows:

Pond Size (acres)	Required Depth (feet)
1 or smaller	10 or more
Larger than 1	15 or more

c. If the Planning Commission determines that compliance with the required depth requirement of this subsection is not necessary to maintain acceptable water quality in the pond, then the Planning Commission, in its discretion, may waive the required depth requirement of this subsection.

d. The side slopes (contour) of a pond shall be constructed and maintained below normal water level with a slope no steeper than 1:6 until a depth of three feet and thereafter with a slope no steeper than 1:3.

e. The side slopes (contour) of a pond shall be constructed and maintained above the normal water elevation with a slope no steeper than 1:6 for a minimum distance of 10 feet measured along the slope from the normal water elevation. This ten-foot area shall be maintained with stone, rock, sand, or other similar materials.

f. All stumps and other materials that could constitute an underwater hazard shall be removed; provided, however, that stumps and other materials need not be removed if there is at least a ten-foot clearance between the stump or other underwater material and the normal water elevation of the pond.

g. The discharge pipe from any pond without a direct outlet to an established drain shall have the drain size designed and engineered by an engineer licensed by the state and approved in writing by the Ottawa County Drain Commissioner. No pond shall be wholly or partially emptied in any manner that will cause water to flow upon the land of another, and no pond shall be wholly or partially emptied upon any land if a storm drain is readily accessible to the premises on which the pond is located. Discharge into the public sanitary sewer is prohibited.

h. No water drawn from a governmentally owned or operated water system shall be used in connection with the filling or operation of a pond.

i. If any sand, topsoil, gravel, or other such material is to be removed from the parcel on which the pond will be located, all requirements of this article and all other Township ordinances, rules, and regulations shall be complied with as well as all requirements of all county, state, and federal ordinances, statutes, laws, rules, and regulations.

j. No pond located on land that is not included in a subdivision, site condominium, or other residential development consisting of multiple building sites shall be located closer than 75 feet to the exterior boundary of the land on which it is located. No pond located inside a subdivision, site condominium, or other residential development consisting of multiple building sites shall be located closer than 75 feet to the outside boundary of the subdivision, site condominium, or other residential development, consisting of multiple building sites. However, if written consent is obtained and provided to the Township from the adjoining landowner, the Zoning Administrator (if he is considering and deciding on the pond application) or the Planning Commission (if it is considering and deciding on the pond application) may, in approving a pond, permit a setback of less than 75 feet in either of the two situations described in this subsection, subject, however, to a minimum setback of 25 feet in any event.

(e) Standards. In considering approval of a pond, the Zoning Administrator and the Planning Commission shall consider the following standards:

(1) Whether all other permits or approvals from other governmental units or agencies have been obtained; for example, approval of the Ottawa County Drain Commissioner for any ponds that would come under the jurisdiction of that office and any approval/permit that may be under Part 301 of the Natural Resources and Environmental Protection Act (MCL § 324.30101 et seq.).

(2) The location of the pond on the parcel and its proximity to adjoining parcels.

(3) The potential for the pond to become a safety hazard for adjoining property or the public.

(4) The number of other ponds on the parcel or in the vicinity of the parcel.

(5) The character, nature and size of the pond and its effect on the parcel, including the effect on other appropriate uses of the parcel.

(6) The potential for the pond to result in stagnant water or insect breeding so as to become a nuisance.

(7) The effect of the pond on adjacent properties, on wells and the water table in the vicinity and on the health, safety and welfare of the public.

(f) Conditions for authorization. In giving its authorization, the Zoning Administrator or the Planning Commission may:

(1) Require financial assurance for the completion of the pond project within the time set in the issued building permit. The financial assurance shall be in the form of cash or a letter of credit acceptable to the Planning Commission and which shall permit the Township to access such funds to enable the Township to remedy a violation of the authorization and the issued building permit. The Planning Commission shall determine the amount of such bond or letter of credit at the time of authorization.

(2) Require proof of liability insurance in amounts acceptable to the Planning Commission, which shall be in place at the time the building permit is issued and shall be maintained until the pond construction project is completed.

(3) Require that the pond be enclosed with a wall, fence, or other type of enclosure. Such wall, fence, or other type of enclosure shall not be less than four feet above the grade line. The wall, fence, or other type of enclosure shall be designed so there are no openings of such a nature or size as to permit any child to pass through or under the fence, wall, or other type of enclosure except as a gate or door, and shall be of a type not readily climbable by children. All gates or doors leading to a pond, except a door in any building forming a part of the enclosure, shall be kept closed when no one is present on the lot on which the pond is located, and such gates and doors shall be fitted with a positive latching device which will automatically latch them when said gate or door is in a closed position.

(4) Require the construction, installation, operation, maintenance, and repair of bubblers, aeration equipment, fountains, or similar devices intended to maintain and enhance the pond water quality.

(5) Impose such other conditions or require such modifications in the plans for the pond as are determined reasonable and necessary for the protection of the health, safety and welfare of the general public.

(g) Responsibility.

(1) By applying for approval of the pond, the applicant shall be deemed to have consented to and agreed to all of the following:

a. That the applicant and all parties at any time owning or having any interest in the premises on which the pond is located agree that they shall, at no time, petition for the establishment of a lake board pursuant to Part 309 of Public Act No. 451 of 1994 (MCL § 324.30901 et seq.), and they shall, at no time, petition for or otherwise investigate any other legal proceeding under any federal or state statute or other provision of federal or state law which would result in the imposition of an assessment, charge or other financial responsibility on the Township in connection with the pond. Without limiting the

generality of the immediately preceding sentence, the applicant and all parties at any time owning or having any interest in the premises on which the pond is located shall at no time petition for the maintaining of normal height and level of waters, maintenance, improvement, or development of the pond for fishing, wildlife, boating, swimming, algae and other vegetative controls, or for any other recreational or agricultural use.

b. That the applicant has designed and engineered the pond and the applicant assumes all responsibility with respect to the adequacy of its design, the adequacy of any outlet, the safety of the pond with respect to adjoining landowners and the public generally, and all other aspects of the pond's construction, erection, installation, location, repair, maintenance, expansion, widening, reconstruction, or deepening.

c. That the applicant shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the Township and its officers, board, Planning Commission, Zoning Board of Appeals, employees, and agents against any and all claims, damages, demands, expenses, liabilities, and losses of any character or nature whatsoever arising out of or resulting from the construction, erection, installation, location, maintenance, repair, reconstruction, deepening, expanding, or widening of the pond, including, but without limitation, any liability to third parties on account of any negative effect caused by the pond on the water table of parcels of land in the vicinity of the pond. The indemnification obligation provided in the preceding sentence shall include the payment of all reasonable attorneys' fees and other expenses of defense.

(2) The provisions of this subsection shall be included as part of the application for a pond, and the applicant shall be required, as a condition of making an application for a pond, to accept and agree to all of the provisions of this subsection.

(h) Zoning permit. Upon authorization and compliance with all conditions, the Zoning Administrator shall issue a zoning permit for the pond construction project. The zoning permit shall be valid for a period of one year, provided that the permit may be renewed prior to its expiration date by the Zoning Administrator for a period not exceeding an additional six months.

(i) Garden/landscaping ponds. This section shall not apply to small garden and/or decorative landscaping ponds having a permanent liner with an aggregate surface area of 150 square feet or less.

(j) Verification of compliance. Upon completion of the pond, the engineer who prepared the drawings of the pond as required in Subsection (b)(6) of this section, unless that requirement has been waived by the Zoning Administrator pursuant to Subsection (c)(1) of this section, shall certify that the pond has been constructed, erected, installed, located, deepened, expanded, reconstructed, or widened in accordance with the application and the Zoning Administrator or the Planning Commission approval. The engineer's certification shall be made within 30 days of the completion of the pond and prior to the utilization of the pond for its intended purposes. The Zoning Administrator may, in his discretion, require a review by the Township's engineer, at the sole cost and expense of the applicant, to verify such compliance. In such circumstance, the applicant shall deposit with the Township a fee in the amount of the reasonable anticipated cost of the Township Engineer's review. If the advanced payment of fees exceeds the actual expense of the Township Engineer's review, the Township shall return the entire or unused portion of the deposit to the applicant. If the advanced payment is insufficient to pay the actual expense of the Township Engineer's review, then the applicant shall promptly pay the Township the balance of the engineering expense.

Sec. 38-505. Earth change regulations and permits. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-46, eff.

2-27-2001; Ord. No. Z-56, eff. 8-22-2006; amended by Ord. No. 2020-001, eff. 1-27-2020]

(a) Permit required. Except as exempted under Subsection (e) of this section, no earth change shall be conducted on any parcel of land unless such earth change has been authorized by and is in compliance with a permit issued pursuant to this section. For purposes of this section, the term "earth change" means a man-made change in the natural or existing cover or topography of land, including, without limitation, the excavating, mining, removing, importing, moving, filling, stockpiling, depositing and/or storing of topsoil, subsoil, sand, gravel, clay, aggregate, stone, sludge, ash and/or any similar materials and resources.

(b) Application for permit. An application for an earth change permit shall be filed with the Zoning Administrator. An application fee, as established by the Township Board from time to time, shall be paid when the application is filed. Such application shall contain the following information and documentation:

(1) The name and address of the applicant. If the applicant is not an individual, the name and title of a contact person for the applicant shall be provided.

(2) If the applicant is not the owner of the parcel, the name and address of the holder of record title and the nature of the applicant's interest in the parcel shall be stated.

(3) A survey and legal description of the parcel for which the earth change permit is sought.

(4) A statement together with a map that details the specific nature and extent of the proposed earth change activity, including the following:

a. The type of materials involved in the proposed earth change.

b. A fair and reasonable estimate of the number of cubic yards of materials involved and description as to what volume of materials are to be excavated from, removed from, imported onto, moved on and/or stored on the parcel as part of the proposed activities.

c. A map depicting the proposed contours of the parcel upon completion of the earth change activities and showing the location of the proposed earth change activities in relation to the boundaries of the parcel and to buildings, septic systems, existing bodies of water and watercourses, both on the parcel and on adjacent lands.

d. The location and type of any fencing or other screening to be located on the parcel during the earth change activities.

e. The proposed landscaping and/or revegetation to secure and stabilize the ground and any slopes during and at the completion of the earth change activities.

f. A description of the type and amount of equipment proposed to be employed in the earth change activities.

g. The points of ingress and egress for the parcel and the route the applicant intends to use in transporting materials to and/or from the parcel. The location and size of aprons and scrub pads, if any are proposed, shall be detailed, together with a cleaning and maintenance plan. Aprons and scrub pads may be required as a condition to issuance of the permit and, if so, they shall be constructed of concrete or asphalt with scrub pads having a minimum length of 100 feet from the road onto the parcel and a minimum width of 12 feet and with aprons having a minimum radius of 25 feet, unless the Planning Commission determines other

dimensions under the circumstances of the project.

h. Any proposed road signage for "slow trucks," "truck crossings," etc.

i. Proposed hours of operation.

j. Duration of earth change activities.

(5) Information regarding approvals and/or permits required under any other federal, state or local government or agency.

(6) Information regarding financial assurance (in the form of a bond or letter of credit) to be provided to the Township to ensure compliance with the permit.

(c) Action on application. If the Zoning Administrator determines the application to be complete, the application will be forwarded to the Planning Commission.

(1) In making its decision, the Planning Commission shall consider the following standards:

a. The nature of the proposed earth change, including, without limitation, whether materials are to be excavated and removed from, or imported to, or moved upon the parcel and the purpose for the proposed earth change, together with the clearing of the land.

b. The size of the parcel.

c. The effect of such earth change on neighboring parcels and whether such earth change can be conducted in a manner harmonious with the neighboring uses.

d. The potential of the earth change to create safety concerns or hazards, to cause problems with noise, fumes, dust, lights and vibrations, to create erosion problems, to alter the groundwater table in the vicinity, to cause flooding or diversion of water, to result in the creation of sand blows, stagnant water pools, bogs and other similar problems affecting the adjacent properties and environment in the vicinity.

e. The change in the topography and loss of natural resources.

f. The types of trucks and other equipment to be used and the potential for traffic congestion, damage to roads, noise and debris, and safety hazards resulting from trucks and equipment used in the earth change activities.

g. Whether the earth change activities comply with all applicable federal, state, county and local laws, ordinances, rules, regulations, permits and requirements.

(2) The Planning Commission may approve, approve with appropriate conditions, or deny the application for an earth change permit and shall state the findings and conclusions for its decision. The Planning Commission shall have the right subsequently to impose additional conditions of approval or to amend any conditions of approval if reasonably necessary to achieve the purposes of the zoning chapter and/or address any change in circumstances or problems; provided that, such action shall not be taken without notice to the applicant and a hearing pursuant to Section 38-36.

(3) If the Planning Commission approves, with or without conditions, the issuance of the earth change permit, it shall also establish the appropriate amount and type of financial assurance to be provided by the applicant to ensure compliance with the permit and to make funds available

to the Township to correct any noncompliance.

(d) Issuance of permit. Upon approval of the Planning Commission, the Zoning Administrator at the request of the applicant shall issue an earth change permit. The issuance and the permit are subject to the following conditions:

(1) The applicant must request and obtain the permit within six months from the date of approval by the Planning Commission; otherwise the approval is null and void and reapplication is required.

(2) At the time the permit is requested, the applicant shall provide the required financial assurance.

(3) At the time the permit is requested, the applicant shall provide proof of adequate comprehensive general liability insurance, and such insurance shall be maintained during the earth change activities.

(4) The permit shall allow only those earth change activities specified in the terms and provisions of the application, as modified and/or supplemented by any conditions of approval made by the Planning Commission, which terms, provisions and conditions shall be deemed included in the permit without further recitation.

(5) The permit issued shall not be transferable or assignable by the applicant, unless an application to approve such transfer or assignment is made and the Planning Commission, after a hearing, approves the transfer or assignment, which approval may be with appropriate conditions. The permit, including all terms, provisions and conditions, shall be binding upon the applicant, parties having an interest in the parcel and any successors or assigns.

(6) The permit shall be issued for the duration of the earth change activities as approved in the decision of the Planning Commission; provided, however, that no permit shall be issued for a period exceeding three years. Prior to expiration of the initial permit period, the applicant may request the Planning Commission, in its discretion, to grant an extension of the permit not to exceed one year. Such request will be subject to the laws, ordinances, rules and regulations then in effect and, there is no assurance or commitment for approval of such request under the laws and circumstances that may exist.

(e) Exemptions from permit requirements.

(1) The following earth change activities do not require a permit, but are subject to the provisions of Subsection (e)(2) of this section:

a. Up to 2,500 cubic yards of topsoil, subsoil and sand may be removed from or imported to a parcel for purposes of the construction of a building or structure on the parcel.

b. Topsoil or sand may be moved from one part of a parcel to another area of the same parcel.

(2) Exempted earth changes shall comply with the following standards:

a. The earth change shall not create or cause a safety hazard, erosion by wind or water, alteration of groundwater tables and other similar problems.

b. The earth change shall not cause or create sand blows, stagnant water pools, bogs or any similar type circumstances that cause injury to adjoining properties.

c. The earth change shall not cause a significant change in the natural topography or have an

adverse or destructive impact on the environment or a natural resource.

d. The earth change shall not result in traffic congestion, road safety hazards or other similar problems.

(f) Violations. A violation of this section or of any term, provision or condition of an approval granted and/or permit issued under this section shall constitute a violation of this chapter, and, in addition to the remedies provided in this chapter, the Zoning Administrator may issue a stop-work order and/or may revoke or cancel any permit in the manner provided in Section 38-33(f).

(g) Relation to ponds. The requirements of this section are in addition to and separate from any requirements, approvals and permits relating to the creation of ponds under Section 38-504.

Sec. 38-506. Home occupations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-16, eff. 9-7-1983; Ord. No. Z-56, eff. 8-22-2006; Ord. No. Z-58, eff. 12-13-2007; amended by Ord. No. ZA-63, eff. 7-1-2013; Ord. No. 2018-1, eff. 3-23-2018; Ord. No. 2020-2, eff. 9-17-2020; Ord. No. 2021-08, eff. 11-2-2021]

The Township is committed to creating a community environment that sustains and promotes the health, safety and welfare of its residents. The Township recognizes the growth of the community and the need to have regulations that reflect the current needs and realities of the residents' lives, including economic lives. This section is designed to permit home occupations as an accessory use to a residential dwelling while helping to regulate and control traffic, parking, noise, advertising, diminished community aesthetics, and noxious odors that could otherwise negatively affect our residential neighborhoods.

(1) All home occupations, whether permitted by right pursuant to Subsection (2) of this section or permitted as a special use pursuant to Subsection (3) of this section, shall be subject to the following requirements.

a. A home occupation shall be permitted only as an accessory use to a residential dwelling in the AG, R-1, R-2, R-3, R-4 and R-5 Zoning Districts.

b. A home occupation shall not alter the residential character of the dwelling in which it is operated, the character of the property on which the dwelling is erected, nor the character of the neighborhood in which the property is located.

c. No signage for the home occupation, or other structures of any kind related to the conduct of the home occupation shall be permitted on the property except as otherwise may be specifically authorized by this chapter.

d. A home occupation shall not include any type of motor vehicle or automobile repair, including, but not limited to, any type of bodywork or engine repair.

(2) Unless otherwise authorized as a special use permit elsewhere in this zoning chapter, home occupations that meet all of the following requirements, restrictions and regulations shall be permitted by right.

a. The home occupation shall be conducted entirely within the dwelling by occupants of the residence and not more than one other person at any given time. No outdoor storage of any equipment, merchandise, articles for sale, or any other materials related to the home occupation shall be permitted for the home occupation.

b. Home occupations shall include the instruction in a craft or fine art, or in-home adult foster care or family or group day-care providers, as provided by the Michigan Zoning Enabling Act, Act

110 of 2006,[4] as amended. Excluding in-home adult foster care or family or group day-care occupations provided by the Michigan Zoning Enabling Act, no more than three customers shall be permitted at the same time on the premises to conduct business as part of a home occupation between the hours of 7:00 a.m. and 6:00 p.m. Further, excluding in-home adult foster care or family or group day-care occupations provided by the Michigan Zoning Enabling Act, no customers shall be permitted between the hours of 6:00 p.m. and 7:00 a.m. The home occupation shall not allow commercial parking on the property and shall not result in having regular deliveries by trucks larger than step side vans come to the property for the purpose of making a pick up or delivery to the property.

c. No merchandise or articles for sale shall be displayed outside of the dwelling for the home occupation.

(3) For a proposed home occupation that is not authorized as a special use permit elsewhere in this zoning chapter or does not meet the requirements, regulations and restrictions contained in Subsection (2) of this section, the home occupation will be permitted only if approved as a special use by the Planning Commission. When deciding an application for a home occupation as a special use, the Planning Commission shall consider the following standards:

a. The nature of the home occupation;

b. The nature of the surrounding neighborhood;

c. The effect of the home occupation on the surrounding neighborhood;

d. The environmental effects of the home occupation;

e. Whether customers conduct business on the premises;

f. Potential traffic congestion as a result of the home occupation; and

g. Provision for parking for traffic or clientele that may result from the operation of the home occupation (for those home occupations where customers or clientele are permitted on the premises).

Sec. 38-507. Single-family dwellings. [Ord. No. Z, eff. 2-7-1974; amended by Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-18, eff. 2-13-1986; Ord. No. Z-30, eff. 11-1-1990; Ord. No. 2018-1, eff. 3-23-2018]

Any single-family dwelling erected on site, a modular home, or a manufactured dwelling or precut structure shall be permitted in the agricultural and residential zoning districts only if in conformance with all of the following requirements:

(1) A modular home or manufactured dwelling must either be:

a. New and certified by the manufacturer and/or appropriate inspection agency as meeting the manufactured home construction and safety standards of the Manufactured Housing Commission, as amended, or any similar successor or replacement standards which may be promulgated; or

b. Used and certified by the manufacturer and/or appropriate inspection agency as meeting the

4. **Editor's Note: See MCL § 125.3101 et seq.**

standards referenced in Subsection (1)a of this section and found, on inspection by the Zoning Administrator or his designee, to be in excellent condition and safe and fit for residential occupancy.

(2) The dwelling shall comply with all Township building, electrical, plumbing, fire, energy and other similar codes; provided, however, that where a dwelling is required by law to comply with any federal or state standards or regulations for construction, then the federal or state standard or regulation shall apply. Appropriate evidence of compliance with such standards or regulations shall be provided to the Township Zoning Administrator.

(3) The dwelling shall comply with all restrictions and requirements of this article, including, without limitation, floor area, yard requirements and lot area for the zoning district within which it is located.

(4) A manufactured dwelling shall be installed with the wheels removed.

(5) The dwelling shall be firmly attached to a permanent continuous foundation constructed on the building site, such foundation to have a wall to be constructed of such materials and type as required by the State Construction Code for on-site constructed single-family dwellings. If the dwelling is a manufactured dwelling, its foundation shall hide the chassis, undercarriage and towing mechanism.

(6) A manufactured dwelling shall be installed pursuant to the manufacturer's setup instructions and shall be secured to the building site by an anchoring system or device complying with the rules and regulations, as amended, of the Manufactured Housing Commission, or any similar or successor agency having regulatory responsibility for manufactured housing communities.

(7) The dwelling shall have a minimum width across any front, side or rear elevation of 20 feet.

(8) Permanently attached steps or porch areas at least three feet in width shall be provided where there is an elevation differential greater than eight inches between the dwelling first floor and ground level.

(9) The dwelling shall have no fewer than two exterior doors, with the second one being in either the rear or the side of the dwelling.

Sec. 38-508. Adult foster care facilities. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-18, eff. 2-13-1986; Ord. No. Z-21, eff. 1-20-1989]

No adult foster care facility shall in any event be located within a one-thousand-five-hundred-foot radius of any other adult foster care facility unless required by the Zoning Act.

Sec. 38-509. Docking of watercraft. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-18, eff. 2-13-1986]

With respect to docks which are accessory structures to single-family and two-family dwellings in all zoning districts, docks which are accessory structures to all nonresidential uses permitted in any residential zoning district, and docks extending from vacant lots located in all residential districts, no more than four boats or other watercraft shall be docked or moored to a dock at any time and, further, no boat or other watercraft which is not owned by or under written charter to the owner or occupant of the dwelling or lot shall be docked or moored for longer than 72 consecutive hours.

Sec. 38-510. Small antennas and satellite dishes. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-18, eff. 2-13-1986; Ord. No. Z-56, eff. 8-22-2006; Ord. No. Z-58, eff. 12-13-2007; amended by Ord. No.

ZA-63, eff. 7-1-2013]

Small video or audio signal receiving antennas, including conventional VHF and UHF television antennas, and not more than one small receiving satellite dish of one meter or less in diameter shall be allowed without Township authorization for each individual dwelling unit or business tenant; provided, however, that no such antenna or satellite dish shall be placed such that building height restrictions or front yard setback requirements for the zone in which it is located have been violated without a written declaration of need being issued by a qualified installer certifying that a signal of reasonable quality can be found in no other complying location on the site. All other video or audio antennas or satellite dishes, including those which receive or transmit signals, which are not regulated by Article V of this chapter, shall meet the following restrictions and regulations:

(1) Freestanding satellite dish antennas shall not exceed 15 feet in height, including support structures, and no dish shall be larger than six feet in diameter. Licensed amateur radio station towers which not regulated under Article V of this chapter shall not exceed 90 feet in height.

(2) Satellite dish antennas shall be a neutral color and, except for one manufacturer name or logo and no more than two safety warnings of five inches by 20 inches, no portion of a satellite dish antenna shall contain any other names, message, symbol or other graphic representation visible from adjoining properties.

(3) A zoning or use permit shall first be obtained from the Zoning Administrator in accordance with Section 38-33 of this zoning chapter. The application shall include drawings showing the proposed method of erection, construction and installation, including details concerning anchoring; and by a site plan showing the proposed location of the satellite dish antenna and its proposed height. The Zoning Administrator shall approve the request if the following criteria have been met:

a. The lot or premises on which the antenna is located is sufficiently sized to accommodate the antenna(s);

b. The area and/or height of the antenna(s) will be consistent with other similar structures in the area;

c. The proposed location of the antenna(s) in relation to the adjoining properties shall not cause interference with uses being conducted on those properties;

d. The antenna will not adversely affect the view of any adjoining properties;

e. A declaration of need being issued by a qualified installer certifying that a signal of reasonable quality cannot be obtained unless more than one satellite dish or a satellite dish larger than one meter in diameter is placed on the site; and

f. Proposed screening shall be provided to conceal the antenna from adjoining properties.

Sec. 38-511. Sale of tangible personal property. [Ord. No. Z, eff. 2-7-1974]

(a) Except in the C-1 and C-2 Zoning Districts or where specifically authorized under the terms of an approved planned unit development, no owner of real property or person possessing a current possessory interest in real property shall publicly display for sale, or permit to be publicly displayed for sale, on such real property tangible personal property for which the owner or other person does not hold legal title.

(b) For the purposes of this section, the term "publicly display for sale" shall include, but not be limited

to, the parking or locating of a vehicle, trailer, snowmobile, jet ski, boat or other item of tangible personal property with a "For Sale" sign or similar sign affixed to or adjacent to such item, whether or not the item's owner or representative is present while the item is being displayed.

Sec. 38-512. Private roads. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-43, eff. 8-27-1999; Ord. No. Z-56, eff. 8-22-2006; amended by Ord. No. ZO16-1, eff. 6-16-2016]

(a) General requirements.

(1) A private road shall be located within a deeded private road easement. The area in which the private road is to be located shall have a minimum cleared width of 28 feet, or 30 feet if the traveled road width must be 26 feet, which shall always be maintained.

(2) A private road shall be connected to and extend from a public street right-of-way either directly or via other private roads.

(3) A private road shall be given a name that is different from any other private road or public street within the county. Written approval for the name shall be obtained from the Ottawa County Road Commission.

(4) A street sign bearing the approved name of the private road shall be erected and maintained by the owner of the proposed private road at each location where a private road connects to and extends from a public street or another private road. Street signs and traffic control signs where the private road meets a public street shall comply with and be installed in accordance with Ottawa County Road Commission standards and specifications. This provision shall also apply to existing private roads, where such a street sign shall be erected by the current owner of the private road on or before December 31, 1999. Private roads serving two or more dwellings shall have a standard stop sign where the private road abuts the public road.

(5) An existing private road constructed prior to September 1, 1999, and any private road constructed on or after that date may be reconstructed, extended, maintained, improved or relocated only in accordance with the standards and requirements of this article.

(6) Private roads are permitted only as a part of an approved planned unit development (see Article III, Division 8, of this chapter) in any zoning district, or as a special use [see § 38-512(c)] in the AG Agricultural District, the R-1 Rural Estate Residence District, the R-2 Lakeshore Residence District, and the R-3 Low Density Single-Family Residence District. However, under no circumstances shall a private road be permitted in a subdivision established under the Land Division Act (MCL § 560.101 et seq.), in a single-family site condominium, or in a two-family site condominium, regardless of the zoning district within which such subdivision or site condominium is located, unless it is located in an approved planned unit development. Where a private road is permitted in a subdivision or a single-family or two-family site condominium because it is located in an approved planned unit development, the private road shall, in any event, have a minimum width of bituminous hard surface of at least 22 feet and shall be paved as is provided in Subsection (b)(2) of this section. In addition, in the case of a private road that is accessible by more than six building sites, the Planning Commission and the Township Board, in recommending and acting upon the proposed planned unit development, shall consider whether a wider paved surface should be provided. If it is determined that a wider paved surface should be provided, this shall be included as a condition of the approval of the planned unit development. Except as is otherwise specifically provided in this subsection, a private road located in an approved planned unit development shall not be subject to any of the requirements

of this section specifically including, but without limitation, the construction specifications contained in Subsection (b) of this section. However, the immediately preceding sentence shall not be construed to prevent the inclusion in the conditions that govern an approved planned unit development of any or all of the requirements of this section.

(7) The owner of a proposed private road shall provide to the Zoning Administrator a proposed maintenance and access agreement in recordable form that provides for the necessary maintenance, repair, improvement and reconstruction of the private road. At a minimum, this agreement shall contain the following provisions:

a. A method of initiating and financing such maintenance, repair, improvement and reconstruction of the private road as is necessary to maintain the private road in a reasonably good and usable condition and necessary snowplowing of the private road.

b. A method of apportioning the cost of maintenance, repair, improvement, reconstruction and snowplowing among the private property owners who benefit from and have access to the private road.

c. A notice that no public funding is available or will be used to construct, reconstruct, maintain, repair, improve or snowplow the private road.

d. A notice that, if repairs and maintenance of the private road are not made so as to maintain the road in reasonably good and usable condition, the Township shall have the authority, but not the obligation, to repair and maintain the road and assess owners of the parcels having frontage on the private road for the total cost, plus an administrative fee in the amount of 10% of the total cost of the repairs and maintenance. The agreement shall also state that any person purchasing a parcel having frontage on the private road shall be deemed to have petitioned for the repair and maintenance of the private road specified in this subsection as is provided by Public Act No. 188 of 1954 (MCL § 41.721 et seq.), authorizing the special assessment by townships of the cost of the maintenance and repair of a private road, and to have consented in all respects to the imposition of a special assessment pursuant to such Act for the cost for the Township to repair and maintain the private road.

e. A provision that the owners of any and all of the property with rights to use the private road shall refrain from prohibiting, restricting, limiting or in any manner interfering with the normal ingress and egress and use by other owners who use the private road. This provision shall also apply to other family members, guests, invitees, agents, emergency vehicles and others bound to or returning from any of the properties having a right to use the private road.

(8) In determining the compliance of a lot with all area and yard requirements, land area located within the easement for a private road shall not be considered.

(b) Construction specifications.

(1) The length of a dead-end private road shall not exceed 850 feet. Unless it is approved as part of a planned unit development, a private road shall not provide access to more than six lots. A lot that is located on the corner of a street and a private road shall not be considered to have access from the private road if the lot has a principal building which has existing driveway access to the street. A lot that is located on the corner of a street and a private road that does not have an existing principal building which has an existing driveway access to the street shall be counted

as one of the six lots and shall have vehicle access from the private road only and shall be prohibited from having vehicle access from the street.

(2) As a condition of its approval as a special use of a private road that terminates at a dead end, the Planning Commission may require that the private road and its easement be configured so as to facilitate connection of the private road with another private road or a street in order to provide the potential for a second ingress/egress route. This may include requiring that the private road easement be extended to the property boundary line even though this extension is not necessary to provide access to a lot or lots. This provision permitting the Planning Commission to impose a condition requiring that the private road and its easement be configured so as to facilitate a second ingress/egress route for a dead-end private road is included in this article based on a legislative finding of the Township Board that it is in the interest of public safety for fire, ambulances, and police vehicles to have two ingress/egress routes to access a lot.

(3) Table.

Private Road Construction Requirements

Requirement		Parcels Served		
		1 to 2	3 to 5	6 or More
Right-of-way easement width		33 feet	55 feet	66 feet
Traveled road bed width		13 feet	18 feet	22 feet
				26 feet if storm sewer is included, including valley gutters
Minimum construction materials	Subbase	10 inches of sand	12 inches of sand	2 to 1 1/2 inches of bituminous hard surface layers, meeting MDOT Specification 22A, 1990 edition, or any applicable set of replacement standards
	Surface	6 inches of finished compacted gravel (No. 22A) on top of sand		

(4) Where a private road terminates in a dead-end, a cul-de-sac with a minimum cleared turnaround radius of 60 feet shall be provided. The cul-de-sac shall be constructed as follows:

a. If there is no island, with a radius of 42 feet; and

b. If there is an island, with a traveled surface width of 20 feet around the island.

(5) The bituminous hard surface layers may be applied at separate times, but two layers shall be

applied not more than six months apart. The minimum width of the bituminous hard surface shall be at least 22 feet. The private road shall be a crowned road; there shall be no valley gutters included within the 22 feet of road surface. Valley gutters may be located outside the 22 feet of road surface.

(6) A lot that is located on the corner of a street and a private road shall not be considered to have access from the private road if that lot has a principal building which has existing driveway access to the street. A lot that is located on the corner of a street and a private road that does not have an existing principal building that has existing driveway access to the street shall be considered as a lot that is accessed from the private road.

(7) After a review and written approval is obtained from the Ottawa County Drain Commissioner, a private road shall be constructed in a manner to provide effective stormwater drainage and to prevent runoff onto adjacent property. If a private road crosses a natural drainage course or easement, stream or other natural body of water, a bridge, culvert or other structure permitting the flow of water under the private road shall be constructed in accordance with applicable Ottawa County Road Commission and State Department of Transportation requirements.

(8) A private road shall not exceed a grade of 10%, provided that, within 50 feet of any private road or public street intersection, the grade shall not exceed 4%.

(9) A driveway permit for the private road shall be obtained from the Ottawa County Road Commission.

(c) Review and approval provisions.

(1) Permit application and fee.

a. Unless approved as part of a planned unit development, private roads shall only be permitted as a special use. The application for approval of a private road as a special use shall be filed with the Planning Commission in accordance with § 38-36 and shall be accompanied by a fee as established by the Township Board pursuant to § 38-33(g) to cover expenses incurred in processing the application.

b. The application for approval of the private road as a special use shall contain or be accompanied by the following information:

1. The name of the owner and any other parties having any legal interest in the private road and the property across which it is to be constructed.

2. The legal description of the property over which the private road is to be constructed.

3. A site location map, drawn to scale, which shows the location of the parcel containing the proposed private road to surrounding properties and all public streets and private roads located within 1/2 mile of the site.

4. A scaled drawing, prepared by a state-licensed engineer, showing the precise location, route, elevations, dimensions, specifications, cross section and design of the private road and any proposed extensions of the private road, existing or proposed curb cuts and the location and distance to any public street (or private road) which the private road is to intersect.

5. A scaled drawing, prepared by a state-licensed engineer, surveyor or architect, or a

state-registered planner, illustrating the proposed lot divisions and building envelopes on the site, as well as the location of all structures presently on neighboring or adjoining properties within 100 feet of the private road easement.

6. A copy of the proposed maintenance and operation agreement required by Subsection (a)(7) of this section.

7. A copy of a driveway permit for the private road issued by the Ottawa County Road Commission.

8. A copy of a document showing preliminary conceptual approval by the Ottawa County Drain Commissioner.

9. A copy of a document showing preliminary conceptual approval by the Ottawa County Health Department.

10. Any other additional information which the Planning Commission may request which is reasonably necessary to evaluate the proposed private road and its effect on the surrounding neighborhood and the Township in general.

(2) Review of application. The application for special use authorization for a private road shall be reviewed and acted upon by the Planning Commission in accordance with the procedures specified in § 38-36 for special use permits. All private roads shall meet the general requirements and construction specifications required in this § 38-512 in order to receive approval by the Planning Commission. In considering such authorization, the Planning Commission shall consider the following standards:

a. The nature and character of the surrounding area;

b. The nature and character of the buildings and the structures currently existing or proposed to be built on the lots which will access the private road;

c. The distance of any existing or proposed buildings and structures from the proposed private road;

d. The potential traffic congestion and/or hazards that will be generated or alleviated by the private road;

e. The adequacy of the private road for school buses, fire trucks, or similar vehicles to access all lots located on the private road;

f. The effect of the private road on the ability of further future divisions or splits of the parcels or lots located on or near the private road; and

g. The environmental effects of the private road and proposed development of the property.

(d) Final compliance requirements. Upon completion of construction of the private road, the applicant shall provide to the Zoning Administrator:

(1) A letter from a state-licensed professional engineer stating and certifying that the private road has been constructed in all respects in compliance with the approved private road plans and the requirements of this article; provided, however, that if application of the second bituminous hard surface layer is being deferred as is authorized by Subsection (e) of this section, then the application of that second layer can be excepted from the scope of the engineer's letter; and

(2) Documentation that the maintenance and access agreement referred to in Subsection (a)(7) of this section and all easements have been recorded in the office of the Ottawa County Register of Deeds.

(e) Permits for buildings on private roads. A building and any other permit shall not be issued for any building or structure that derives its primary access from a private road unless the private road has been approved as a special use and all other requirements of Subsection (d) of this section have been met. However, if the second bituminous hard surface layer has not yet been applied, building and other permits may nonetheless be issued for buildings or structures which derive their primary access from the private road, provided the second hard surface bituminous layer is applied within six months of the date of the application of the first bituminous hard surface layer. If this six-month deadline is not complied with, then no additional building or other permit shall be issued for any building or structure which derives its primary access from the private road and, further, a stop-work order shall be issued with respect to all building and other permits presently outstanding with respect to all buildings or structures which derive their primary access from the private road.

(f) Township liability. The owner of the private road agrees, as a condition of applying for and receiving a special use permit for a private road, to indemnify and save and hold the Township, and its Township Board, Planning Commission, officers and employees, harmless from all claims for personal injury and/or property damage arising out of the failure to properly construct, maintain, repair and replace the private road and all expenses incurred in defending such claims. The substance of this subsection shall appear on the application for the special use permit and be signed by the applicant property owner.

Sec. 38-513. Wind energy. [Added by Ord. No. ZA-62, eff. 10-30-2009]

(a) Definitions. As used in this section, the following terms shall have the meanings indicated:

ANEMOMETER — A temporary wind speed indicator constructed for the purpose of analyzing the potential for utilizing a wind turbine at a given site.

SHADOW FLICKER — The moving shadow created by the sun shining through the rotating blades of a wind turbine.

WIND TURBINE — Any structure or appurtenance that converts wind energy into electricity or any other form of energy.

(b) Anemometers are permitted in all zoning districts as a temporary use, in compliance with the provisions contained herein.

(1) The construction, installation, or modification of an anemometer tower shall require a building permit and shall conform to all applicable local, state, and federal safety, construction, environmental, electrical, communications, and FAA requirements.

(2) An anemometer shall be subject to the minimum requirements for height, setback, separation, location, safety requirements, and decommissioning that apply to the proposed wind turbine on the property.

(3) An anemometer that does not meet the requirements of Subsection (c) or (d) shall be permitted for no more than 13 months.

(c) Wind turbines, whether permitted by right pursuant to Subsection (d) or permitted as a special use pursuant to Subsection (e), shall be subject to the following requirements:

(1) The lowest extension of any blade or other exposed moving component of a wind turbine shall be at least 15 feet above the ground or any walking surface such as a deck or balcony.

(2) No wind turbine shall be located in or over a body of water.

(3) All wind turbines, including their components, connections and placement, must conform to: the design standards of the IEC 61400-SER {Ed.1.0}, FAA requirements, the Michigan Airport Zoning Act (Public Act 23 of 1950, MCL § 259.431 et seq.), the Michigan Tall Structures Act (Public Act 259 of 1959, MCL § 259.481 et seq.), the Michigan Public Service Commission and the Federal Energy Regulatory Commission standards.

(4) The owner(s) and/or operator(s) of a wind turbine shall complete decommissioning within 24 months after the end of its useful life. All decommissioning expenses are the responsibility of the owner(s) and/or operator(s).

(5) Wind turbines shall not interfere with communication systems, such as, but not limited to, radio, telephone, television, satellite, or emergency communication systems.

(6) No commercial advertising or displayed messages shall be allowed on a wind turbine.

(7) Wind turbines shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.

(d) Wind turbines shall be permitted in any zoning district, provided that, in addition to the requirements listed in Subsection (c), the following requirements are met:

(1) The total height of the wind turbine may not exceed 50 feet, measured from the immediate adjacent grade.

(2) Wind turbines shall meet all the yard requirements applicable to the zoning district and Section 38-494(a).

(3) Wind turbines must not create a nuisance for adjoining properties, such as noise, vibration and shadow flicker.

(4) The diameter of the blades must not exceed 10 feet.

(5) No more than two wind turbines may be located on a property.

(6) Wind turbines may only be installed as an accessory to an approved use in the applicable zoning district.

(7) An application for a building permit showing that all applicable ordinances, codes and other restrictions are met and specific engineering pertaining to support and/or foundation for the wind turbine must be submitted and approved prior to the installation of a wind turbine.

(e) Special use permits.

(1) If a wind turbine(s) is (are) not permitted under Subsection (d) of this section, then a special use permit shall be required from the Planning Commission for the construction of a wind turbine(s) in any zoning district.

(2) Applicants for a special use permit for a wind turbine shall submit the following information, in addition to any other information required by this section:

a. A scaled site plan showing the following:

1. The location, type and height of the proposed wind turbine.

2. On-site land uses and zoning and adjacent land uses (including buildings and structures located thereon) and zoning (even if adjacent to another municipality).

3. The proposed means of access and parking.

4. Setbacks from property lines.

b. A detailed topographical landscape plan showing specific landscape materials, both existing and proposed.

c. Elevation drawings of the proposed wind turbine(s) and any other structures. If the wind turbine(s) is (are) to be illuminated, this should be clearly depicted on the elevation drawing.

d. Signed and sealed construction plans for the wind turbine(s), including documentation that shows compliance with manufacturers' specifications.

(3) In addition to any other standards specified in this section, the Planning Commission shall also consider the following factors in determining whether to issue a special use permit for a wind turbine(s):

a. Height and number of the proposed wind turbine(s).

b. Proximity of the proposed wind turbine(s) to residential structures and residential district boundaries.

c. Nature of uses on adjacent and nearby properties.

d. Surrounding topography.

e. Surrounding tree coverage and foliage.

f. Design of the proposed wind turbine(s), with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.

g. Proposed ingress and egress to the proposed wind turbine(s).

h. The effect of the proposed wind turbine(s) on the surrounding neighborhood.

i. The effects on the environment.

Sec. 38-514. Marihuana establishments and facilities prohibited. [Added by Ord. No. ZO 2019-1, eff. 7-26-2019]

(a) Pursuant to Section 6 of the Michigan Regulation and Taxation of Marihuana Act (Michigan Initiated Law 1 of 2018), as amended,[5] marihuana establishments are prohibited within the boundaries of the Township.

(b) Marihuana facilities are prohibited within the boundaries of the Township. As used in this section,

5. **Editor's Note: See MCL 333.27956.**

"marihuana establishment(s)" means that term as defined in the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, as amended,[6] and "marihuana facility(ies)" means that term as defined in the Medical Marihuana Facilities Licensing Act, 2016 PA 281, as amended.[7]

Sec. 38-515. Condominium project approval. [Added by Ord. No. 2019-3, eff. 5-16-2019]

(a) Pursuant to authority conferred by Section 141 of the Condominium Act, Act 59 of 1978, (MCL § 559.101 et seq.; MCL § 559.241), as amended, all condominium subdivision plans shall be submitted to the Planning Commission for Township approval. In determining whether to approve a condominium subdivision plan, the Planning Commission and Township Board shall consult with the Zoning Administrator, Township Planner, Township Attorney, and Township Engineer regarding the adequacy of the master deed, deed restrictions, utility systems and streets, subdivision layout and design, and compliance with all requirements of the Condominium Act. For purposes of interpreting and applying this Section 38-515, the words and phrases used shall have the meanings respectively ascribed to them in Sections 3 through 10 of the Condominium Act (MCL §§ 559.103 through 559.110).

(1) Initial information. Concurrently with notice required to be given to the Township pursuant to Section 71 of the Condominium Act (MCL § 559.171), a person intending to develop a condominium project shall provide the following information with respect to the project:

a. The name, mailing address, electronic mail address, and telephone number of:

1. All persons with an ownership interest in the land on which the condominium project will be located, together with a description of the nature of each person's interest (for example, fee owner, optionee, or land contract vendee).

2. All engineers, attorneys, architects or registered land surveyors associated with the project.

3. The developer of the condominium project.

b. The legal description of the land on which the condominium project will be developed, together with appropriate tax identification numbers.

c. The acreage content of the land on which the condominium project will be developed.

d. The purpose of the condominium project (for example, residential, commercial, industrial, etc.).

e. The number of condominium units to be developed as part of the condominium project.

f. Whether or not a community water system is contemplated.

g. Whether or not a community septic system is contemplated.

(2) Information to be kept current. All information required by this Section 38-515 shall be furnished to the Zoning Administrator and shall be kept current and updated until such time as a certificate of compliance pursuant to Section 38-35 has been issued.

(3) Site plans - new projects, master deed, and engineering and inspections. Prior to recording the

6. **Editor's Note: See MCL 333.27951 et seq.**

7. **Editor's Note: See MCL 333.27101 et seq.**

master deed as required by Section 72 of the Condominium Act (MCL § 559.108), the condominium project shall undergo site plan review and approval pursuant to Article II, Division 3, of this chapter by the Planning Commission, unless the condominium project is proposed as a planned unit development, in which case the review and approval of the planned unit development condominium project shall be subject to Article III, Division 8, of this chapter. The Township Board may approve a condominium project in any location within Park Township, provided the condominium project meets the provisions of Section 38-515. In addition, the Township shall require appropriate engineering plans and inspections prior to the issuance of any certificates of compliance.

(4) Site plans - expandable or convertible projects. Prior to expansion or conversion of a condominium project to additional land, the new phase of the condominium project shall be subject to site plan review and approval pursuant to Article II, Division 3, of this chapter by the Planning Commission. The Township Board may approve an expansion or conversion, provided the condominium project meets the provisions of Section 38-515.

(5) Master deed, restrictive convenants and as-built survey to be furnished. The developer shall furnish the Zoning Administrator with the following:

a. One copy of the recorded master deed and one copy of all restrictive covenants. In the event of any conflict between the restrictive covenants, the approved plan, and this chapter, the approved plan and this chapter shall control. Two copies of an as-built survey shall also be provided. The as-built survey shall be reviewed by the Zoning Administrator for compliance with all applicable Township ordinances.

(6) Compliance with federal, state and local law. All condominium projects shall comply with federal and state statutes and local ordinances.

(7) State and county approval. The developer shall establish that appropriate state and county approvals have been received with regard to the fresh water system for the proposed condominium project and with regard to the wastewater disposal system for the proposed condominium project.

(8) Easements for utilities. The condominium subdivision plan shall include all necessary easements granted to Park Township, or Ottawa County if appropriate, for the purposes of constructing, operating, inspecting, maintaining, repairing, altering, replacing, and/or removing pipelines, mains, conduits and other installations of a similar character (hereinafter collectively called "public structures") for the purpose of providing public utilities, including conveyance of sewage, water and stormwater runoff across, through and under the property subject to said easement, and excavating and refilling ditches and trenches necessary for the location of the public structures.

(9) Condominium plan - required content. All condominium subdivision plans shall include the information required by Section 66 of the Condominium Act and the following:

a. A survey plan of the condominium subdivision.

b. A floodplain plan, when appropriate.

c. A site plan showing the location, size, shape, area and width of all condominium units.

d. A utility plan showing all sanitary sewer, water, and storm sewer lines and easements granted to the Township for installation, repair and maintenance of all utilities.

e. A street construction, paving, and maintenance plan for all private streets within the proposed condominium subdivision.

f. A storm drainage and stormwater management plan, including all lines, swales, drains, basins, and other facilities.

(10) Relocation of boundaries. The relocation of boundaries, as described in Section 48 of the Condominium Act, shall conform to all setback requirements of this chapter for the district in which the condominium project is located and shall be subject to the review and approval of the Zoning Administrator. These requirements shall be made part of the bylaws and recorded as part of the master deed.

(11) Subdivision of condominium units. All subdivisions of individual condominium units shall conform to the requirements of this chapter for minimum lot width, lot area, and building setback requirements and shall be subject to the review and approval of the Zoning Administrator. These requirements shall be made part of the bylaws and recorded as part of the master deed.

(12) Manufactured housing condominium project. Manufactured housing condominium projects shall conform to all requirements of this chapter and shall be located only in a planned unit development.

(13) Site condominium projects. All condominium projects that consist in whole or in part of condominium units which are building sites, mobile home sites, or recreational sites shall provide in the condominium plan a building envelope which complies with the setback, area and width requirements of the applicable zoning district and shall be subject to the review and approval of the Zoning Administrator.

(14) Single-family detached condominiums. Single-family detached condominium units shall be subject to all requirements and standards of the applicable residential district regulations, including minimum floor area requirements. There shall be maintained a minimum distance of 80 feet from the center of one residential dwelling unit to the center of another residential dwelling unit. This eighty-foot requirement shall be computed along the front building line. In addition, building envelopes shall be depicted on the site plan to ensure that the minimum area requirements can be met.

(15) Streets and roads and sidewalks.

a. All streets and roads in a site condominium project shall, at a minimum, conform to the standards and specifications promulgated by the Ottawa County Road Commission, or private roads built to Section 38-512 of this chapter.

b. The developer shall install sidewalks, designed and installed to Ottawa County Road Commission standards, along the development side of all public streets on which the development has frontage if the public street has a bituminous hard surface or if the developer is proposing to hard surface the public street on which the development has frontage. In cases where a sidewalk, or portion of a sidewalk, is outside of the public street right-of-way, a public easement for sidewalk purposes is required.

c. The developer shall install internal sidewalks according to the requirements of Chapter 18, Land Divisions and Subdivisions, as amended.

(16) Paved public streets.

a. The land for which a condominium project is proposed under this chapter shall have frontage on and abut a paved public street for the entire width of the parcel being proposed for the condominium project. If such land is a corner lot, each public street abutting the land must be paved as noted herein.

b. If the land does not have such paved public street frontage, the developer of the condominium project may make such improvements as are necessary to comply with the paved public street frontage requirement of Section 38-515(16) above, subject to the approval of the Ottawa County Road Commission. If a parcel has frontage on only one public street, such improvements shall be extended from an existing paved public street to the farthest lot line of the parcel containing the proposed condominium project.

c. If the parcel is a corner lot, only one of the street frontages must be paved as extended from an existing paved public street to the farthest lot line of the parcel containing the proposed condominium project. This street shall be considered the primary street frontage for the condominium project.

d. In order to comply with the paved public street frontage requirement of Section 38-515(16) above, the remaining street frontage (the secondary street frontage) for the condominium project must be paved at such time that an entrance to the condominium project is provided onto the secondary street frontage. This paving shall be extended from the paved primary street frontage to the condominium project entrance on the secondary street.

(17) Public water and sanitary sewer. Public water and sanitary sewer service shall be provided to all condominium projects according to the requirements of Chapter 18, Land Divisions and Subdivisions, as amended.

(18) Streetlights and street trees. The developer shall install streetlights and street trees according to the requirements of Chapter 18, Land Divisions and Subdivisions, as amended.

(19) Public hearing. Prior to making a recommendation to the Township Board, the Planning Commission shall hold a public hearing on the condominium plan. Public notice shall be provided as required by the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended.

Sec. 38-516. (Reserved)

Sec. 38-517. Garage sales. [Added by Ord. No. 2020-001, eff. 1-27-2020]

Garage sales, rummage sales, yard sales, moving sales, and similar activities are considered temporary accessory uses within any residential zoning district and are subject to the following conditions:

(1) Any garage sale, rummage sale or similar activity will be allowed without a temporary zoning permit for a period not to exceed four days within a three-month period. Any such activities operating for a period of time in excess of four days will require a temporary zoning permit from the Zoning Administrator.

(2) All such sales must be conducted a minimum of 18 feet from the front lot line and a minimum of 15 feet from the side lot lines.

(3) No signs advertising such sales may be placed upon a public right-of-way or other public property. All signs advertising such sales must be placed upon private property with the consent of the owner

of the private property and must be removed within 24 hours of the conclusion of the sale or similar activity.

Sec. 38-518. Tree preservation. [Added by Ord. No. 2020-1022-1, eff. 11-4-2020]

(a) Purpose and Intent. Tree preservation is recognized as essential throughout the Township to protect the health, safety, and general welfare of the natural environment and the residents. The intent of this section is to promote the aesthetic, biological, and environmental benefits of trees. Further, the Township seeks to implement the goals of protection, preservation, and reforestation of trees, as encouraged by the Park Township Master Plan, recognizing:

(1) The natural beauty and rural character of the Township are increased.

(2) Tree-lined streets are an asset to the historic resort character of the community, particularly along, but not necessarily limited to, Lakeshore Drive.

(3) Mature trees create a spectacular canopy along roadways and create shade, particularly along, but not necessarily limited to, North Lakeshore Drive.

(4) New development should preserve tree stands.

(5) The restoration of a street tree canopy is important along street right-of-way corridors, particularly along, but not necessarily limited to, Ottawa Beach Road.

(6) Avoiding the loss of significant woodlots to disease and infestation is important.

(7) Tree canopy and health analysis, maintenance, and reforestation should regularly occur.

(b) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the content clearly indicates a different meaning:

ARBORIST — A professional, who is both certified by the International Society of Arboriculture and is a registered member of the Arboriculture Society of Michigan, and who cultivates, manages, and studies trees, shrubs, vines, and other perennial woody plants in dendrology and horticulture.

BUFFER — A vegetative screening of mature trees, or planted trees, or a combination of both, that protects and enhances the existing natural beauty and is sufficient to reduce noise and visually screen abutting property from the impacts of the development property.

CANOPY — The layer of tree leaves, branches, and stems that provide coverage of the ground when viewed from above.

CLEAR-CUT or CLEAR-CUTTING — The removal of any tree beyond that reasonably required to construct development infrastructure and buildings.

DEVELOPMENT — Any planned unit development, condominium, site condominium, plat, private road, site plan, or other application subject to review by the Park Township Planning Commission.

DIAMETER BREAST HEIGHT — The measurement of a tree diameter at 4.5 feet above the ground.

FORESTER — A professional, who is registered with the State of Michigan Department of Natural Resources Registered Forester program, and who practices the science of ecological restoration and management of forests.

IMPROVED SURFACE — The bituminous pavement or concrete or other hard surface, including

gravel shoulders, of a traveled roadbed.

MANAGEMENT or MANAGEMENT PLAN — The sustainable practice of creating or improving a healthy biodiversity, carbon sequestration, and air quality equal to the original natural environment prior to development.

REFORESTATION — The intentional restocking of trees that have been removed.

STANDS OF TREES (TREE STANDS) — An aggregation of trees or other growth occupying a specific area and sufficiently uniform in species composition, size, age, arrangement, and condition as to be distinguished from the forest or other growth on adjoining areas.

TREE — A woody perennial plant with six inches or greater of diameter breast height, typically containing a single stem or trunk, and bearing lateral branches.

WILDLIFE CORRIDOR — An area of natural habitat that provides passage for wildlife, colonization, and the breeding of plants and animals, throughout a development and across artificial obstacles such as dams, roads, pedestrian pathways, and railways.

(c) Residential, Commercial, and Industrial Development. Any development with commercial use, industrial use, or a residential development of two or more residential building sites or units shall be subject to the following:

(1) Buffers. The designation of a buffer along all lot lines for a residential development boundary, including the street right-of-way, and along all side and rear lot lines for commercial or industrial development. The Planning Commission has the discretion to increase, decrease, or eliminate the buffer in whole or in part, based upon a consideration of the following factors:

a. Whether trees within or near the proposed buffer are mature trees;

b. Whether the buffer contains or could contain tree stands;

c. The area of the proposed buffer related to the area of the overall development property;

d. The location and type of existing adjacent uses;

e. The type of permitted adjacent uses;

f. The density permitted by the underlying zoning district; and

g. The density permitted within a planned unit development when a development is sought pursuant to Chapter 38, Article III, Division 8, of this chapter.

(2) Wildlife Corridor. The designation of a wildlife corridor abutting one or more lot lines of the development boundary at locations that provide a logical continuation of the wildlife corridor on the adjacent properties and beyond.

a. The Planning Commission has the discretion to increase, decrease, or eliminate the wildlife corridor in whole or in part, based upon a consideration of the following factors:

1. The species of animals to benefit from the wildlife corridor;

2. The quality and quantity of vegetative cover and habitat resource;

3. Whether man-made or natural features, such as a body of water, exist on adjacent properties that would obstruct the natural continuation of the wildlife corridor; and

4. Whether the migration of animals is viable without the wildlife corridor.

b. No vertical or otherwise upright tree that is deceased or dying shall be removed from a wildlife corridor, unless it is determined to be a threat to human life or property outside of the wildlife corridor. Such determination shall be made by the Zoning Administrator based on sufficient evidence provided by the lot or property owner.

(3) Clear-cutting. Clear-cutting is prohibited.

(4) Tree Canopies. All trees within the development shall maintain a canopy. A canopy shall include all of the tree leaves, branches, and stems for any tree without a building beneath the tree, and the canopy shall not be removed to a height more than eight feet from ground level. A canopy shall include all of the tree leaves, branches, and stems for any tree with a building beneath the tree in whole or in part, and the canopy shall not be removed to a height more than five feet above the highest point of the building.

(5) Tree Stands. Tree stands shall be preserved to the extent practicable within residential development.

(6) Health Analysis. For residential developments with six or more building sites or units, and for commercial or industrial developments, the Planning Commission may require an inventory and general health analysis of all existing trees of six inches or greater in diameter measured at the diameter breast height, identifying the species and approximate height of each tree, performed by an arborist.

(7) Reforestation Plan. A reforestation plan of no less than 25% of the trees removed at six inches or greater in diameter measured at the diameter breast height, which removal was necessary to construct the related development infrastructure, including, but not necessarily limited to, any easements and physical improvements of internal roads, drives, public utilities, and stormwater, shall be provided. The reforestation plan shall be performed by a forester and shall include a management plan for the entire development property.

(8) Outside Agency Approvals. Final approval from the Ottawa County Road Commission, Ottawa County Environmental Health Department, Ottawa County Water Resources Commissioner, and any other pertinent government agency with jurisdiction over applicable approvals for the development shall be obtained.

(d) Street Trees. Pursuant to the purpose and intent of this section, the Township seeks to preserve, enhance, and create tree-lined streets along street rights-of-way. No person or property owner shall allow the removal of any tree within the street right-of-way nor remove any tree within 20 feet from the improved surface of the street, linearly measured to the diameter breast height of the tree trunk. Tree removal shall be permitted for only the purpose of driveways or private roads intersecting the street right-of-way. Tree removal shall be the minimum amount necessary to reasonably access the lot for vehicular access and emergency services. Tree stands shall not be removed unless absolutely unavoidable. The following street rights-of-way shall be subject to this section:

(1) 152nd Avenue from Butternut Drive to Post Avenue.

(2) 160th Avenue from New Holland Street to Post Avenue.

(3) 168th Avenue.

(4) Butternut Drive.

(5) James Street.

(6) Lakeshore Drive.

(7) Lakewood Boulevard.

(8) Ottawa Beach Road.

(9) Riley Street, west of 152nd Avenue.

(10) Quincy Street, west of Butternut Drive.

(11) Southshore Drive.

(e) Appeals. In lieu of Section 38-70 of this chapter, the Zoning Board of Appeals may grant relief from any provision of this section and shall consider the following standards:

(1) That strict compliance with this section would render conformity with those restrictions unnecessarily burdensome.

(2) That the plight of the property owner/applicant is due to the unique circumstances of the property and not due to general conditions of the zoning district.

(3) In the case of a development, whether appropriate buffers and wildlife corridors can be adequately provided if the variance is granted.

(4) The location of buildings on adjoining properties.

(5) The size of the lot in question and the size of adjoining properties.

(6) The effect of construction on the lot in question on the view from adjoining properties.

(7) The potential effect of erosion.

Sec. 38-519. (Reserved)

Sec. 38-520. Temporary local produce markets. [Added by Ord. No. 2023-01, eff. 4-15-2023]

(a) Temporary local produce markets shall require site plan approval from the Planning Commission.

(b) The following shall apply to all temporary local produce markets:

(1) Produce must be grown or raised within Ottawa, Allegan, or Kent Counties.

(2) Other agricultural products as well as produce not grown or raised in Ottawa, Allegan, or Kent Counties, including value-added agricultural products, may also be sold in the market if they are related to the other products sold at the market, and if the total sales area of such items is less than 25% of the total area of the temporary local produce market.

(3) The market, sales area, and any outdoor display areas shall be set back at least 30 feet from the improved surface of the adjacent roadway and any multiuse path, and at least 10 feet from side and rear property lines.

(4) Buildings, temporary and permanent. More than one building may be permitted per parcel. All buildings must meet all requirements of the currently adopted Building Code. Buildings used as

temporary local produce markets shall be considered accessory structures; however, in the event of a conflict between this section and the accessory structure standards in Section 38-491, this section shall apply. Any temporary structure housing the temporary local produce market must be removed from the property outside of the ninety-day period (or fewer days) that the stand is in operation.

(5) Restrooms. Temporary local produce markets must provide any restroom facilities that may be required by federal or state laws or regulations, or by local ordinances or codes, or by any other similar requirements.

a. If the property owner seeks to meet the restroom requirements with any toilet facility that is not under the direct ownership and control of the temporary local produce market operator, the property owner must provide any relevant agreements along with a signed affidavit ensuring that the restroom facility will be accessible during the hours of operation of the temporary local produce market.

b. Portable restroom facilities must be located at least 20 feet from any lot line and screened from view by either fencing or dense vegetation. They must be maintained so no odor is present at the lot line.

(6) Waste containers. Suitable containers for rubbish must be placed on the premises for public use. They must be removed when the market is not active.

(7) Hours of operation. Any stand located within 200 feet of any dwelling on an adjacent lot may not open earlier than 7:00 a.m. and must close not later than 10:00 p.m.

(c) Parking requirements specific to temporary local produce markets.

(1) All parking shall be provided in off-street parking lots. The Planning Commission may waive this requirement, in whole or in part, if the market is located in an area with extensive street parking which the Planning Commission determines will be adequate to meet the needs of the proposed use. The Planning Commission may also permit parking to be shared with adjacent uses if the joint use of parking meets other requirements, including but not limited to handicap accessibility.

(2) The number of parking spaces shall be determined on a case-by-case basis, upon consideration of the size and character of the temporary local produce market being proposed.

(3) Barrier-free parking spaces must be provided.

(4) Parking shall not be located nearer than 10 feet to the road pavement or multiuse path and may not pose a hazard to either vehicular or nonmotorized road or path users.

(5) Ingress-egress shall be limited to driveways that have been approved by the Ottawa County Road Commission.

(6) The Planning Commission may waive parking lot lighting requirements upon making the determination that the facility will be used only during daylight hours.

(7) The Planning Commission may waive parking lot landscaping requirements upon making the determination that existing vegetation to be retained on the site satisfies the objectives of this section and maintains the rural, noncommercial character of the site. Other screening and buffering requirements may be either waived or implemented by the Planning Commission as

needed.

(8) The Planning Commission may waive the requirement for public water to be provided on-site if it is not required in order to be compliant with applicable state or federal laws or regulations, or local ordinances or codes, or any similar requirements.

Sec. 38-521. through Sec. 38-532. (Reserved)

ARTICLE V
Wireless Communications Towers And Antennas

Sec. 38-533. Definitions. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-38, eff. 1-8-1998; Ord. No. Z-57, eff. 12-13-2007]

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

ALTERNATIVE TOWER STRUCTURE — Man-made trees, clock towers, bell steeples, church spires, light poles, elevator bulkheads, barns, silos, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

ANTENNA — Any 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 communications signals or other communication signals.

CO-LOCATION — The use of a tower by more than one wireless telecommunications provider.

FAA — The Federal Aviation Administration.

FCC — The Federal Communications Commission.

GUYED TOWER — Any tower that utilizes guy wires.

HEIGHT — When referring to a tower or other building or structure upon which an antenna is mounted, the distance measured from the finished grade of the parcel at the center of the front of the tower or other building or structure to the highest point on the tower or other building or structure, including the base pad and any antenna.

LATTICE TOWER — A support structure constructed of vertical metal struts and cross braces, forming a triangular or square structure which often tapers from the foundation to the top.

MONOPOLE TOWER — A support structure constructed of a single, self-supporting pole, securely anchored to a foundation without guy wires.

PREEXISTING TOWERS and PREEXISTING ANTENNAS — Any tower or antenna for which a building permit or special use permit has been properly issued prior to the effective date of the amendment to the ordinance adding this article, or any tower or antenna for which no building and/or special use permit was required, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.

TOWER — Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting (i.e., without guy wires or other external means of support) lattice towers, guyed towers, or monopole towers, used for the transmission or reception of radio, telephone, cellular telephone, television, microwave or any other form of telecommunication signals. The term "tower" includes the structure and any support for the structure.

Sec. 38-534. Background. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-38, eff. 1-8-1998; Ord. No. Z-57, eff. 12-13-2007]

(a) The Township has received or expects to receive requests to site wireless communications towers and antennas within its boundaries.

(b) The Township finds that it is in the public interest to permit the siting of wireless communications towers and antennas within its boundaries.

(c) It is the Township's intent to permit the siting of wireless communications towers and antennas within its boundaries.

(d) It is the Township's intent to protect and promote the public health, safety and welfare by regulating the siting of wireless communications towers and antennas within its boundaries.

Sec. 38-535. Purpose and goals. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-38, eff. 1-8-1998; Ord. No. Z-57, eff. 12-13-2007]

(a) The purpose of this article is to establish reasonable guidelines and general regulations for siting wireless communications towers and antennas.

(b) The goals of this article are to:

(1) Protect residential areas and land uses from potential adverse effects of towers and antennas;

(2) Encourage the location of towers and antennas in nonresidential areas;

(3) Minimize the total number of towers and antennas throughout the Township;

(4) Promote the joint use of existing tower sites rather than construction of additional towers;

(5) Promote the location of towers and antennas in areas where the adverse effect on the Township is minimal;

(6) Promote the configuration of towers and antennas to minimize their adverse visual impact through careful design, siting, landscape screening, and innovative camouflaging techniques;

(7) Promote telecommunications services to the Township which are quick, effective, and efficient;

(8) Protect the public health and safety of the Township and its residents; and

(9) Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

To further these goals, the Township shall consider its Comprehensive Plan, Zoning Map, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

Sec. 38-536. Applicability. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-38, eff. 1-8-1998; Ord. No. Z-57, eff. 12-13-2007]

(a) New towers and antennas. All new towers and new antennas in the Township shall be subject to this article, except as otherwise provided in this section.

(b) Amateur radio station operators/receive-only antennas; television antennas. This article shall not govern any tower, or the installation of any antenna that is under 90 feet in height and is owned and operated by a federally licensed amateur radio station or is used exclusively for receive only antennas for voice or television reception.

(c) Preexisting towers and antennas. Preexisting towers and preexisting antennas shall not be required to meet the requirements of this article, other than the requirements of Section 38-537(f) and (g), and the general requirements of this article concerning preexisting structures (i.e., Article VII of this

chapter, pertaining to parking and loading spaces).

Sec. 38-537. General requirements. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-38, eff. 1-8-1998; Ord. No. Z-57, eff. 12-13-2007]

(a) Principal or accessory use. Antennas and towers may be considered either principal or accessory uses. A different existing use of or on the same lot shall not preclude the installation of an antenna or tower on that lot. Likewise, an existing antenna or tower on a lot shall not preclude the location of a different use, building or structure on the same lot.

(b) Lot size. Even though antennas or towers may be located on leased portions of a lot, the dimensions of the entire lot shall be used to determine if the installation of a tower or antenna complies with the regulations of the applicable zoning district, including, but not limited to setback requirements, lot-coverage requirements, and other such requirements. The area of the lot and the lot dimensions, frontage for example, shall meet the minimum requirements of the zoning district within which it is located.

(c) Height. Towers shall not exceed a maximum height of the lesser of 199 feet or one foot lower than the height that would require illumination of the tower on the date of the commencement of construction of the tower.

(d) Tower finish. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.

(e) Design of tower site. All towers shall be designed and constructed to accommodate the co-location of a minimum of three wireless communication carriers or providers. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.

(f) Antenna color. An antenna and its supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

(g) Lighting. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.

(h) State or federal requirements. All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this article shall bring such towers and antennas into compliance with such revised and applicable standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to comply with such revised and applicable standards and regulations shall constitute grounds for the Township to seek a court order, authorizing the Township or its designee to remove the tower and/or antenna at the owner's expense.

(i) State construction codes and safety standards. The owner of a tower or antenna shall ensure its structural integrity by maintaining it in compliance with the standards contained in applicable state construction code and applicable standards published by the electronic industries association or any similar successor organization, as amended from time to time. If the Township suspects that a tower or an antenna does not comply with such codes or standards and constitutes a danger to persons or

property, then the Township may proceed under applicable law in Article IV of Chapter 10, pertaining to dangerous buildings or common law to bring the tower or antenna into compliance or to remove the tower or antenna at the owner's expense.

(j) Measurement. Tower setbacks and separation distances shall be measured and applied to facilities without regard to municipal and county jurisdictional boundaries.

(k) Not essential services. With the exception of towers and antennas erected or installed by Ottawa County central dispatch or other similar public entities for purposes of public safety, which are considered by the Township to be essential services, all commercial towers and antennas shall be regulated and permitted pursuant to this article, and shall not be regulated or permitted as essential services, public utilities, or private utilities.

(l) Franchises. Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in the Township have been obtained, and they shall file a copy of all required franchises with the Zoning Administrator.

(m) Signs. No signs or advertising shall be allowed on an antenna or tower. However, the tower owner may post a sign no larger than 12 square feet in area designating a person to contact in an emergency, together with the person's telephone number and address.

(n) Metal towers. Metal towers shall be constructed with a corrosion-resistant material.

(o) No interference. Towers shall not interfere with television or radio reception on surrounding properties.

(p) Paving requirement. All parking and drive areas shall be paved with an asphalt or concrete binder and shall be constructed in accordance with the requirements of Section 38-605. In the alternative, the Planning Commission may allow appropriate environmentally friendly paving materials, such as pervious concrete or other porous paving material that allows water to pass through it.

Sec. 38-538. Permitted uses. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-38, eff. 1-8-1998; Ord. No. Z-57, eff. 12-13-2007]

(a) General. The uses listed in this section are deemed to be permitted uses by right in any zoning district and shall not require a special use permit.

(b) Permitted uses.

(1) Antennas or towers located on property owned, leased, or otherwise controlled by the Township are permitted uses, provided a license or lease authorizing such antenna or tower has been approved by the Township. This provision shall not be interpreted to require the Township to approve a license or lease.

(2) Antennas which are themselves not more than 30 feet in height and located upon legally existing electric transmission towers are permitted uses.

Sec. 38-539. Special use permits. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-38, eff. 1-8-1998; Ord. No. Z-57, eff. 12-13-2007]

(a) General. The following provisions shall govern the issuance of special use permits for towers or antennas by the Planning Commission.

(1) If the tower or antenna is not a permitted use under Section 38-538, then a special use permit shall be required for the construction of a tower or the placement of an antenna in any zoning district.

(2) Applications for special use permits under this section shall be subject to the general procedures and requirements of this article for special uses, except as modified in this section.

(3) In granting a special use permit, the Planning Commission may impose such conditions that the Planning Commission concludes are necessary to minimize any adverse effect of the proposed tower or antenna on adjoining properties.

(4) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer. This engineer shall certify in writing that the tower or antenna will be structurally sound and will comply with all applicable building and other construction code requirements.

(b) Processing special use applications.

(1) Submittal information required. Applicants for a special use permit for a tower or an antenna shall submit the following information, in addition to any other information required by this article.

a. A scaled site plan showing: the location, type and height of the proposed tower or antenna; on-site land uses and zoning; adjacent land uses, including buildings and structures located thereon, and zoning (even if adjacent to another Township); comprehensive plan classification of the site and all properties within the applicable separation distances set forth in Subsection (b)(6) of this section; small scale sketch of properties, streets and uses within one-half mile of the proposed tower or antenna; adjacent roadways; proposed means of access; setbacks from property lines; elevation drawings of the proposed tower or antenna and any other structures; topography; parking; and other information deemed necessary by the Zoning Administrator or Planning Commission to assess compliance with this article.

b. Legal description of the lot and of the leased portion of the lot (if applicable), together with a copy of the applicant's deed or lease.

c. The separation distance between the proposed tower or antenna and the nearest dwelling, platted residential properties, and unplatted residentially zoned properties.

d. An inventory of the existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the Township or within one mile of the Township border, including specific information about the location, height, design, type of construction, capacity to locate additional antennas, and the owners/operators of those existing towers and antennas, along with the separation distance between those other towers or antennas and the proposed tower and/or antenna.

e. A detailed landscape plan showing specific landscape materials, both existing and proposed.

f. A description of the method of fencing, finished color and, if applicable, the method of camouflage and illumination of the tower and/or antenna.

g. Signed and sealed construction plans for the tower and/or antenna.

h. A description of compliance with the requirements of this article, and of all applicable federal, state, county or Township laws, rules, regulations and ordinances.

i. A notarized statement by the applicant for a tower, indicating if the tower will accommodate co-location of additional antennas for future users.

j. A description of the services to be provided by the proposed new tower or antenna, and any alternative ways to provide those services without the proposed new tower or antenna, and evidence (in the form of a report, study, or other relevant documentation) that no existing tower, antenna, alternative tower structure, structure, or alternative technology can provide the services sought by the applicant.

k. A description of the feasible location of applicant's future planned towers or antennas within the Township based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower or antenna is erected.

(2) Factors considered in granting special use permits for towers or antennas. In addition to any other standards specified in this article for considering special use permit applications, the Planning Commission shall also consider the following factors in determining whether to issue a special use permit under this article.

a. Height of the proposed tower or antenna;

b. Proximity of the proposed tower or antenna to residential structures and residential district boundaries;

c. Nature of uses on adjacent and nearby properties;

d. Surrounding topography;

e. Surrounding tree coverage and foliage;

f. Design of the proposed tower or antenna, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

g. Proposed ingress and egress to the proposed tower or antenna;

h. Availability of suitable existing towers or antennas, alternative tower structures, other structures, or alternative technologies not requiring the use of towers or antennas or other structures, as discussed in this section;

i. The effect of the proposed tower or antenna on the conforming properties and the surrounding neighborhood; and

j. Whether or not the proposed tower or antenna is located in zoning districts or on structures where the Township intends at least most towers and antennas in the Township to be located, as subsequently described in this section.

(3) Township intentions concerning the location of most if not all towers and antennas. The Township intends that most if not all towers and antennas will be located as described in this subsection.

a. The Township encourages the location of towers and antennas, including the placement of additional buildings or other supporting equipment used in connection with them, where

they will have a minimal adverse effect on residential uses.

b. The Township encourages the location of antennas on existing towers.

c. The Township encourages antennas on existing structures which are not towers, as an accessory use to any commercial, industrial, professional, institutional, or multifamily structure of eight or more dwelling units, provided the antenna does not extend more than 30 feet above the highest point of the structure.

(4) Availability of suitable existing towers, antennas, alternative tower structures, other structures, or alternative technology. No new tower or antenna shall be permitted unless the applicant demonstrates that no existing tower, antenna, alternative tower structure or alternative technology can provide the services sought by the applicant without the erection of the applicant's requested new tower or antenna. At the applicant's sole cost and expense, the Township will contract with an engineer, or other professional consultant, to review the information submitted by the applicant and then provide a report to the Planning Commission regarding whether this requirement has been adequately met. Evidence that no existing tower, antenna, alternative tower structure, structure, or alternative technology can provide the services sought by the applicant may consist of the following.

a. The applicant could demonstrate that no existing towers, antennas, alternative tower structures, alternative technology, or other structures are available within the geographical area which meet the applicant's engineering requirements.

b. The applicant could demonstrate that existing towers, antennas, alternative tower structures, or other structures are not of sufficient height to meet the applicant's engineering requirements, and that their height cannot be increased to meet such requirements.

c. The applicant could demonstrate that existing towers, alternate tower structures, or other structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment, and that their strength cannot practically be increased to provide that support.

d. The applicant could demonstrate that the proposed antenna would cause electromagnetic interference with existing towers or antennas, or that existing towers or antennas would cause interference with the applicant's proposed antenna.

e. The applicant could demonstrate that the costs to collocate an antenna exceed the costs of erecting a new tower or antenna.

f. The applicant could demonstrate that there are other limiting factors that render existing towers, antennas, alternative tower structures, and other structures unsuitable.

g. The applicant could demonstrate that an alternative technology that does not require the use of towers or antennas is cost-prohibitive or unsuitable.

(5) Setbacks. The following setback requirements shall apply to all towers for which a special use permit is required.

a. Towers must be set back a minimum distance equal to at least 75% of the height of the tower from any adjoining lot line. The setback is measured from the perimeter or outside edge of the base of the tower.

b. Guys and accessory buildings must satisfy the minimum setback requirements for the applicable zoning district.

(6) Separation. The following separation requirements shall apply to all towers for which a special use permit is required.

a. All monopole towers shall have a separation distance of the greater of 200 feet or two times the height of the tower from residentially zoned or used property.

b. All lattice or guyed towers shall have a separation distance of the greater of 300 feet or three times the height of the tower from residentially zoned or used property.

c. All new lattice or guyed towers shall be separated a minimum distance of 5,000 feet from any existing tower (lattice, guyed, or monopole). Separation distances between towers shall be applicable for and measured between the proposed lattice or guyed tower and preexisting towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan of the proposed tower.

(7) Security fencing. Towers and their guy wires, if any, for which a special use permit is required shall be enclosed by security fencing not less than six feet in height. The towers shall also be equipped with appropriate anti-climbing devices.

(8) Landscaping. The following requirements shall govern the landscaping surrounding towers for which a special use permit is required. The required landscaping shall be maintained in good condition for the duration of the special use permit and shall be irrigated.

a. Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent property. The standard buffer shall consist of a landscaped strip at least eight feet wide outside the perimeter of the compound. The landscaping buffer shall include native, indigenous species, including, but not limited to evergreens, planted at intervals that provide effective, year-round screening.

b. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, the Planning Commission may conclude that natural growth around the property perimeter may be a sufficient buffer.

Sec. 38-540. Accessory utility buildings. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-38, eff. 1-8-1998; Ord. No. Z-57, eff. 12-13-2007]

All utility buildings and structures accessory to a tower or an antenna shall comply with all other requirements of this article, shall be architecturally designed to blend in with the surrounding environment and shall meet the minimum setback requirements of the zoning district where the tower or antenna is located. Ground-mounted equipment shall be screened from view by suitable vegetation, except where a design of nonvegetative screening better reflects and complements the architectural character of the surrounding neighborhood.

Sec. 38-541. Removal of abandoned antennas and towers. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-38, eff. 1-8-1998; Ord. No. Z-57, eff. 12-13-2007]

Notwithstanding anything to the contrary elsewhere in this article, any antenna that is not operated or any

tower that is not utilized for an operating antenna for a continuous period of 24 months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within 90 days of receipt of notice from the Township notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower within the 90 days shall be grounds for the Township to proceed under applicable state law to remove the tower or antenna at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower. The owner of each antenna and/or tower shall submit to the Township in January of each year evidence satisfactory to the Township that the antenna and/or tower is being currently operated and utilized.

Sec. 38-542. Expansion of nonconforming use. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-38, eff. 1-8-1998; Ord. No. Z-57, eff. 12-13-2007]

Notwithstanding any other provisions of this article to the contrary, towers that are constructed and antennas that are installed in accordance with this article shall not be deemed to be the expansion of a nonconforming use or structure.

Sec. 38-543. through Sec. 38-562. (Reserved)

ARTICLE VI
Signs

Sec. 38-563. Definitions. [Ord. No. Z.02, eff. 2-7-1974; Ord. No. Z-14.02, eff. 4-19-1982; Ord. No. Z-20.02, eff. 8-7-1988; Ord. No. Z-22.02, eff. 2-20-1989; Ord. No. Z-39.02, eff. 1-1-1999]

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

BANNER — A fabric or plastic sign hung on a wall or from poles, on which lettered, figured, promotional phrases, or pictorial matter is displayed for advertising a business, service, or entertainment.

BILLBOARD — Any structure, including the wall of any building, on which lettered, figured, promotional phrases, or pictorial matter is displayed for advertising a business, service, or entertainment which is not conducted on the land upon which the structure is located or products not primarily sold, manufactured, processed or fabricated on such land.

BUSINESS SIGN — Any structure, including the wall of any building, on which lettered, figured, promotional phrases, or pictorial matter is displayed for advertising or identifying a profession, business, service, or entertainment conducted on the land where the structure is located, or products primarily sold, manufactured, processed, or fabricated on such land.

IDENTIFYING SIGN — Any structure on the same premises it identifies which serves only to tell the name or use of any public or semipublic building or recreation space, apartment building or apartment complex, subdivision, club, lodge, church, or institution or parking lot.

POLITICAL SIGN — A sign used to advertise a candidate for public office or a position on an issue to be voted on at a general or special election.

PORTABLE SIGN — A temporary sign which is not permanently affixed to the ground, a building or structure, including, without limiting the generality of the foregoing, all banners, pennants, balloons, A-frame signs, light chains, and signs on wheels or portable stands, but excluding real estate signs and political signs.

REAL ESTATE SIGN — A sign used only to advertise, with pertinent information, the sale, rental, or leasing of the premises upon which it is located.

Sec. 38-564. Purpose and scope. [Ord. No. Z.01, eff. 2-7-1974; Ord. No. Z-14.01, eff. 4-19-1982; Ord. No. Z-20.01, eff. 8-7-1988; Ord. No. Z-22.01, eff. 2-20-1989; Ord. No. Z-39.01, eff. 1-1-1999]

(a) This section is intended to protect and further the health, safety and welfare of the people of the Township by regulating the construction, erection, reconstruction, alteration, repair, maintenance, size, location and number of all signs, to ensure that such signs do not create a hazard to the public, to ensure that they do not interfere with the safe and efficient movement of pedestrians or traffic within the Township and to ensure that their size, location and number compliment harmoniously the nature of development within the various zoning districts of the Township.

(b) When more restrictive with respect to location, use, size, height or other requirements relating to structural safety, the provisions of the state construction code and/or any other applicable state construction code shall take precedence over this section.

Sec. 38-565. General conditions. [Ord. No. Z.03, eff. 2-7-1974; Ord. No. Z-14.03, eff. 4-19-1982; Ord. No. Z-20.03, eff. 8-7-1988; Ord. No. Z-22.03, eff. 2-20-1989; Ord. No. Z-39.03, eff. 1-1-1999; Ord. No. Z-56.03, eff. 8-22-2006]

(a) No sign shall be erected, constructed or reconstructed in any location where it may interfere with, or obscure the view of, or be confused with, an authorized traffic sign.

(b) No sign shall have any visible moving components, or a moving or changing message, either constantly or at intervals, regardless of whether the motion or change is caused by artificial or physical means, except as permitted by Section 38-569 and Section 38-575(g)(4).

(c) A sign which is an integral part of a building may not extend higher than the sidewall of the building on which it is mounted.

(d) No freestanding sign shall exceed eight feet in height. The Zoning Administrator may authorize freestanding signs of a greater height. The Zoning Administrator may, in his discretion, decline to decide such matter and refer decision thereon to the Zoning Board of Appeals as a matter for Zoning Board of Appeals decision pursuant to Section 603 of the Zoning Act (MCL § 125.3603). In granting such authorization, either by the Zoning Administrator, or the Zoning Board of Appeals as a matter for Zoning Board of Appeals decision pursuant to Section 603 of the Zoning Act (MCL § 125.3603), the following standards shall be considered:

(1) The number of businesses using the building and/or sign;

(2) The sign height related to the height of the principal buildings on the lot and neighboring lots;

(3) The effect of the sign on the surrounding neighborhood; and

(4) How the sign affects light, visibility and the circulation of air.

(e) No sign, temporary or permanent, shall be erected, constructed, installed or located on private property without the written consent of the owner of such property; provided, however, the requirement that the consent be written shall not apply to political and real estate signs. Real estate signs may only be placed on the property that is for sale, rental or lease.

(f) No sign, including, without limitation, political signs, shall be located in the public right-of-way or attached to any tree, utility pole, street sign, traffic control device or other similar object or installed, attached or affixed to any public building or structure.

(g) No sign, or any part thereof, attached to a wall shall extend more than 12 inches therefrom.

(h) No item or article of tangible personal property, including, but without limitation, a vehicle, trailer, snowmobile, or watercraft, including personal watercraft, shall be used as a sign by displaying or placing thereon or attaching thereto letters or words, figures, or pictures or any type or kind of promotional material which provides information about or advertises a business, service, entertainment or any other activity or enterprise and locating or parking this item or article of tangible personal property at a location or place where such item or article of tangible personal property can be viewed by members of the general public. As examples of the application of this subsection, but without limitation, the following described circumstances constitute violations of this subsection:

(1) Watercraft with temporary vinyl lettering used as signs and parked in a commercial lot.

(2) Vehicles with temporary vinyl lettering used as signs and parked in a commercial lot.

(3) Signs mounted on trailers.

(4) Banners hung on watercraft.

(5) A personal watercraft with a vinyl or fabric "For Rent" sign on it.

Sec. 38-566. Maintenance. [Ord. No. Z.04, eff. 2-7-1974; Ord. No. Z-14.04, eff. 4-19-1982; Ord. No. Z-20.04, eff. 8-7-1988; Ord. No. Z-22.04, eff. 2-20-1989; Ord. No. Z-39.04, eff. 1-1-1999]

All signs shall be maintained in good condition and repair, including, without limiting the foregoing, maintenance of supports and fastenings to prevent the sign from falling.

Sec. 38-567. Traffic hazard. [Ord. No. Z.05, eff. 2-7-1974; Ord. No. Z-14.05, eff. 4-19-1982; Ord. No. Z-20, eff. 8-7-1988; Ord. No. Z-22.05, eff. 2-20-1989; Ord. No. Z-39.05, eff. 1-1-1999]

No sign shall be constructed, erected, reconstructed or located in such a manner as to cause a hazard to vehicle or pedestrian traffic, including, without limiting the foregoing, a visual hazard caused by flashing lights or glare where the visual hazard impairs vision or is unreasonably distracting.

Sec. 38-568. Right-of-way. [Ord. No. Z.06, eff. 2-7-1974; Ord. No. Z-14.06, eff. 4-19-1982; Ord. No. Z-20.06, eff. 8-7-1988; Ord. No. Z-22.06, eff. 2-20-1989; Ord. No. Z-39.06, eff. 1-1-1999]

No sign, temporary or permanent, shall be constructed, erected or reconstructed upon or over any sidewalk, street, alley or other public right-of-way.

Sec. 38-569. Illumination. [Ord. No. Z.07, eff. 2-7-1974; Ord. No. Z-14.07, eff. 4-19-1982; Ord. No. Z-20.07, eff. 8-7-1988; Ord. No. Z-22.07, eff. 2-20-1989; Ord. No. Z-39.07, eff. 1-1-1999; Ord. No. Z-56.07, eff. 8-22-2006]

All signs that are to be illuminated shall be illuminated by electrical power. All electrical wiring and electrical installation shall be in conformance with the electrical code currently in force in the Township. Time and/or temperature signs and changeable letter signs are only permitted as is provided by Section 38-575(g)(4). No other type of sign shall be illuminated with flashing, blinking, intermittent or on and off lighting. Open neon lights are prohibited. All sign illumination shall be employed in such a manner so as to prevent intense or brilliant glares or rays of light from being directed at any street, private road, or at any adjoining property.

Sec. 38-570. Measurement of sign area. [Ord. No. Z.08, eff. 2-7-1974; Ord. No. Z-14.08, eff. 4-19-1982; Ord. No. Z-20.08, eff. 8-7-1988; Ord. No. Z-22.08, eff. 2-20-1989; Ord. No. Z-39.08, eff. 1-1-1999]

The area of a sign includes the entire area within a circle, triangle or multisided figure enclosing the extreme limits of writing, representation, emblem, or any figure of similar character, together with any frame or other material or color forming an integral part of the display or used to differentiate such sign from the background against which it is placed, excluding the necessary supports or uprights on which such sign is placed, but including any sign tower. Where a sign has two or more faces, the area of all faces shall be included in determining the area of the sign, except that where two such faces are placed back to back and are at no point more than two feet from one another, the area of the sign shall be taken as the area of one face if the two faces are of equal area, or as the area of the larger face if the two faces are of unequal area. In the case of a sphere or other three-dimensional object used as a sign, the total area of the sphere or other three-dimensional object is divided by two for purposes of determining the sign area.

Sec. 38-571. Portable signs. [Ord. No. Z.09, eff. 2-7-1974; Ord. No. Z-14.09, eff. 4-19-1982; Ord. No.

Z-20.09, eff. 8-7-1988; Ord. No. Z-22.09, eff. 2-20-1989; Ord. No. Z-39.09, eff. 1-1-1999]

Except for signs, pennants, and banners permitted pursuant to Section 38-576(b)(16), portable signs are prohibited in all zoning districts unless located inside the window of a building. Only one portable sign is permitted per window, with the total area of each sign not to exceed 25% of the total area of the window in which it is placed.

Sec. 38-572. Political signs. [Ord. No. Z.10, eff. 2-7-1974; Ord. No. Z-14.10, eff. 4-19-1982; Ord. No. Z-20.10, eff. 8-7-1988; Ord. No. Z-22.10, eff. 2-20-1989; Ord. No. Z-39.10, eff. 1-1-1999]

Political signs shall be permitted in all zoning districts provided they are temporary, not illuminated, do not exceed six square feet in area in the AG, R-1, R-2, R-3, R-4, and R-5 Zoning Districts and do not exceed 32 square feet in the C-1 and C-2 Zoning Districts. There shall be no more than one political sign per 25 feet of property road frontage or fraction thereof. All political signs shall be removed within 10 days after the holding of the election with which the political sign is concerned. All political signs shall comply at all times with the requirements of Sections 38-565 through 38-568.

Sec. 38-573. Billboards. [Ord. No. Z.11, eff. 2-7-1974; Ord. No. Z-14.11, eff. 4-19-1982; Ord. No. Z-20.11, eff. 8-7-1988; Ord. No. Z-22.11, eff. 2-20-1989; Ord. No. Z-39.11, eff. 1-1-1999]

Billboards are prohibited in the Township.

Sec. 38-574. Nonconforming signs. [Ord. No. Z.12, eff. 2-7-1974; Ord. No. Z-14.12, eff. 4-19-1982; Ord. No. Z-20.12, eff. 8-7-1988; Ord. No. Z-22.12, eff. 2-20-1989; Ord. No. Z-39.12, eff. 1-1-1999; (Ord. No. Z-56.12, eff. 8-22-2006]

Subject to the provisions of this section, a sign which is existing and lawful on the effective date of the ordinance from which this chapter is derived, or in the case of an amendment to this article, then on the effective date of such amendment, may be maintained and continued although such sign does not conform with the provisions of this article or any amendment thereto, as the case may be.

(1) No nonconforming sign:

   a. Shall be changed to another non-conforming sign;

   b. Shall be structurally altered so as to prolong the life of the sign or so as to change the shape, size or type;

   c. Shall be reestablished or continued after the activity, business, or use to which it was attached has been discontinued for 90 days or longer.

(2) No owner shall be required to remove a sign that was erected in compliance with this article if such sign becomes nonconforming due to a change in the location of buildings, streets, private roads, or other signs if the change was beyond the control of the owner of the sign and the premises on which it is located.

(3) If the owner of a sign, or the premises on which a sign is located, changes the location of a building, property line, or sign, or changes the use of a building so that any sign on the premises is rendered nonconforming, such sign shall be removed or made to conform to this chapter.

Sec. 38-575. Permitted signs in each zoning district. [Ord. No. Z.13, eff. 2-7-1974; Ord. No. Z-14.13, eff. 4-19-1982; Ord. No. Z-20.13, eff. 8-7-1988; Ord. No. Z-22.13, eff. 2-20-1989; Ord. No. Z-39.13,

eff. 1-1-1999; Ord. No. Z-56.13, eff. 8-22-2006; Ord. No. Z-58.13, eff. 12-13-2007; amended by Ord. No. ZA-63, eff. 7-1-2013]

(a) AG Agricultural and Permanent Open Space District. Signs shall be permitted in this zoning district only as follows:

(1) One real estate sign for each 450 feet or fraction thereof of property road frontage, not in excess of six square feet each in area, provided the real estate signs are not illuminated and are placed entirely within the boundaries of the parcel of land or lot to which the signs refer.

(2) One permanent identifying sign, provided such sign shall:

a. Not exceed an area of 32 square feet;

b. Not extend more than 12 inches from the surface of the building if mounted on a wall;

c. Have all lighting shielded from adjoining residences in such a manner that direct light does not leave the property on which the sign is located.

(3) One construction sign per construction project, denoting architects, engineers, banking institutions, subcontractors, or contractors connected with the work under construction. For one- and two-family dwelling projects, the area shall not exceed 12 square feet. For all other construction projects, the maximum area is 32 square feet. This sign may be displayed only during the time the improvements are under construction.

(4) One freestanding business sign for each farm or property, not in excess of 32 square feet in area, and located not less than 40 feet from the edge of the street right-of-way or private road easement.

(5) One or more temporary seasonal signs advertising business operations such as being "open" or the sale of products on the lot where the sign is located. The collective total square footage of such signs shall not exceed an area of 64 square feet per lot; provided, however, that the lot shall meet the minimum lot area for the district, and no individual sign shall exceed an area of 32 square feet. All such signs shall be separated by no less than 50 feet. Where temporary seasonal signs are located on one or more legal nonconforming lots advertising business operations, the collective total square footage of temporary seasonal signs throughout all of the lots shall not exceed an area of 64 square feet, and no individual sign shall exceed an area of 32 square feet. All such signs shall be separated by no less than 50 feet. **[Amended by Ord. No. 2020-001, eff. 1-27-2020**

(b) "R" designated residential zoning districts.

(1) In all "R" designated residential zoning districts, signs shall be permitted only as follows:

a. One real estate sign not in excess of six square feet in area, if the real estate sign is not illuminated and is placed entirely within the boundaries of the parcel of land or lot to which the sign refers.

b. One permanent identifying sign, provided such sign shall:

1. Not exceed an area of 32 square feet;

2. Not extend more than 12 inches from the surface of the building if mounted on a wall;

3. Have all lighting shielded from adjoining residences in such a manner that direct light does not leave the property on which the sign is located;

4. Be placed at least five feet from the edge of the road right-of-way; and

c. One and/or two permanent identifying signs at each entrance to a residential development (i.e., subdivision, condominium, or apartment complex), provided that the total square footage of the sign at each entrance does not exceed an area of 32 square feet, and all requirements of Subsection (b)(2) of this section are met.

d. One construction sign per construction project, denoting architects, engineers, banking institutions, subcontractors, or contractors connected with the work under construction. For one- and two-family dwelling projects, the area shall not exceed 12 square feet. For all other construction projects, the maximum area is 32 square feet. This sign may be displayed only during the time the improvements are under construction.

e. Plat or site condominium advertising signs provided there shall be only one such sign per plat or site condominium, and that no such sign shall exceed 32 square feet in area. Plat or site condominium advertising signs shall be removed when 75% of the building sites of the last approved phase have buildings located thereon or are under construction.

(2) In the R-1 Rural Estates Residence District, one or more temporary seasonal signs advertising business operations such as being "open" or the sale of products on the lot where the sign is located. The collective total square footage of such signs shall not exceed an area of 64 square feet per lot; provided, however, that the lot shall meet the minimum lot area for the district, and no individual sign shall exceed an area of 32 square feet. All such signs shall be separated by no less than 50 feet. Where temporary seasonal signs are located on one or more legal nonconforming lots advertising business operations, the collective total square footage of temporary seasonal signs throughout all of the lots shall not exceed an area of 64 square feet, and no individual sign shall exceed an area of 32 square feet. All such signs shall be separated by no less than 50 feet. **[Added by Ord. No. 2020-001, eff. 1-27-2020**

(c) In all "C" designated commercial zoning districts, signs shall be permitted only as follows:

(1) All signs permitted in the R-1 Rural Estate Residence District, subject to the same conditions, restrictions, and requirements as provided in the R-1 Rural Estate Residence District, except that political signs and real estate signs may be larger than permitted in the R-1 Rural Estate Residence District, but shall not be greater than 32 square feet in area, signs permitted by § 38-575(b)(2) shall not exceed 50% of the dimensional provisions therein but may be permitted per business on a lot, and home occupation signs are prohibited. **[Amended by Ord. No. 2020-001, eff. 1-27-2020**

(2) Business signs if the signs:

a. Are placed flat against the building on which they are located;

b. Are limited to one sign per tenant space per side or sides of the building which fronts on principal streets, private roads or waterways providing access to the building;

c. Are not in excess of 10% of the wall area of the tenant space to which they are attached, but not to exceed 32 square feet in area in any event;

d. Have no dimension greater than 30 feet.

(3) One freestanding business sign if it is located in the front yard and does not exceed 32 square feet in area.

(4) One changeable letter sign, per building, not to exceed 32 square feet in area, is allowed on the side of a building or on the same support as the freestanding business sign permitted under Subsection (c)(3) of this section. Message changes may be accomplished through either electronic and/or mechanical means, or through the use of illumination, provided that the following criteria are met:

a. There shall be no animation, cartoons or moving pictures or similar depictions of motion.

b. Movement of any kind shall be prohibited except the simultaneous and instantaneous change of letters, numbers or symbols necessary to convey the changing message.

c. The rate of change between messages shall be no more frequent than 10 seconds.

(5) Where two or more businesses are located in the same building, the freestanding business signs for each business shall be combined on the same pole or ground sign. In this instance, the total area of all freestanding business signs mounted on the same pole or ground sign shall not exceed 64 square feet.

(d) Planned unit development. Such signs as are approved by the Township Board in authorizing the planned unit development.

Sec. 38-576. Permit required. [Ord. No. Z.14, eff. 2-7-1974; Ord. No. Z-14.14, eff. 4-19-1982; Ord. No. Z-20.14, eff. 8-7-1988; Ord. No. Z-22.14, eff. 2-20-1989; Ord. No. Z-39.14, eff. 1-1-1999]

(a) Except as specifically excused in Subsection (b) of this section, no sign shall be constructed, erected, located, placed, attached to a building, installed, structurally altered, or relocated prior to the issuance of a permit by the Zoning Administrator. For all signs, the application for the sign permit shall include the name of the applicant, the size of the sign, plans and specifications for the sign, the proposed location of the sign, the proposed method of construction, erection, structural alteration, or relocation, and a description of the equipment to be used for such work.

(b) No permit shall be required for any of the following:

(1) Normal sign maintenance and repair;

(2) Change of lettering or display panels on a sign;

(3) Real estate signs (may only be placed on the actual property for sale);

(4) Highway signs erected by the United States of America, State of Michigan, Counties of Allegan or Ottawa, or the Township;

(5) Governmental use signs erected by governmental agencies to designate hours of activity or conditions for use for parks, parking lots, recreational area, other public areas or for governmental buildings;

(6) Directional signs erected in conjunction with private, off-street parking areas, provided the sign does not exceed four square feet in area and is limited to traffic control functions only;

(7) Historic signs designating sites recognized by the state historical commission as centennial farms and historic landmarks;

(8) Signs posted to control or prohibit hunting within the Township;

(9) Essential public service signs denoting utility lines, railroad lines, hazards and precautions;

(10) Memorial signs or tablets which are either cut into the face of a masonry surface or constructed of bronze or other incombustible material when located flat on the face of a building;

(11) One construction sign per construction project, subject to the provisions of Section 38-575;

(12) One model home sign per project not exceeding 12 square feet in area to be displayed only during the actual time the home is being used as a model;

(13) Political signs;

(14) One sign per street address not exceeding two square feet in area and bearing only property address and/or names of occupants of residential premises. No other words or letters are permitted;

(15) Flags and insignia of the governments of the United States, the State of Michigan and the Township;

(16) Signs, pennants and banners announcing civic occasions, festivals, celebrations, sports events or arts and humanities events only when for an agency of government or a private nonprofit organization and when authorized in advance in writing by the Zoning Administrator. The Zoning Administrator may, at his discretion, decline to decide such matter and refer decision thereon to the Zoning Board of Appeals as a matter for Zoning Board of Appeals decision pursuant to Section 603 of the Zoning Act (MCL § 125.3603). Advertising symbols, logos or titles identifying contributors to such event or occasion shall be permitted, provided that such identification shall be limited to 15% of the area of the sign, pennant or banner. In considering such authorization, the Zoning Administrator or Zoning Board of Appeals shall consider the following standards:

a. The proximity of the sign, pennant or banner to traffic signals and other signs, pennants and banners;

b. The size of the sign, pennant or banner;

c. The time period during which the sign, pennant or banner is to be displayed;

d. The effect of the sign, pennant or banner on traffic safety and the general neighborhood; and

e. No sign, pennant, or banner permitted under this Subsection (16) shall be erected more than 30 days prior to the date on which the civic occasion, festival, celebration, or event announced therein begins. All signs, pennants, and banners shall be removed within 10 days after the date on which the civil occasion, festival, celebration, or event announced therein has ended.

(17) Legal notices;

(18) Open house signs on the day of the open house only; and

(19) Auction signs on the day of the auction only.

Sec. 38-577. through Sec. 38-600. (Reserved)

ARTICLE VII
Parking And Loading Spaces

Sec. 38-601. General parking requirements. [Ord. No. Z, eff. 2-7-1974; amended by Ord. No. Z-51, eff. 9-5-2003; Ord. No. Z-60, eff. 5-14-2009; Ord. No. 2018-3, eff. 8-26-2018; Ord. No. 2020-2, eff. 9-17-2020]

In all zoning districts, there shall be provided, before any building or structure is occupied, or is enlarged or increased in capacity, off-street, outdoor parking spaces for motor vehicles as provided in the following table, except that the required parking spaces may be located inside one garage or one other accessory building on parcels within the MP Overlay District or the OB Overlay District or may be located off-site or a combination of on-site and off-site when located entirely within the MP Overlay District or the OB Overlay District. All parking shall be designed and constructed to be in compliance with relevant provisions of all state and federal laws and regulations, including but not limited to the Michigan Persons with Disabilities Civil Rights Act and the federal American Disabilities Act. This shall include, but not be limited to, the requisite number of handicapped parking spaces to be made available.

Use	Minimum Parking Spaces Required
Dwellings	2 for each dwelling unit
Assembly uses such as theaters, clubs, community halls, arenas, museums, pools, studios, mortuary, or other similar uses; this specifically excludes restaurants and bars	1 for each 25 square feet of assembly area and 1 for each employee
Hospitals, institutions	2 for each patient bed
Sanitariums, convalescent, or nursing homes	1 for each patient bed
Homes for senior citizens	2 for each dwelling unit
Hotels, motels, resorts	1 space per each unit between 250 square feet and 400 square feet; 2 spaces per each unit between 400 square feet and 650 square feet; 3 spaces per each unit 650 square feet and larger; in addition, there shall be 1 space for each employee on duty; in addition, there shall be designated loading zones
Bowling alleys	8 for each alley
Private, elementary and junior high schools	1 for each employee normally engaged in or about the buildings and grounds plus 1 for each 4 seats used in a public assembly area
Senior high schools and institutions of higher learning	1 for each employee normally engaged in or about the buildings and grounds, and 1 for each 3 students enrolled in the institution
Churches	1 for each 3 seats in the main worship unit
Professional offices and buildings	1 for each 200 square feet of floor area, and 1 for each employee

Use	Minimum Parking Spaces Required
Medical doctor's office, dental clinic, or veterinarian office	8 for each doctor, plus 1 for each employee
Banks, business offices, and public buildings not specifically mentioned elsewhere	1 for each 150 square feet of floor area
Taverns, bars, restaurants and ice cream parlors	1 for each 2 seats
Marinas	1 for each slip or mooring
Drive-in establishments	1 for each employee, plus 4 additional spaces
Outdoor cafes and ice cream shops without indoor seating	1 for each employee, plus 1 for each 2 outdoor seats but not less than a minimum of 4 additional spaces
Retail stores, supermarkets, department stores, billiard/pool rooms, personal service shops	1 for each employee, and 1 for each 150 square feet of retail sales area
Other uses not specifically mentioned	In the case of buildings which are used for uses not specifically mentioned, those provisions for off-street parking facilities for a use which is so mentioned and to which said use is similar in terms of parking demand shall apply
Mixed uses in same building	In the case of mixed uses in the same building, the amount of parking space for each use specified shall be provided, and the space for one use shall be not considered as providing required spaces for any other use except as to churches and auditoriums incidental to public and parochial schools permitted herein

Sec. 38-602. Joint use of facilities. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-51, eff. 9-5-2003]

(a) Provision of common parking facilities for several uses in the same vicinity is encouraged. Where multiple principal uses utilizing common parking facilities exist on the same property in the same vicinity, the total space requirement is the sum of the minimum individual requirements for each use.

(b) Where a principal use and an accessory use exist on the same property, the total space requirement is the sum of the minimum individual requirements for the principal and accessory uses unless the Planning Commission authorizes as a special use a smaller number of parking spaces. In granting such authorization, the Planning Commission shall consider the following standards:

(1) Whether the proposed number of parking spaces is sufficient to meet the need for parking facilities of both the principal and accessory uses. The number of parking spaces authorized by the Planning Commission shall not be less than the minimum number required for the principal use.

(2) The reason for the request that a smaller number of parking spaces than that required be authorized.

(3) The effect on adjoining property and the surrounding neighborhood.

(c) The Planning Commission shall hold a public hearing with notice thereon in accordance with the requirements of the Zoning Act with respect to special use authorization.

(d) The Planning Commission shall hold a public hearing and shall meet all the requirements of the Zoning Act, with respect to special use authorization, including requirements concerning notification of the public hearing.

Sec. 38-603. Location of facilities. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-51, eff. 9-5-2003]

Off-street parking facilities shall be located as hereafter specified; when a distance is specified, it shall be the walking distance measured from the nearest point of the parking facility to nearest normal entrance to the building or use that such facility is required to serve.

(1) For all residential buildings and for all nonresidential buildings and uses in residential zoning districts, required parking shall be provided on the lot with the building or use it is required to serve.

(2) For commercial and all nonresidential buildings and uses in commercial zoning districts, required parking shall be provided within 300 feet.

Sec. 38-604. Size of parking space. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-51, eff. 9-5-2003; Ord. No. Z-60, eff. 5-14-2009]

Each off-street parking space shall be a minimum of nine feet in width and 20 feet in length.

Sec. 38-605. Requirements for parking areas. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-51, eff. 9-5-2003; Ord. No. Z-56, eff. 8-22-2006]

Every parcel of land hereafter established as an off-street public or private parking area for 10 or more vehicles, including a municipal parking lot, commercial parking lot, automotive sales and/or service lot, and accessory parking areas for multiple dwellings, businesses, public assembly, and institutions, shall be developed and maintained in accordance with the following requirements:

(1) The parking lot and its driveways shall be effectively screened on each side which adjoins premises situated in any R or AG Zoning District by a fence of acceptable design, wall, or compact evergreen hedge. There shall also be provided on each side and rear which adjoins any R or AG Zoning District, a greenbelt 10 feet in width landscaped with lawn or low shrubbery clumps or trees.

(2) The parking lot and its driveway shall be designed to provide adequate drainage. Environmentally friendly drainage systems are encouraged including, but not limited to, on-site water retention, permeable paving surfaces, rain gardens, etc.

(3) The parking lot and its driveway shall be surfaced with concrete, asphalt pavement or a type of environmentally friendly porous paving, and maintained in good condition, free of dust, trash, and debris.

(4) The parking lot and its driveways shall not be used for repair, dismantling, or servicing of any vehicles.

(5) The parking lot shall be provided with entrances and exits so located as to minimize traffic congestion.

(6) The parking lot shall be provided with wheel stops, bumper guards, rolled curb, raised curb, or a sidewalk of at least six inches in height so located that no part of a parked vehicle will extend beyond

the parking area when abutting a building, interior pedestrian walkway, or public pedestrian walkway. **[Amended by Ord. No. 2021-07, eff.11-2-2021]**

(7) Lighting facilities shall be equipped with shielding so as to reflect the light downward and away from adjoining properties.

(8) No part of any public or private parking area regardless of number of spaces provided shall be closer than 10 feet to the street right-of-way line or private road easement.

Sec. 38-606. Off-street loading and unloading spaces. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-51, eff. 9-5-2003]

For every building or addition to an existing building hereafter erected to be occupied by storage, retail store or block of stores, hotel, motel, resort, hospital, mortuary, laundry, restaurant or other similar uses, requiring the receipt or distribution of materials or merchandise, there shall be provided and maintained on the same lot with such building or addition an area or means adequate for maneuvering and ingress and egress for delivery vehicles and off-street loading and unloading spaces in relation to floor areas as follows:

(1) Up to 10,000 square feet: one space at least 14 feet in width, 35 feet in length and 14 feet in height;

(2) Ten thousand square feet or more: at least two spaces at least 14 feet in width, 55 feet in length and 14 feet in height.

No such space shall be located closer than 50 feet to any lot in any R Zoning District.

Sec. 38-607. through Sec. 38-630. (Reserved)

ARTICLE VIII
Nonconforming Uses, Buildings Or Structures

Sec. 38-631. Continuance of nonconforming uses, buildings or structures. [Ord. No. Z, eff. 2-7-1974]

Except where specifically provided to the contrary, and subject to the provisions of this article, the lawful use of any building or structure or of any land or premises which is existing and lawful on the effective date of the ordinance from which this chapter is derived, or, in the case of an amendment of this article, then on the effective date of such amendment, may be continued although such use does not conform with the provisions of this article or any amendment thereto. In addition, except where specifically provided to the contrary and subject to the provisions of this article, a building or structure which is existing and lawful on the effective date of the ordinance from which this chapter is derived, or, in the case of an amendment of this article, then on the effective date of such amendment, may be maintained and continued although such building or structure does not conform with the provisions of this article or any amendment thereto.

Sec. 38-632. Expansion. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982]

(a) Structures, buildings or uses nonconforming by reason of height, area and/or parking loading space provisions only may be extended, enlarged, altered, remodeled or modernized provided there is compliance with all height, area, and/or parking and loading provisions with respect to such extension, enlargement, alteration, remodeling or modernization and the Zoning Administrator determines that such alteration, remodeling, or modernization will not substantially extend the life of any nonconforming building or structure. Any use of a building or structure which is nonconforming by reason of parking and loading provision and which is thereafter made conforming or less nonconforming by the addition of parking and/or loading space shall not thereafter be permitted to use such additionally acquired parking and/or loading space to meet requirements for any extension, enlargement, or change of use which requires greater areas for parking and/or loading space.

(b) No nonconforming use of any building or structure or of any land or premises which is nonconforming for reasons other than height, area, and/or parking and loading space provisions shall hereafter be extended or enlarged unless all extensions or enlargements do not exceed 50% of the area of the original nonconforming use and such extensions or enlargements are authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

(1) Whether the extension or enlargement will substantially extend the probable duration of such nonconforming use; and

(2) Whether the extension or enlargement will interfere with the use of other properties in the surrounding neighborhood for the uses for which they have been zoned or with the use of such other properties in compliance with the provisions of this article.

Sec. 38-633. Restoration and repair. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-5, eff. 3-2-1978]

All repairs and maintenance work required to keep a nonconforming building or structure in sound condition may be made but it shall not be structurally altered to permit the use of such building or structure beyond its natural life. In the event fire, wind, act of God or public enemy damages any nonconforming building or structure, it may be rebuilt and restored to its former condition.

Sec. 38-634. Discontinuance. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982]

The nonconforming use of a building or structure or of any land or premises shall not be:

(1) Reestablished after discontinuance, vacancy, lack of operation or otherwise for a period of nine months.

(2) Reestablished after it has been changed to a conforming use.

Sec. 38-635. Existing building or structure under construction. [Ord. No. Z, eff. 2-7-1974]

Any building or structure shall be considered existing and lawful and for purposes of Section 38-631, to have been in use for the purpose for which constructed if on the effective date of the ordinance from which this chapter is derived, a building permit has been obtained therefor, if required, or if no building permit is required, a substantial start has been made toward construction and construction is thereafter pursued diligently to conclusion.

Sec. 38-636. Changing of uses. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982]

A nonconforming use of any building, structure or land shall not be changed to any other nonconforming use unless authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

(1) Whether the proposed use is equally, or more appropriate than the present nonconforming use to the zoning district in which the building, structure or land is located. No change to a less appropriate use may be authorized by the Planning Commission;

(2) Whether the proposed use will substantially extend the probable duration of the nonconforming structure, building, or use;

(3) Whether the proposed use will interfere with the use of adjoining lands or other properties in the surrounding neighborhood for the uses for which they have been zoned pursuant to the provisions of this article; and

(4) The effect of the proposed use on adjoining lands and the surrounding neighborhood.

ARTICLE IX
Manufactured Housing Community[8]

Sec. 38-637. Mobile home parks. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

Mobile home parks are permitted planned unit developments provided they are in conformance with all state statutes and regulations governing mobile home parks, including the Mobile Home Commission Act (MCL § 125.2301 et seq.) and this chapter.

Sec. 38-638. Minimum area and maximum densities. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

Each mobile home park shall be owned and operated as one entity or on a condominium basis. Each mobile home park shall contain a minimum of 50 mobile home lots at first occupancy.

Sec. 38-639. Buffer zones. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

All mobile home parks shall provide and maintain as a minimum, a seventy-five-foot landscaped setback from any street right-of-way line that borders the park and a fifty-foot landscaped buffer zone where the park boundary is adjacent to neighboring properties. The Township Board may require that an additional landscaped setback be provided. The landscaping shall consist of deciduous or evergreen trees that reach a minimum of five feet in height and five feet in width in one growing season. Such trees shall be spaced so they provide a continuous screen from adjacent streets. Alternative screening devices may be utilized if they conceal the mobile home park as effectively as the required landscaping described in this section.

Sec. 38-640. Minimum lot area. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

Each mobile home lot shall have a minimum lot area of 4,750 square feet and a minimum width of 50 feet at the front setback line.

Sec. 38-641. Minimum mobile home size. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

No mobile home in any mobile home park shall contain less than 600 square feet of living area nor have outside dimensions of less than 12 feet in width and 50 feet in length.

Sec. 38-642. Yard requirements. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

The front yard of each mobile home lot shall be no less than 20 feet as measured from the nearest edge of the street pavement to the nearest wall of the mobile home. The rear yard of each lot shall be no less than 10 feet. The nonentry side of a mobile home shall have a side yard of no less than 10 feet and the entry side shall have a side yard of no less than 26 feet. In the case of a double wide mobile home, side yard requirements shall be met by the provision of larger lots sufficient in width to meet these requirements.

Sec. 38-643. Corner lots. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

Where a mobile home is bounded by two streets, the front yard requirement shall be met for each street. No fence, structure, or planting over 30 inches in height shall be located on any corner lot within the required front yards.

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8. **Editor's Note: This Article Was Created By Ord. No. ZO17-1, Eff. 5-15-2017, By Moving Already Effective Sections Here From Another Part Of This Chapter.**

Sec. 38-644. Street requirements. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

If two-way traffic is to be accommodated, the street pavement width shall be no less than 22 feet. If only one-way traffic is to be accommodated, the street pavement width shall be no less than 20 feet.

Sec. 38-645. Parking. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

Parking shall be provided in off-street parking bays with two parking bays for each mobile home. Each parking bay shall be no less than 200 square feet in area. Each parking bay shall be conveniently located in relation to the mobile home for which it is provided. In addition to the two required off-street parking bays, one additional parking space is permitted on the mobile home lot, provided it is a hard surface area containing at least 200 square feet of area.

Sec. 38-646. Access from major streets. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

Each mobile home park shall have a minimum of two access streets that enter from a primary or secondary arterial street as designated in the Township general land use and circulation plan, as amended, and provide a continuous route of travel throughout the park. No ingress or egress shall be provided via collector streets as designed in the Township general land use and circulation plan, as amended.

Sec. 38-647. Signs. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

A maximum of one identification sign is allowed at each access point to the mobile home park. Each such sign shall not exceed 30 square feet in area and shall not be illuminated by any light source other than a continuous indirect white light. In those cases where signs are intended to be read from both sides, the combined total area of both signs when combined shall not exceed 30 square feet.

Sec. 38-648. Mobile home sales prohibited. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

The business of selling new and/or used mobile homes as a commercial operation in connection with the operation of a mobile home park is prohibited. Mobile homes located on the lots within the mobile home park may be sold by the owner or operator of the park provided no more than five are offered for sale at any one time. This section shall not prohibit the sale of a new or used mobile home by a resident of a mobile home park.

Sec. 38-649. Underground utilities. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

All public and private utilities shall be installed underground.

Sec. 38-650. Site improvements. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

Each mobile home shall be provided with a continuous pad of four-inch-thick concrete running the full length and width of the mobile home. In lieu of a continuous concrete pad, concrete piers four inches thick may be provided if they run the full length of the mobile home. Each pad shall be equipped with hurricane anchors or tie down equipment capable of being connected to the mobile home to secure the home during high winds. Decorative skirting which is ascetically pleasing shall be installed along the base of each mobile home sufficient to hide the under carriage and supports from view.

Sec. 38-651. Sidewalks. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

Paved sidewalks shall be provided throughout each mobile home park. Sidewalks shall be a minimum of

four feet in width, be adjacent to each street, and be laid out such that they connect the recreation area, common open spaces and the community building with mobile home sites.

Sec. 38-652. Streets and parking areas. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

All streets and parking areas in a mobile home park shall be surfaced with asphalt or concrete.

Sec. 38-653. Refuse disposal. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

Each mobile home park shall provide an effective system of garbage and rubbish storage, collection, and disposal.

Sec. 38-654. Lighting. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

Each mobile home park shall be provided with sufficient lighting to illuminate all parking bays, streets and sidewalks.

Sec. 38-655. Central television antenna. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

Each mobile home park shall have a master underground television antenna system. Exterior television antennas shall not be permitted on individual mobile homes.

Sec. 38-656. Ground cover. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

All exposed ground surfaces in the mobile home park must be sodden, seeded or covered with ornamental stone. One shade tree at least 10 feet in height when planted shall be provided for each two mobile home sites.

Sec. 38-657. Drainage. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

(a) An adequate storm drainage system, including necessary storm sewers, drain inlets, manholes, culverts, bridges, and other appurtenances, shall be provided. The Ottawa County Drain Commissioner shall establish the requirements for each particular mobile home park.

(b) Construction of storm drainage systems shall be in accordance with the standards and specifications adopted by the Ottawa County Drain Commissioner. All proposed storm drainage construction plans for mobile home parks shall be approved by the Ottawa County Drain Commissioner.

Sec. 38-658. Storage area. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

Each mobile home lot shall be equipped with a storage building with a length of no less than eight feet and no more than 12 feet and a width of no less than eight feet and no more than 10 feet, or, in lieu thereof, a minimum of 350 cubic feet of storage area in a central storage building. The height of such storage building shall not exceed eight feet. Such storage building shall be placed or constructed within the required rear or entry side yard. No storage building shall be located closer than five feet to any lot line or closer than three feet to the mobile home. All storage buildings shall be erected, constructed and secured in conformance with all state construction codes and other ordinances.

Sec. 38-659. Recreation vehicle storage. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

All mobile home parks shall contain a storage area for the storage of campers, trailers, motor homes, boats, snowmobiles and other vehicles ordinarily towed or driven for a special purpose. The storage of these

vehicles in the mobile home park is specifically prohibited except in the storage area. The storage area shall be screened by a solid type fence five feet in height around its perimeter or by some other screening device that is approved by the Township Board as part of its approval of the planned unit development.

Sec. 38-660. Recreation area. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

Each mobile home park shall include a recreation area or areas equal in size to no less than 10% of the total gross usable park area. Required setbacks or buffer zones may not be used for the required recreation areas. All recreation areas shall be centrally located, well drained, accessible to all residents of the mobile home park, and improved with playground equipment and other facilities for all age groups. In no case shall any intensive use playground equipment be located closer than 50 feet to any mobile home.

Sec. 38-661. Community building. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-52, eff. 9-5-2003]

Each mobile home park shall have a community building to provide a tornado shelter of sufficient size to provide a safe refuge for all mobile home park residents. Such a building may also house offices and other facilities that are necessary for the management of a mobile home park.

ARTICLE X
Open Space Preservation Development[9]

Sec. 38-662. Open space design development. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-47, eff. 8-1-2002; Ord. No. Z-52, eff. 9-5-2003]

(a) Description and purpose.

(1) Open space design developments are permitted as a planned unit development in order to encourage the flexible and innovative arrangement of residential developments, to preserve and enhance natural features and open lands without a sacrifice in residential quality or excessive density, and to make an appropriate transition between lands zoned or used for agricultural and rural estate residential purposes and lands zoned or used for more intense development.

(2) Open space design developments shall be subject to the planned unit development approval process and, in addition to complying with the requirements and procedures contained in Sections 38-363 through 38-379, shall also comply with the requirements contained in this section.

(b) Location. Open space design developments may only be located on lands which are designated as Open Space Design District on the current general land use and circulation plan map in the Township Comprehensive Plan Land Use and Circulation Plan, which was adopted by the Township pursuant to state law.

(c) Use regulations. The land, buildings and structures located in open space design developments shall be used only for single-family dwellings and permitted accessory uses.

(d) Maximum height regulations. No building or structure shall exceed 35 feet in height. No building or structure shall consist of more than 2 1/2 stories.

(e) Yard regulations. No building or structure, nor any enlargement thereof, shall be hereafter erected in an open space design development except in conformance with the following yard requirements:

(1) Front yard. There shall be a front yard of not less than 40 feet.

(2) Side yard. No side yard shall be less than 10 feet.

(3) Rear yard. There shall be a rear yard of not less than 50 feet; provided, however, that if the rear yard abuts undivided permanent open space established as is provided in Subsection (g) of this section, the rear yard shall be not less than 35 feet.

(f) Density. The maximum density shall be equal to the base density as determined by the Planning Commission upon its review of the parallel plan pursuant to Sections 38-366(6) and 38-373(b),[10] unless the proposed open space design development qualifies as a cluster open space design development as provided in Subsection (g) of this section. A project that qualifies as a cluster open space design development as provided in Subsection (g) of this section may receive a density bonus of up to 20% of the base density, so that the maximum density for a cluster open space design development could be 1.2 times the base density as determined by the Planning Commission upon

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9. **Editor's Note: This Article Was Created By Ord. No. ZO17-1, Eff. 5-15-2017, By Moving Already Effective Sections Here From Another Part Of This Chapter.**

10. **Editor's Note: The provisions of former Sections 38-366(6) and 38-373(b) of Article III, Division 8, were replaced by Ord. No. ZO17-1. The new sections do not contain provisions regarding determination by parallel plan.**

review of the parallel plan pursuant to Sections 38-366(6) and 38-373(b). In any case where the fractional portion of the calculated dwellings is equal to or greater than 0.5, the number of dwellings shall be rounded up to the nearest whole unit. In any case where the fractional portion of the calculated dwellings is less than 0.5, the number of dwellings shall be rounded down to the nearest whole unit.

(g) Cluster open space design developments. A cluster open space design development shall be defined as an open space design development in which 50% of the acreage of the project is designated as undivided permanent open space, which shall be owned and managed by a homeowner's association, a condominium association, the Township, or a recognized land trust or conservancy.

(1) Undivided open space. An exception may be made to the requirement that the permanent open space be undivided (i.e., contiguous throughout the development and not completely bisected or separated by any street, lot, etc.) for the sole purpose of permitting a public street to provide a second means of ingress and egress to the development. This exception to the undivided aspect of the permanent open space will apply only with respect to the density bonus provided in Section 38-402(f), and not to the lesser rear yard requirement provided in Section 38-402(e).[11]

(2) Calculation of open space.

a. When existing or created wetlands and/or floodplain or other nondevelopable land is less than 20% of the area of the project designated as open space, then all of that area shall be used in the calculation of open space for purposes of meeting the fifty-percent requirement to be considered a cluster planned residential development. When existing or created wetlands and/or floodplain or other nondevelopable land is equal to or greater than 20% but less than 50% of the area of the project designated as open space, then 50% of that area shall be used in the calculation of open space for purposes of meeting the fifty-percent requirement to be considered a cluster planned residential development. When existing or created wetlands and/or floodplain or other nondevelopable land is equal to or greater than 50% of the area of the project designated as open space, then none of that area shall be used in the calculation of open space for purposes of meeting the fifty-percent requirement to be considered a cluster planned residential development.

b. For example, a project that involves 40 acres must set aside a minimum of 20 undivided acres as open space to qualify as a cluster open space design development. If the proposed open space contains a 3 1/2 acre pond, then the entire 3 1/2 acre pond will count as open space for purposes of calculating the amount of designated open space, and an additional 16.5 acres must be designated as undivided open space in order to qualify as a cluster open space design development. If the proposed open space contains a six-acre pond, then 1/2 of the six-acre pond will count as open space for purposes of calculating the amount of designated open space, and an additional 17 acres must be designated as undivided open space in order to qualify as a cluster open space design development. If the proposed open space contains a pond that is 10 acres or more in size, then none of the pond will count as open space for purposes of calculating the amount of designated open space, and an additional 20 acres must be designated as undivided open space in order to qualify as a cluster open space design development.

(3) Management and maintenance of permanent open space.

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11. Editor's Note: The provisions of former Section 38-402(e) and (f) of Article III, Division 8, were replaced by Ord. No. ZO17-1. The new sections do not contain provisions regarding a density bonus or lesser rear yard requirements.

a. The final site plan required by Section 38-370[12] shall include a complete description and plan for the management of the undivided permanent open space including, but without limitation, ownership, assurance as to the permanent continuation of the open space through a conservation easement or other appropriate permanent legal restriction or document subject to the review and approval of the Township Attorney, specific plans and arrangements for the maintenance of the permanent open space, specific plans and arrangements for the financing of the cost of the maintenance of the permanent open space and all other matters pertinent to the continuation and maintenance of the permanent open space.

b. The Township shall have the authority, but not the obligation, to repair and maintain any permanent open space and to assess the owners of all parcels located within the planned residential development for the total cost, plus an administrative fee in the amount of 10% of the total cost of the maintenance. This amount may be assessed and collected by the Township against those private properties within the planned residential development in the same manner as Township special assessments are assessed and collected pursuant to Public Act No. 188 of 1954 (MCL § 41.721 et seq.), for private roads.

(4) Explanation of undeveloped state. The undivided permanent open space shall remain in an undeveloped state. For purposes of this section, the phrase "undeveloped state" means a natural state preserving the natural resources, the natural features or the scenic or wooded conditions of the property, or the use of the property solely for agricultural use, open space use, or a similar use or condition. Property in an undeveloped state does not include a golf course, but may include a recreational trail, picnic area, children's play area, greenway, or linear park. For purposes of this section, agricultural uses permitted in the open space shall be limited to those uses specified in Section 38-184(1), (2), (3), (5), (6), and (10).

(h) Minimum floor area. Each dwelling unit in an open space design development shall have a minimum of 1,000 square feet of usable floor area, provided; however, that all single-family dwellings with more than one floor level shall meet the following requirements: 1,100 square feet of usable floor area for a 1 1/2-story dwelling; 1,000 square feet of usable floor area in the main and upper level floors of a tri-level dwelling; and 1,400 square feet of usable floor area for a two-story dwelling. The basement floor area of a dwelling, or any portion thereof, may not be included for purposes of determining compliance with the floor area requirements of this section.

(i) Requirement of public utilities. Each dwelling shall be served by public utilities for public water and sanitary sewer. All public and private utilities shall be installed underground.

(j) Requirement of public streets. All streets located within an open space design development shall be dedicated to the public and shall be publicly owned and maintained.

(k) Requirement of greenbelts. All open space design developments shall have a greenbelt measuring at least 100 feet from the edge of the road right-of-way along any preexisting street that borders the development. A landscaping plan, which may include a berm, must be submitted for approval.

Sec. 38-663. Open space preservation provisions. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-47, eff. 8-1-2002; Ord. No. Z-52, eff. 9-5-2003]

(a) Description and purpose.

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12. Editor's Note: The provisions of former Section 38-370 of Article III, Division 8, were replaced by Ord. No. ZO17-1. For current provisions, see Art. III, Division 8.

(1) This section is intended to provide a property owner with the option to develop property zoned for residential development in a manner that allows no more than 50% of the property to be developed with the same number of single-family dwelling units that could otherwise be developed on the entire property, provided that the remaining property (at least 50% of the property) is permanently preserved as open space in an undeveloped state, in accordance with the Township Zoning Act.

(2) Property owners exercising this option shall follow the process established for planned unit development approval, and in addition to complying with the requirements and procedures contained in Sections 38-363 through 38-379 for planned unit development approval, the property owners must also comply with the requirements contained in this section.

(b) Eligibility requirements. A property owner may exercise the open space preservation option only with respect to property that meets the following requirements.

(1) The property must be zoned for residential development. For purposes of this section, the term "zoned for residential development" means property located in any zoning district that permits single-family dwellings.

(2) The property must be zoned at a density equivalent to:

a. Two or fewer dwelling units per acre if the land is not served by a public sewer; or

b. Three or fewer dwelling units per acre if the land is served by a public sewer.

(3) The development of the property must not be dependent upon the extension of a public sewer or public water supply system, unless the development of the property without the exercise of the option would be dependent upon the extension of a public sewer or public water supply system.

(4) The property, or any portion of the property, must not have previously been subject to the development under the open space preservation option. Once a property owner has exercised the open space preservation option with respect to certain property, no portion of that property shall be eligible for any further or future open space preservation options.

(c) Open space preservation development option.

(1) Notwithstanding any provision of this chapter to the contrary, property that meets the eligibility requirements of Subsection (b) of this section may be developed, at the option of the property owner, on a maximum of 50% of the property with the same number of dwelling units that the Township determines could otherwise have been developed on the entire property under existing Township chapters and state and county laws, rules and regulations, while perpetually preserving a minimum of 50% of the property as open space.

(2) With the exception of the minimum lot area regulations required for the underlying zoning district in which the property is located, the development of property under this open space preservation option shall be subject to all other provisions of this chapter, and all other Township chapters and state and county laws, rules and regulations. Without limitation, the development of the property shall be subject to the use regulations, maximum height regulations, and minimum yard regulations of the underlying zoning district in which the property is located, and it shall be subject to rules relating to suitability of groundwater for on-site water supply for property not served by public water and rules relating to suitability of soils for on-site sewage disposal for property not served by public sewers.

(d) Density determination by parallel plan. The number of dwelling units permitted shall be determined through preparation of a parallel plan. In addition to the documents required to be submitted for planned unit development approval, the applicant shall submit a parallel plan for the proposed development that is consistent with state, county and Township requirements and design criteria for a tentative preliminary plat, including, without limitation, the requirements of this chapter and the Article II of Chapter 18, pertaining to land division and subdivisions. The parallel plan shall meet all standards for lot size, lot width and setbacks as required by the underlying zoning district, shall include public roadway improvements, and shall contain an area that conceptually would provide sufficient area for stormwater detention. The Planning Commission shall review the parallel plan and determine the number of lots that could be feasibly developed following the parallel plan. This number, as determined by the Planning Commission, shall be the maximum number of dwelling units permitted on the property developed pursuant to the open space preservation option.

(e) Open space preserved in an undeveloped state. In exercising the open space preservation option, the property owner must provide that a minimum of 50% of the property will perpetually remain as open space in an undeveloped state. This shall be accomplished through the use of a conservation easement, plat dedication, restrictive covenant, or other legal means that run with the land, subject to approval by the Township Attorney. For purposes of this section, the term "undeveloped state" means a natural state preserving the natural resources, the natural features or the scenic or wooded conditions of the property, or the use of the property solely for agricultural use, open space use, or a similar use or condition. Property in an undeveloped state does not include a golf course, but may include a recreational trail, picnic area, children's play area, greenway, or linear park. Property preserved in an undeveloped state may be, but is not required to be, dedicated to the use of the public.

PARK TOWNSHIP
OTTAWA COUNTY, MICHIGAN

(Short-Term Rentals)

ZONING ORDINANCE AMENDMENT

(Ordinance No. 2024-01)

At a regular meeting of the Township Board for Park Township held at the Township offices on March 14, 2024, beginning at 6:30 p.m., this Ordinance/ordinance amendment was offered for adoption by Township Board Member Spoelhof and was seconded by Township Board Member Steggerda:

AN ORDINANCE/ORDINANCE AMENDMENT TO AMEND THE PARK TOWNSHIP ZONING ORDINANCE, AS AMENDED, REGARDING ALLOWED USES, SHORT-TERM RENTALS AND SIMILAR MATTERS.

THE TOWNSHIP OF PARK (the "TOWNSHIP") ORDAINS:

Article 1 – Intent and Legislative History.

The current Park Township Zoning Ordinance (the "Zoning Ordinance"), and the past zoning ordinances for Park Township going back to 1946, have not used the now commonly used term short-term rentals phrase ("STRs," as defined below), but rather have used terms such as "transient lodging," "lodging house," "hotels," "motels," "tourist cabins," and "tourist homes" to address and regulate such transient uses. The Zoning Ordinance adopted in 1946 allowed hotels and tourist cabins in the residential zoning district when approved by the Board of Appeals, and transient lodging and boarding as an accessory use like a home occupation. The Zoning Ordinance adopted in 1963 similarly allowed hotels and motels in each of the residential zoning districts when approved by the Board of Appeals, and allowed tourist rooms in only one of the two residential zoning districts. However, the current Zoning Ordinance adopted in 1974 removed these as

permitted uses within the residential zoning districts, and only allows hotels, motels, and tourist homes (e.g., lodging for transient guests) in the commercial/business zoning districts dedicated to accommodate the needs of tourists and associated recreational purposes (which is the C-2 Resort Service zoning district in the current Zoning Ordinance). Accordingly, STRs have not been lawfully allowed within the Township (except in the C-2 commercial/business zoning district) since the current zoning regulations were enacted by the Township in 1974, with the exception of nonconforming uses that were lawfully established prior to 1974 and lawful licensed Bed and Breakfast Establishments. Absent an STR located in a commercial or business zoning district or a lawful Bed and Breakfast Establishment, the only way that an existing STR could be lawful today is if it is a lawful nonconforming use (i.e. it lawfully existed before February 7, 1974, and perhaps even earlier, has been in constant operation or use ever since and has not been expanded, abandoned, etc.). To the best of the knowledge of current Township officials and after a careful review of Township records, the Township cannot locate any records, documents, minutes or evidence that an STR has ever been approved by the Township within the AG Agricultural and Permanent Open Space zoning district, the R-1 Rural Estate zoning district, the R-2 Lakeshore Residence zoning district the R-3 Low Density Single-Family Residence zoning district, the R-4 Medium Density Single- and Two-Family Residence zoning district, or the R-5 Low Density Multifamily Residence zoning district by the then-Park Township Zoning Administrator, code official or any other Township official with such approval authority. It is also likely that some or all of the STRs that may currently exist within the Township do not meet all of the applicable building codes, fire codes and/or similar codes or laws. Accordingly, the Township Board finds that any STR that currently exists in Park Township (except for any lawful STRs within the C-2 Resort Service zoning districts, lawful and licensed Bed and Breakfast Establishments, or any

lawful nonconforming use) are unlawful under the Zoning Ordinance (and potentially, the building code and/or fire code as well) and that the STR use of such unlawful operations must cease. That should not constitute a hardship for any property owner, because the dwelling involved presumably can still be used for non-commercial non-transient residential use and would likely remain a valuable property.

Article 2 – Findings.

The Township Board hereby finds that there are potentially many problems and negative consequences associated with STRs that are not located within the C-2 Resort Service zoning district. Such negative and adverse impacts can include, but are not necessarily limited to, the following:

(a) The Township Board expressly finds that STRs are a commercial or business activity which is generally incompatible (and often in conflict) with non-commercial nearby single-family residential uses, neighborhoods and areas. That is particularly true regarding dwellings that are rented or leased out to transient guests entirely or for most of the calendar year or the majority of days during the summer season.

(b) Although the ability to utilize a dwelling as an STR may enhance the value of the specific property being rented or leased out, the same may not be true regarding adjoining and nearby properties. An STR can devalue other single-family residential dwelling lots adjoining the STR and for some distance away from the STR due to the real or perceived negative impacts caused by the STR. It is not a reasonable policy or trade off to enhance the value of one property (which is utilized

for STR use) while causing the devaluation of other more adjoining or nearby residential lots or parcels in the area.

(c) Even though most STRs in residential or agricultural zoning districts are supposed to be used for occupancy by only one family at a time, that often is not the case for STRs. STRs are frequently rented, used, or occupied by two or more families at the same time, which constitutes a multi-family use that is inconsistent with the zoning districts allowing only single-family residential use.

(d) The transient nature of STRs and the constant "coming and going" of new renters (and their invitees) is akin to a hotel, motel or boarding house, potentially causes many problems, and is inconsistent with adjoining and nearby conventional noncommercial single-family residential uses. In many cases, new tenants or renters check into the STR dwelling (and vacate the same) within only two or three days. Such constant "turnover" is a characteristic of a commercial facility and is not consistent with single-family residential use.

(e) In many cases, people who rent or lease a residential property for short time periods do not take the same level of care of that property as the owner of a property who resides thereon. Further, these transient occupants do not reside in the STR but merely occupy it on a short-term basis, and have no on-going relationship with the adjoining property owners akin to a residential neighborhood.

(f) Park Township simply does not have the staff or resources to fully police STR properties and situations.

(g) Although many advocates for STRs assert that problems with STRs can be minimized by the enactment and enforcement of local noise ordinances, blight

ordinances, barking dog ordinances, parking ordinances, etc., the enactment or full enforcement of such ordinances is frequently not feasible or practical for a municipality such as Park Township. Furthermore, to the degree that such ordinances can be enforced and might help in some situations, it is an "after-the-fact" solution reacting to a problem once it has already arisen.

(h) In general, STR uses are more intensive, transitory, and problematic than conventional single-family and other residential uses.

(i) Persons renting or leasing an STR property are often not familiar with the area involved, do not know local customs, and rarely know about local government ordinance requirements.

(j) A significant number of STRs in a community can decrease the number of long-term residents.

(k) STRs can decrease the availability of long-term housing stock, drive up dwelling prices and make long-term residency less affordable.

(l) STRs can significantly increase the number of vacant homes and dwellings during the winter months or off-season times.

(m) The presence of STRs in a neighborhood can increase levels of noise, traffic, and parking issues during the summer months.

(n) Many of the problems associated with STRs can also occur in duplex and multi-family residential areas and neighborhoods.

Article 3 – Enforcement

Although Township officials believe that there are few if any lawful STR uses anywhere within the Township (apart from licensed Bed and Breakfast Establishments and potentially within

the C-2 Resort Service zoning district), the Township also recognizes that property owners who have been conducting unlawful STR uses within houses, cottages and cabins may need some time to cease such STR operations, particularly if third-parties have made arrangements for reservations ahead of time or entered into contracts to rent or lease those premises. Accordingly, absent a health or emergency situation for a specific property, the Township will generally not enforce these new Zoning Ordinance amendments regarding STRs or existing regulations or prohibitions in the Zoning Ordinance prohibiting STRs (except for Article 9 of this document) prior to October 1, 2024. It is anticipated that Township officials will attempt to find and ascertain the properties within the Township on which unlawful STRs are occurring and to notify the owners of those properties about these Zoning Ordinance amendments and the October 1, 2024 deadline. The Township Board expressly finds that such "wind down" period regarding enforcement is reasonable and still protects the health, safety and welfare of residents, property owners and visitors in and to the Township.

Article 4 – The following definition of a "Short-Term Rental" is hereby added to Section 38-6 of the Park Township Zoning Ordinance, as amended:

Short-Term Rental ("STR"): A dwelling unit, cabin, home, cottage or house (or part or portion thereof) that is available for rental, leasing, or use for habitation, accommodation or lodging of guests, renters, third-parties, or others paying a fee, money, charge or other compensation, for a period of 28 or fewer consecutive days and nights at a time. A "tourist home" is a type of STR.

Article 5 – The following new Section 38-521 is hereby added to Article IV (entitled "Supplemental Regulations") of the Park Township Zoning Ordinance, as amended:

Section 20.31 - Short-Term Rentals.

Short-Term Rentals are prohibited in all zoning districts except for the C-2 Resort Service zoning district.

Article 6 – The following Subsection 38-452(27) is hereby added to the Park Township Zoning Ordinance, as amended, for the C-2 Resort Service zoning district:

(27) Short-term rentals and tourist homes.

Article 7 – The following Subsection 38-2(9) is hereby added to the Park Township Zoning Ordinance, as amended:

If a use, building, structure, fixture or activity is not expressly allowed by this Ordinance, it is unlawful and prohibited. In addition, if a specific use, building, structure, fixture or activity is not expressly listed as a permitted use or use with special land use approval for a specific zoning district, it is prohibited and unlawful in that zoning district.

Article 8 – Severability.

If any section, clause, or provision of this Ordinance/ordinance amendment is declared to be unconstitutional or otherwise invalid by a court of competent jurisdiction, that declaration shall not affect the remainder of the Ordinance/ordinance amendment. The Township Board hereby declares that it would have passed this Ordinance/ordinance amendment and each part, section, subsection, phrase, sentence and clause irrespective of the fact that any one or more parts, sections,

subsections, phrases, sentences or clauses be declared invalid.

Article 9 – The Balance of the Park Township Zoning Ordinance (as amended) Remains Unchanged and in Effect.

Except as expressly amended by this Ordinance/ordinance amendment, the balance of the Park Township Zoning Ordinance, as amended, remains unchanged and in full force and effect.

Article 10 – Effective Date.

This Ordinance/ordinance amendment shall become effective upon the expiration of seven (7) days after this Ordinance/ordinance amendment (or a summary thereof) appears in the newspaper as provided by law.

The vote to adopt this Ordinance/ordinance amendment was as follows:

YEAS: _Spoelhof, Serne, Steggerda and Keeter_____

_____

NAYS: none _____

ABSTAIN/ABSENT: Gerard, DeHaan, and Jones _____

THIS ORDINANCE/ORDINANCE AMENDMENT IS HEREBY DECLARED ADOPTED.

CERTIFICATION

I hereby certify that the above is a true copy of an Ordinance/Ordinance amendment adopted by the Township Board for Park Township at the time, date, and place specified above pursuant to the required statutory procedures.

Respectfully submitted,

By: _____
Skip Keeter
Park Township Clerk

EXHIBIT 4

PARK TOWNSHIP

SHORT-TERM RENTALS

Michigan Appellate Decisions

There are a number of Michigan appellate decisions (both for zoning and deed restrictions) regarding short-term rentals ("STRs"). Those decisions are summarized as follows:

A. *Aldrich v Sugar Springs Property Owners Association, Inc.,* 345 Mich App 181 (2023). This was a deed restriction case. A group of property owners sued a homeowners' association, seeking a judicial declaration against a prohibition on using their properties for short-term rentals. The association clarified that its bylaws prohibited rentals of shorter than six months. The Court of Appeals found that the limits on use for "residential purposes only" did not permit short-term rentals. The Court's reasoning relied in part on the fact that the deed restrictions presumptively limited use to residential purposes, as opposed to commercial purposes, and the Court relied upon prior case law that short-term renting was a commercial use.

B. *Apache Hills Property Owners Association, Inc. v Sears Nichols Cottages, LLC* (unpublished decision of the Michigan Court of Appeals, dated December 22, 2022; Case No. 360554; 2022 WL 17878015). This was also a deed restriction case. The deed restrictions indicated that each lot could only be used as a single-family private residence and no business of any sort could be conducted, apart from home offices. The restrictions also restricted any activity that could be a nuisance. The Court of Appeals found that the property owner failed to abide by the single-family private residence requirement in that it advertised the property for rent for up to 16 people and five cars. While the Court acknowledged that leasing was permitted, the

manner in which the defendant went about leasing its property violated the deed restrictions.

C. *Concerned Property Owners of Garfield Township, Inc. v Charter Township of Garfield* (unpublished decision of the Michigan Court of Appeals, dated October 25, 2018; Case No. 342831; 2018 WL 5305235). The township passed an updated zoning ordinance prohibiting short-term rentals in the R-1B zoning district. Certain property owners claimed that they were entitled to continue the non-conforming use of their properties as short-term rentals under the previous version of the zoning ordinance, which the township disputed. The Court held that the short-term rentals were "transitory" in nature and therefore violated the prior zoning ordinance. Short-term rentals of one week at a time did not meet the standard for "residential occupancy."

D. *Laketon Township v Advanse, Inc.* (unpublished decision of the Michigan Court of Appeals, dated Mar 24, 2009; Case No. 276986; 2009 WL 763447); *reversed by* 485 Mich 933 (2009). The Court of Appeals initially reversed a trial court order in favor of Laketon Township enjoining the property owner from renting out a house as an expansion of prior nonconforming use. The Michigan Supreme Court subsequently reversed the Court of Appeals and reinstated the trial court's injunction on the basis that the previous version of the ordinance did not allow rentals and the property owner's conduct unlawfully expanded a prior nonconforming use of the property.

E. *People of the City of St. Clair Shores v Dorr* (unpublished decision of the Michigan Court of Appeals, dated October 29, 2020; Case No. 349910; 2020 WL 6374724).

This case involved a misdemeanor violation where the defendant property-owner used his home as an "Airbnb" rental, in violation of local zoning ordinances. The property owner claimed that Airbnb rentals were a permitted home business and that the ordinance was unconstitutionally vague. In a split decision, the Court of Appeals found that the home business was not permitted under the ordinance because that use was not "incidental" to the use of the house as a dwelling, and the Court found that the property owner had not demonstrated the ordinance was improperly vague.

F. *Highfield Beach at Lake Michigan v Sanderson*, 331 Mich App 636; 954 NW2d 231 (2020). This case involved an action by a condominium association against a condominium owner. The association voted to amend its bylaws to set the minimum rental period as four months, and then claimed the condominium owner rented his condominium unit in violation of this bylaw. The Court of Appeals found that the association's amendment to its bylaws could apply prospectively, and the condominium owner had to abide by the limitations in the bylaws against short-term rentals.

G. *Torch Lake Protection Alliance v Ackermann* (unpublished decision of the Michigan Court of Appeals, dated November 30, 2004; Case No. 246879; 2004 WL 2726072). The lake association and certain property owners brought suit, arguing that the defendant's use of his property for short-term rentals violated the local zoning ordinance and certain deed restrictions limiting use to private residential purposes. The Court of Appeals affirmed a trial court decision that short-term rental use violated the local zoning ordinance. Further, the Court also found that the

defendant's short-term rental use of his property violated certain deed restrictions because it constituted a "business" and was not used strictly for a "private residential purpose."

H. *O'Connor v Resort Custom Builders, Inc.*, 459 Mich 335; 591 NW2d 216 (1999). This case arose when a developer sought to sell "interval ownership interests," akin to "timesharing," in a home located in a subdivision limited to private residences per certain deed covenants. The neighbors and homeowners' association sued. The Michigan Supreme Court held that "interval ownership" of a single-family dwelling was not a "residential purpose" within the meaning of the covenants restricting the use of property to residential purposes. That short-term rentals were permitted did not waive the enforcement against interval ownership arrangements.

I. *Enchanted Forest Property Owners Association v Schilling* (unpublished decision of the Michigan Court of Appeals, dated March 11, 2010; Case No. 287614; 2010 WL 866148). A property owners association sued to enjoin a property owner from using house as short-term rental, pursuant to deed restrictions. The Court of Appeals held that the use of the defendant's property as a vacation rental was deemed use for a commercial purpose, in violation of the prohibitions in certain deed restrictions. Accordingly, the Court enjoined the property owner from using the property as a vacation rental.

J. *Eager v Peasley*, 322 Mich App 174; 911 NW2d 470 (2017). The property owners filed suit against defendant property owners to enjoin defendants' lakefront property from being used as a short-term rental, based on restrictive covenants limiting use to "private occupancy only" and for "private dwelling" purposes. The

Court of Appeals agreed that use of the defendant's property for short-term rentals violated the prohibitions against use for "private occupancy only." Further, the Court found that defendant's use of his property constituted a "commercial use" that was prohibited by a restrictive covenant.

K. *Cherry Home Association v Baker* (unpublished decision of the Michigan Court of Appeals, dated October 21, 2021; Case No. 354841; 2021 WL 4932059). The homeowner's association sued defendant property owners to enforce restrictive covenants against short-term rentals. The Court of Appeals found that the deed declarations restricted the lots to residential use. The Court also found that use of the property for short-term rentals was not a form of residential use. The Court also found certain waiver arguments by the defendant property owner unavailing based on the trial record before the Court on appeal.

L. *Melvin R. Berlin Revocable Trust v Rubin* (unpublished decision of the Michigan Court of Appeals, dated July 20, 2023; Case No. 359300; 2023 WL 4671407). A group of property owners sued defendant group of property owners for violation of restrictive covenants based on defendants' use of their properties for short-term rentals. The Court of Appeals determined that the restrictive covenants did not permit the use of the lots for short-term or other rentals and that the defendants had not used their properties as single-family residences, like the covenants provided. The Court also dismissed defendants' accusations of waiver and fraudulent or negligent misrepresentation.

M. *John H. Baukham Trust v Petter* (unpublished decision of the Michigan Court of Appeals, dated September 19, 2017; Case No. 332643; 2017 WL 4158025). The

property owner plaintiffs sued property owner defendants alleging violations of deed restrictions prohibiting the use of restricted lots for commercial purposes. Defendants stipulated and therefore did not contest on appeal that they had used their properties for short-term rental purposes. The Court of Appeals affirmed the trial court's decision and found that the injunction enjoining "all rental activity for a fee" was not outside the range of principled outcomes. The Court partially reversed and remanded the matter to the trial court for further factual development on unrelated issues.

N. *The Townes at Liberty Park Condominium Assn v Arabella Ventures, Inc.* (unpublished decision of the Michigan Court of Appeals, dated May 23, 2024; Case No. 365956; 2024 WL 2499177). The issue of whether a short-term rental violated the condominium by-laws was rendered moot when the rentals ceased and the defendants sold their condominium unit. In footnote Number 1, the Court of Appeals indicated that "the act of renting property to another for short-term use is a commercial use" pursuant to *Aldrich v Sugar Springs Property Owners Assn, Inc,* 345 Mich App 181, 192 (2023) and *Terrien v Zwit*, 467 Mich 56, 63-64 (2002).

EXHIBIT 5

2022 WL 17724288

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED

Court of Appeals of Michigan.

NSC WALKER, LLC, Plaintiff-Appellant,
v.
CITY OF WALKER, Defendant-Appellee.

No. 358403

December 15, 2022

Kent Circuit Court, LC No. 21-002833-AA

Before: Gleicher, C.J., and Markey and Rick, JJ.

Opinion

Per Curiam.

*1 Plaintiff, **NSC Walker**, LLC (**NSC**), appeals by right the circuit court's opinion and order affirming a decision that was rendered in favor of defendant, **City** of **Walker** (the **city**), by the **city's** Zoning Board of Appeals (ZBA). The circuit court concluded that the ZBA's decision precluding a certain use of NSC's property was consistent with the city's zoning ordinance and a site-plan-approval condition. We reverse and remand for further proceedings.

I. BACKGROUND

The real property at issue in this case is located in a C-1 local commercial zoning district. In 2017, when the property was owned by Everkept Storage, Inc. (Everkept), the ZBA had approved the property for use as an indoor self-storage facility.. Although an indoor self-storage operation did not constitute an express permitted principal use for a C-1 zoning district, the ZBA found that it was sufficiently similar to such a use and compatible with the intent of the zoning district. The pertinent ordinance section relied on by the ZBA to allow Everkept to operate an indoor self-storage business was Walker Ordinance, § 94-176(b), which provides:

> Principal uses. Except as expressly otherwise permitted by this chapter, no building or part of a building in the "C-1" district, local commercial, shall be used, erected, altered or converted or land used, in whole or in part, except for:

> (1) Food stores, grocery stores, meat markets, bakeries, coffee shops, delicatessens and restaurants.
>
> [This ordinance subsection goes on at some length specifically identifying a variety of businesses which do not expressly include indoor self-storage.]
>
> * * *
>
> (18) Other retail business or service uses determined by the board of zoning appeals to be *similar to the permitted principal uses in this zoning district* and compatible with the intent of the zoning district..... [Emphasis added.]

The ZBA's decision under Walker Ordinance, § 94-176(b)(18) to authorize Everkept's planned indoor self-storage operation was subject to a site-plan review by the city's planning commission. The planning commission subsequently granted approval of Everkept's business subject to, in pertinent part, a condition that there could be "[n]o long-term trailer parking or storage, long-term vehicle parking or storage, or outdoor storage of any material." Everkept accepted the condition, along with other conditions, so it was allowed to operate its indoor self-storage facility. In 2018, while Everkept still owned the property, the city amended its zoning ordinance to add indoor self-storage [1] as a "special exception" use within the C-1 district permissible upon review and approval by the planning commission. Walker Ordinance, § 94-176(d).

In 2020, Everkept sold the property to NSC, which continued to operate an indoor self-storage facility, but with an additional service or feature made available to its customers and others in the form of U-Haul trucks and trailers that could be rented and that were shuttled back and forth from the property on an as-needed basis. The circuit court provided the following description:

> [*2] NSC purchased the property in 2020. Shortly after, the City received complaints that the property was being used as a location to rent U-Haul moving trucks and trailers. This was being done through U-Haul's "equipment shunting" system. Under this system, the property is used as a pick-up and drop-off point for the trucks and trailers. According to the record, at any given time there would typically be three or four trucks and trailers on the property which are either reserved for rental or returned and waiting for pick-up by U-Haul. NSC claims that 75% of the U-Haul customers are also customers of the self-storage.

Following multiple citizen complaints, the city's code enforcement specialist sent a violation notice and order to abate to NSC. The notice and order indicated that the local ordinance did not permit "the use of a rental truck business (U-Haul) or the open storage of commercial vehicles" on the property. NSC lodged a challenge of

the notice and order with the city's ZBA. NSC argued, in part, that running the U-Haul business in connection with the indoor self-storage facility constitutes a permitted accessory use under Walker Ordinance, § 94-176(c). This provision states that "[a]ny use customarily incidental to the *permitted principal uses* in the 'C-1' district shall be a permitted accessory use." Walker Ordinance, § 94-176(c) (emphasis added). After a public meeting, the ZBA determined as follows:

> 1. A truck rental use is not customarily incidental or accessory to a self-storage use.
>
> 2. Truck rental and open outdoor storage of vehicles, trucks or trailers are uses that are not permitted by right or by special exception in the C-1, Local Commercial zoning district.
>
> 3. A property owner does not have the right to commence an activity or use that is customarily accessory to a special exception principal use without prior Planning Commission approval.
>
> 4. A truck rental operation as a principal OR accessory use is one that could be reasonably judged similar to uses permitted by right or by special exception in the C-4, Outdoor Commercial zoning district.
>
> 5. The long-term outdoor storage of vehicles on the subject site is specifically prohibited per the conditional site plan approval granted by the Planning Commission on April 5, 2017.
>
> 6. Truck rental is not a use that is consistent with the 2020 Walker Master Plan and the future land use and community character designations of the Northwest Neighborhood.

On appeal by NSC, the circuit court affirmed the ZBA's findings and determinations. The court ruled that because indoor self-storage was not a *permitted principal use* in a C-1 district but only judged to be *similar* to a permitted principal use, Walker Ordinance, § 94-176(b)(18), the U-Haul component of NSC's business could not qualify as an "accessory use" as a matter of law under Walker Ordinance, § 94-176(c). [2] The circuit court further ruled that even if those Walker Ordinance sections were construed contrary to their plain language, NSC would still not be entitled to relief because the U-Haul operation violated the site-plan-approval condition barring "long-term trailer parking or storage, long-term vehicle parking or storage, or outdoor storage of any material." The circuit court explained:

> There was ample evidence for the ZBA's finding that the renting of U-Hauls breached this condition. NSC was doing repeated "short-term" rental of trucks and trailers in such a way that the storage and parking became "long-term," or at least could reasonably be construed as such. As one member of the public

explained at the hearing before the ZBA, "It may not be the same trucks, but there are trucks there all the time ...." [Omission in original.]

*3 The circuit court denied the appeal, closing its opinion and order by ruling that "NSC could not take advantage of the accessory-use provision, and even if it could, the use of the property for U-Haul rental was expressly barred by the [planning commission's] conditions." NSC now appeals the circuit court's opinion and order.

II. ANALYSIS

A. GOVERNING STANDARDS AND PRINCIPLES

In general, this Court reviews de novo a circuit court's decision in an appeal from a zoning board, *Edw C Levy Co v Marine City Zoning Bd of Appeals*, 293 Mich App 333, 340; 810 NW2d 621 (2011), as well as the interpretation and application of municipal ordinances, *Great Lakes Society v Georgetown Charter Twp*, 281 Mich App 396, 407; 761 NW2d 371 (2008). MCL 125.3606(1) provides:

> Any party aggrieved by a decision of the zoning board of appeals may appeal to the circuit court for the county in which the property is located. The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:
>
> (a) Complies with the constitution and laws of the state.
>
> (b) Is based upon proper procedure.
>
> (c) Is supported by competent, material, and substantial evidence on the record.
>
> (d) Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.

"Substantial evidence is evidence that a reasonable person would accept as sufficient to support a conclusion." *Edw C Levy*, 293 Mich App at 340 (quotation marks omitted). It may be substantially less than a preponderance of the evidence but requires more than a scintilla of evidence. *Id.* at 340-341. "The court may affirm, reverse, or modify the decision of the zoning board of appeals[,] [and] [t]he court may make other orders as justice requires." MCL 125.3606(4).

In *Hughes v Almena Twp*, 284 Mich App 50, 60; 771 NW2d 453 (2009), this Court observed:

> This Court reviews the circuit court's determination regarding ZBA findings to determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the [ZBA]'s factual findings. This standard regarding the substantial evidence test is the same as the familiar "clearly erroneous" standard. A finding is clearly erroneous if the

> reviewing court, on the whole record, is left with the definite and firm conviction that a mistake has been made. [Quotation marks and citations omitted; alteration in original.]

With respect to the construction of ordinal language, this Court in *Great Lakes Society*, 281 Mich App at 407-408, stated:

> Ordinances are treated as statutes for the purposes of interpretation and review. Hence, the interpretation and application of a municipal ordinance presents a question of law, which this Court reviews de novo. The goal of statutory construction, and thus of construction and interpretation of an ordinance, is to discern and give effect to the intent of the legislative body. Terms used in an ordinance must be given their plain and ordinary meanings .... [Citations omitted.]

In general, "a reviewing court is to give deference to a municipality's interpretation of its own ordinance." *Macenas v Village of Michiana*, 433 Mich 380, 398; 446 NW2d 102 (1989). With respect to how much deference should be given, our Supreme Court explained that "in cases of ambiguity in a municipal zoning ordinance, where a construction has been applied over an extended period by the officer or agency charged with its administration, that construction should be accorded great weight in determining the meaning of the ordinance." *Id.* But when the language of an ordinance is clear and unambiguous, it "must be enforced as written." *Kalinoff v Columbus Twp*, 214 Mich App 7, 11; 542 NW2d 276 (1995).

B. DISCUSSION AND RESOLUTION

*4 For a property owner in a C-1 district to take advantage of the accessory-use provision, the "use" at issue must be "customarily incidental to [a] permitted principal use[ ][.]" Walker Ordinance, § 94-176(c). The question that arose in this case was whether the operation of an indoor self-storage facility under Walker Ordinance, § 94-176(b)(18) constituted a permitted principal use which would potentially allow for an accessory use. The ZBA, the circuit court, and the city took the position that the indoor self-storage business was merely *similar* to a permitted principal use in the C-1 district and not an actual permitted principal use. [3] We disagree with this stance because it is contrary to the plain and unambiguous language of the ordinance.

Walker Ordinance, § 94-176(b), sets forth a list of permitted principal uses, specifically identifying particular businesses or services, with Subdivision (18) as a catchall to cover businesses or services of a similar nature to those expressly identified. The drafters of the ordinance clearly realized the impossibility of identifying every conceivable business or service that would be a proper fit in a C-1 district, resulting in the language in Subdivision (18). The reference in Subdivision

(18) to businesses or services that are "similar" to the list of permitted principal uses merely serves as one of the criteria to guide the ZBA in deciding whether Subdivision (18) is applicable to a given use, along with the requirement that a contemplated use be "compatible with the intent of the zoning district." When the ZBA designates a business or service as qualifying for inclusion in a C-1 district under Subdivision (18), it effectively and necessarily becomes a permitted principal use, entitled to the same treatment as the expressly-identified permissible uses, including the potential to operate accessory uses. Accordingly, we hold that the circuit court misinterpreted Walker Ordinance, § 94-176(b), thereby applying incorrect legal principles to the case.

With respect to the site-plan-approval condition precluding any "long-term trailer parking or storage, long-term vehicle parking or storage, or outdoor storage of any material," we note there was evidence that U-Haul trucks and trailers are parked on NSC's property at times and to some extent stored on the property. But the parking or storage must be long-term to violate the site-plan-approval condition. Because the operation of an indoor self-storage facility would necessarily entail customer's employing cars, trucks, and trailers to transport items to and from the facility, the planning commission's condition clearly sought to allow short-term parking and storage of vehicles and trailers. The circuit court ruled that "NSC was doing repeated 'short-term' rental of trucks and trailers in such a way that the storage and parking became 'long-term,' or at least could reasonably be construed as such." We hold that the circuit court misconstrued the plain language of the site-plan-approval condition. In barring long-term trailer or vehicle parking or storage, the planning commission's condition plainly and unambiguously requires a focus on individual vehicles and trailers and whether they are being parked or stored long-term on the property. Repeated short-term rentals are not prohibited by the clear language of the site-plan-approval condition. To interpret the condition otherwise would potentially result in violations any time multiple self-storage customers, *using their own vehicles and trailers*, are at the facility at the same time or one right after the other. To be clear, U-Haul trucks and trailers must be shuttled on and off the property in a timely manner consistent with a customer's use of a self-storage unit. In other words, the U-Haul operation must come close to paralleling or mimicking circumstances in which customers using their own vehicles are typically arriving at, using, and leaving the facility. By way of example, if a customer is finished using a U-Haul truck and leaves it on the property, NSC cannot allow it to sit there because another customer has signed up to use that particular truck two days later. But if the wait between uses by two customers is an hour, the U-Haul truck cannot be characterized as being stored or parked on the property long-term. Where the line is crossed would need to be assessed on a case-by-case basis. [4]

*5 ***Importantly***, our ruling above is subject to a determination by the circuit court regarding whether operating the U-Haul component of NSC's business is

"customarily incidental" to operating the indoor self-storage facility such that the U-Haul aspect of the business qualifies as an "accessory use" under Walker Ordinance, § 94-176(c). The ZBA determined that the U-Haul business is not "customarily incidental" to operating an indoor self-storage business. The circuit court did not address this issue in light of its rulings on the other matters. Therefore, we remand the case to the circuit court for consideration of the issue.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

All Citations

Not Reported in N.W. Rptr., 2022 WL 17724288

Footnotes

1 The actual language employed by the ordinance section is "self-storage: interior-access." Walker Ordinance, § 94-176(d)(5).

2 Because of the circuit court's ruling, it expressly found it unnecessary to make a determination whether operating the U-Haul aspect of NSC's business is "customarily incidental" to running the indoor self-storage business such that the U-Haul operation qualifies as an "accessory use" under Walker Ordinance, § 94-176(c). As indicated earlier, the ZBA found that the U-Haul operation was not customarily incidental to NSC's indoor self-storage business; therefore, the accessory-use provision was unavailable to NSC.

3 We note that the ZBA permitted Everkept to operate an indoor self-storage facility under Walker Ordinance, § 94-176(b)(18), and not under the "special exception" use provision in Walker Ordinance, § 94-176(d), which did not become effective until after Everkept was granted permission under Walker Ordinance, § 94-176(b)(18). Accordingly, we will not treat indoor self-storage use as a special-exception use under the particular circumstances of this case. Therefore, we decline to address NSC's argument that a special-exception use for an indoor self-storage operation under Walker Ordinance, § 94-176(d)(5) essentially amounts to a permitted principal use for purposes of seeking an accessory use.

4 Assuming the issue ultimately needs to be addressed, perhaps the parties can even come to an understanding regarding how long a U-Haul truck or trailer can remain on the property in between uses before a violation of the site-plan-approval condition occurs.

End of Document

EXHIBIT 6

Moskovic I

638 F.Supp.3d 770
United States District Court, W.D. Michigan, Southern Division.

Joanne MOSKOVIC, et al., Plaintiffs,
v.
CITY OF NEW BUFFALO, Defendant.
218 S Bronson LLC, et al., Plaintiffs,
v.
City of New Buffalo, Defendant.

Case No. 1:21-cv-144, Case No. 1:21-cv-674
Signed October 31, 2022

Synopsis

Background: Plaintiffs who sought permits to use their homes as short-term rental properties brought action against city, asserting that city moratorium and ordinance suspending the issuance of short-term rental permits violated the Michigan Zoning Enabling Act (MZEA), Michigan's Open Meetings Act (OMA), and numerous provisions of the Michigan constitution and United States Constitution. Plaintiffs moved for partial summary judgment on their substantive due process and equal protection claims, and city moved for summary judgment on all counts.

Holdings: The District Court, Hala Y. Jarbou, J., held that:
1 plaintiffs did not have a vested protected property interest in the nonconforming use of their homes;
2 bad-faith exception to application of an amended zoning ordinance did not apply to plaintiffs' claims;
3 plaintiffs failed to establish that city moratorium violated the dormant Commerce Clause;
4 plaintiffs were not entitled to relief under the OMA;
5 claims brought after the 60-day statute of limitations for OMA violations were untimely;
6 city's notice of electronically-held public meeting to discuss moratorium on short-term rental permits complied with OMA;
7 moratorium and ordinance did not violate plaintiffs' right to substantive due process;

8 moratorium and ordinance did not violate plaintiffs' right to procedural due process;
9 moratorium and ordinance did not violate plaintiffs' right to equal protection;
10 city violated the equal protection rights of limited liability company (LLC), as assignee of original owners of property, by denying application for short-term rental permit;
11 moratorium and ordinance did not constitute a regulatory taking; and
12 moratorium and ordinance did not conflict with MZEA.

Motions granted in part and denied in part.

Procedural Posture(s): Motion for Summary Judgment.

West Headnotes (65)

1 **Summary Judgment**

Summary judgment is not an opportunity for the court to resolve factual disputes; the court must shy away from weighing the evidence and instead view all the facts in the light most favorable to the nonmoving party and draw all justifiable inferences in their favor. Fed. R. Civ. P. 56(a).

368H	Summary Judgment
368HIV	Ascertaining Whether Fact Issue Exists
368Hk73	Presumptions and Inferences
368Hk75	Favoring nonmovant; disfavoring movant

(Formerly 170Ak2552)

368H	Summary Judgment
368HIV	Ascertaining Whether Fact Issue Exists
368Hk96	Weighing evidence, resolving conflicts, and determining credibility

(Formerly 170Ak2543)

2 **Summary Judgment**

The standard of review remains the same for reviewing cross-motions for summary judgment. Fed. R. Civ. P. 56(a).

368H	Summary Judgment
368HVI	Proceedings
368HVI(A)	In General
368Hk272	Motion or Other Request
368Hk279	Cross-motions

(Formerly 170Ak2534)

3 **Summary Judgment**

A case involving cross-motions for summary judgment requires evaluating each party's motion on its own merits, taking care in each instance to draw all reasonable inferences against the party whose motion is under consideration. Fed. R. Civ. P. 56(a).

368H	Summary Judgment
368HIV	Ascertaining Whether Fact Issue Exists
368Hk73	Presumptions and Inferences
368Hk75	Favoring nonmovant; disfavoring movant

(Formerly 170Ak2543)

368H	Summary Judgment
368HVI	Proceedings
368HVI(A)	In General
368Hk272	Motion or Other Request
368Hk279	Cross-motions

(Formerly 170Ak2534)

4 **Zoning and Planning**

Plaintiffs who claimed injury as a result of city ordinance and moratorium which required them to obtain a permit for using their home as a short-term rental and then prevented them from doing so alleged an injury in fact sufficient to establish standing to challenge ordinance and moratorium. U.S. Const. art. 3, § 2, cl. 1.

414	Zoning and Planning
414X	Judicial Review or Relief
414X(A)	In General
414k1584	Right of Review; Standing
414k1588	Permits, certificates, and approvals

5 **Zoning and Planning**

Michigan courts generally apply the law which is in effect at the time of decision by the trial court; thus, if a zoning ordinance has been amended after the suit was filed, a court will give effect to the amendment.

1 Case that cites this headnote

414	Zoning and Planning
414X	Judicial Review or Relief
414X(D)	Determination
414k1711	Effect of change of law or facts

6 **Zoning and Planning**

Under Michigan law, a court will not apply an amendment to a zoning ordinance created after the suit was filed where (1) the

414	Zoning and Planning

amendment would destroy a vested property interest acquired before its enactment, or (2) the amendment was enacted in bad faith and with unjustified delay.

414X	Judicial Review or Relief
414X(D)	Determination
414k1711	Effect of change of law or facts

7 **Zoning and Planning**

To be protected as vested property interest under Michigan law, a nonconforming use must have been legal at one time; a use that violates the zoning ordinances since its inception does not draw such protection.

414	Zoning and Planning
414VI	Nonconforming Uses
414k1305	Legality or illegality of use

8 **Zoning and Planning**

Under the Michigan Zoning Enabling Act (MZEA), alterations to zoning or other property-use ordinances may only apply prospectively and may not destroy already-vested property interests. Mich. Comp. Laws Ann. § 125.3208(1).

414	Zoning and Planning
414III	Modification or Amendment; Rezoning
414III(A)	In General
414k1154	Rights of objecting owners; continuity of regulation

9 **Zoning and Planning**

To obtain a vested right in a nonconforming use, a property owner must actually use their property lawfully in the nonconforming way or conduct work of a substantial character by way of preparation for an actual use of premises before the zoning requirements change; mere preliminary operations, such as ordering of plans, surveying the land, removal of old buildings, are not sufficient.

414	Zoning and Planning
414VI	Nonconforming Uses
414k1302	Existence of use in general

414	Zoning and Planning
414VI	Nonconforming Uses
414k1303	Contemplated or intended use

10 **Zoning and Planning**

Generally speaking, under Michigan law permits are not issued by local authorities when the contemplated use for which the permit is issued conflicts with a local zoning ordinance.

414	Zoning and Planning
414VIII	Permits, Certificates, and Approvals
414VIII(A)	In General
414k1354	Grounds for grant or denial in general

11 **Zoning and Planning**

Under Michigan law, plaintiffs who had prepared to use their homes as short-term rentals but had not yet received a permit to do so did not have a vested protected property interest in the nonconforming use of their homes, in action challenging city moratorium and ordinance prohibiting the issuance of new permits for short-term rentals; the use of homes as short-term rentals was not permitted in the absence of a permit by the city's zoning code prior to issuance of the ordinance. Mich. Comp. Laws Ann. § 125.3208(1).

414	Zoning and Planning
414VI	Nonconforming Uses
414k1303	Contemplated or intended use

12 **Zoning and Planning**

Under Michigan law, "zoning ordinances" regulate the use of land and buildings according to districts, areas, or locations, whereas "regulatory ordinances" control how activity must be conducted pursuant to certain regulations, such as obtaining a permit.

414	Zoning and Planning
414I	In General
414k1000	Nature in general

414	Zoning and Planning
414VIII	Permits, Certificates, and Approvals
414VIII(A)	In General
414k1345	Nature and necessity in general

13 **Zoning and Planning**

Under Michigan law, the test to determine bad faith as an exception to the application of an amendment to a zoning ordinance is whether the amendment was enacted for the purpose of manufacturing a defense to plaintiff's suit.

414	Zoning and Planning
414III	Modification or Amendment; Rezoning
414III(A)	In General
414k1143	Circumstances affecting validity of amendment in general

14 **Zoning and Planning**

Under Michigan law, the court can apply a new zoning ordinance that was amended since a suit was filed even if it serves to strengthen municipality's litigating position.

414	Zoning and Planning
414V	Construction, Operation, and Effect

414V(A)	In General
414k1215	Time of taking effect; retroactive operation

15 **Zoning and Planning**

Under Michigan law, under the bad faith exception to application of a current zoning ordinance when determining whether to apply a zoning ordinance that was adopted after a suit was filed, the factual determination that must control is whether the predominant motivation for the ordinance change was improvement of the municipality's litigation position.

414	Zoning and Planning
414V	Construction, Operation, and Effect
414V(A)	In General
414k1215	Time of taking effect; retroactive operation

16 **Zoning and Planning**

Under Michigan law, some factors a court can consider when determining whether the bad faith exception applies to application of an amended zoning ordinance include: (1) whether the plaintiff had an unquestionable right to issuance of a permit before the amendment, (2) whether the municipality had not forbidden the type of construction the plaintiff proposed before the amendment, (3) whether the ordinance was amended for the purpose of manufacturing a defense to the plaintiff's suit, and (4) whether the city waited until the last possible minute to assert the defense.

414	Zoning and Planning
414VIII	Permits, Certificates, and Approvals
414VIII(A)	In General
414k1350	Right to Permission, and Discretion
414k1352	Change of regulations as affecting right

17 **Zoning and Planning**

Under Michigan law, the bad-faith exception to application of an amended zoning ordinance did not apply to allow plaintiffs to seek enforcement of previous version of city's ordinance which allowed the issuance of permits for the nonconforming use of plaintiffs' homes as short-term rentals; city had issued moratorium prohibiting short-term rentals to allow consideration of appropriate regulatory amendments in light of community concerns before plaintiffs filed suit, indicating that lawsuit brought by plaintiffs was not the predominant motivation for the amended ordinance, the ordinance did not target plaintiffs' property specifically, and plaintiffs did not address the necessary component of unjustified delay.

414	Zoning and Planning
414VIII	Permits, Certificates, and Approvals
414VIII(A)	In General
414k1350	Right to Permission, and Discretion
414k1352	Change of regulations as affecting right

18 **Commerce**

Courts generally reserve dormant Commerce Clause review for laws that protect in-state economic interests at the expense of out-of-state competitors. U.S. Const. art. 1, § 8, cl. 3.

83	Commerce
83II	Application to Particular Subjects and Methods of Regulation
83II(B)	Conduct of Business in General
83k56	Regulation and conduct in general; particular businesses

19 **Commerce**

State laws that explicitly discriminate against interstate commerce are almost always invalid under the dormant Commerce Clause, as are laws that appear neutral but have an impermissibly protectionist purpose or effect. U.S. Const. art. 1, § 8, cl. 3.

83	Commerce
83II	Application to Particular Subjects and Methods of Regulation
83II(A)	In General
83k54	Preferences and Discriminations
83k54.1	In general

83	Commerce
83II	Application to Particular Subjects and Methods of Regulation
83II(B)	Conduct of Business in General
83k56	Regulation and conduct in general; particular businesses

20 **Commerce**

Where a law has only an incidental effect on interstate commerce, laxer review applies; such laws will be upheld under the dormant Commerce Clause unless they impose burdens on interstate commerce that clearly exceed their local benefits. U.S. Const. art. 1, § 8, cl. 3.

83	Commerce
83I	Power to Regulate in General
83k11	Powers Remaining in States, and Limitations Thereon
83k13.5	Local matters affecting commerce

21 **Commerce**

Under the first step of the analysis to evaluate challenges to the dormant Commerce Clause,

83	Commerce

the court looks at whether the state regulation directly regulates or discriminates against interstate commerce, or whether its effect is to favor in-state economic interests over out-of-state interests. U.S. Const. art. 1, § 8, cl. 3.

83I	Power to Regulate in General
83k11	Powers Remaining in States, and Limitations Thereon
83k12	In general

83	Commerce
83II	Application to Particular Subjects and Methods of Regulation
83II(B)	Conduct of Business in General
83k56	Regulation and conduct in general; particular businesses

22 **Commerce**

Under the dormant Commerce Clause, a state regulation can discriminate against out-of-state interests in three different ways: (1) facially, (2) purposefully, or (3) in practical effect. U.S. Const. art. 1, § 8, cl. 3.

83	Commerce
83I	Power to Regulate in General
83k11	Powers Remaining in States, and Limitations Thereon
83k12	In general

83	Commerce
83II	Application to Particular Subjects and Methods of Regulation
83II(A)	In General
83k54	Preferences and Discriminations
83k54.1	In general

23 **Commerce**

Under the dormant Commerce Clause, the critical consideration is the overall effect of the statute on both local and interstate activity. U.S. Const. art. 1, § 8, cl. 3.

83	Commerce
83I	Power to Regulate in General
83k11	Powers Remaining in States, and Limitations Thereon
83k12	In general

24 **Commerce**

Plaintiffs bear the initial burden of proof to show that a state regulation is discriminatory under the dormant Commerce Clause. U.S. Const. art. 1, § 8, cl. 3.

83	Commerce
83II	Application to Particular Subjects and Methods of Regulation
83II(A)	In General
83k54	Preferences and Discriminations
83k54.1	In general

25 **Commerce**

A law that discriminates against out-of-state economic interests is virtually per se invalid under the dormant Commerce Clause and will survive only if it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives. U.S. Const. art. 1, § 8, cl. 3.

83	Commerce
83I	Power to Regulate in General
83k11	Powers Remaining in States, and Limitations Thereon
83k13.5	Local matters affecting commerce

83	Commerce
83II	Application to Particular Subjects and Methods of Regulation
83II(B)	Conduct of Business in General
83k56	Regulation and conduct in general; particular businesses

26 **Commerce**

If the state regulation is neither discriminatory nor extraterritorial, then to resolve a dormant Commerce Clause claim the court must apply the balancing test established in *Pike v. Bruce Church, Inc.*, 397 U.S. 137, under which a state regulation is upheld unless the burden it imposes upon interstate commerce is clearly excessive in relation to the putative local benefits. U.S. Const. art. 1, § 8, cl. 3.

83	Commerce
83I	Power to Regulate in General
83k11	Powers Remaining in States, and Limitations Thereon
83k13.5	Local matters affecting commerce

27 **Commerce**

City moratorium prohibiting the issuance of short-term rental permits did not violate the dormant Commerce Clause in challenge brought by plaintiffs who sought permits to use their homes as short-term rental

83	Commerce
83II	Application to Particular Subjects and Methods of Regulation

properties, absent evidence beyond plaintiffs' unsupported assertion that the ordinance's burden on interstate commerce outweighed any local benefit. U.S. Const. art. 1, § 8, cl. 3.

83II(K)	Miscellaneous Subjects and Regulations
83k82.20	Subjects and regulations in general

28 **Commerce**

Conjecture is no replacement for the kind of proof of real burdens on interstate commerce, as opposed to hypothetical burdens, needed to support a dormant Commerce Clause challenge to a state regulation. U.S. Const. art. 1, § 8, cl. 3.

83	Commerce
83I	Power to Regulate in General
83k11	Powers Remaining in States, and Limitations Thereon
83k12	In general

29 **Municipal Corporations**

Under Michigan law, Plaintiffs who sought permits to use their homes as short-term rental properties were not entitled to relief for city's alleged violations of Michigan's Open Meetings Act (OMA) in their challenge to city moratorium halting the issuance of short-term rental permits, where plaintiffs did not sue a public official and the moratorium had expired. Mich. Comp. Laws Ann. §§ 15.270(2), 15.273(1).

268	Municipal Corporations
268IV	Proceedings of Council or Other Governing Body
268IV(A)	Meetings, Rules, and Proceedings in General
268k92	Rules of procedure and conduct of business

30 **Federal Courts**

The district court is bound to apply Michigan law as a Michigan court would; if a Michigan court would not grant relief under the circumstances, then the district court cannot do so either.

170B	Federal Courts
170BXV	State or Federal Laws as Rules of Decision; Erie Doctrine
170BXV(A)	In General
170Bk3001	In general

31 **Limitation of Actions**

Sixty-day statute of limitations for plaintiffs' claim that city violated Michigan's Open Meetings Act (OMA) when adopting and extending moratorium on short-term rentals began to run when the city approved the minutes for the meetings at which the moratorium was adopted or extended, and thus claims brought outside the 60-day limitations period were untimely. Mich. Comp. Laws Ann. §§ 15.270, 15.270(3)(a).

241	Limitation of Actions
241II	Computation of Period of Limitation
241II(A)	Accrual of Right of Action or Defense
241k58	Liabilities Created by Statute
241k58(1)	In general

32 **Municipal Corporations**

City's notice of electronically-held public meeting to discuss moratorium on short-term rental permits complied with Michigan's Open Meetings Act (OMA), in action brought by plaintiffs who sought permits to use their homes as short-term rental properties; city posted notice on its website that complied with the OMA and included information about how members of the public could participate electronically, and plaintiffs failed to explain how their rights were impaired by city's alleged noncompliance. Mich. Comp. Laws Ann. §§ 15.263a(4), 15.270(2).

268	Municipal Corporations
268IV	Proceedings of Council or Other Governing Body
268IV(A)	Meetings, Rules, and Proceedings in General
268k92	Rules of procedure and conduct of business

33 **Administrative Law and Procedure**

To establish a claim under Michigan's Open Meetings Act (OMA), plaintiffs must show that noncompliance with the OMA has impaired the rights of the public. Mich. Comp. Laws Ann. §§ 15.263a(4), 15.270(2).

15A	Administrative Law and Procedure
15AII	Administrative Agencies
15AII(B)	Meetings and Records
15Ak1071	Effect of violation of open meetings laws in general

34 **Constitutional Law**

Substantive due process requires that both state legislative and administrative actions that deprive the citizen of life, liberty or property must have some rational basis. U.S. Const. Amend. 14.

92	Constitutional Law
92XXVII	Due Process
92XXVII(B)	Protections Provided and Deprivations Prohibited in General
92k3892	Substantive Due Process in General
92k3895	Reasonableness, rationality, and relationship to object

92	Constitutional Law
92XXVII	Due Process
92XXVII(F)	Administrative Agencies and Proceedings in General
92k4025	In general

35 **Constitutional Law**

A plaintiff alleging a substantive due process violation resulting from a zoning decision must show that (1) a constitutionally protected property or liberty interest exists, and (2) the constitutionally protected interest has been deprived through arbitrary and capricious action. U.S. Const. Amend. 14.

92	Constitutional Law
92XXVII	Due Process
92XXVII(G)	Particular Issues and Applications
92XXVII(G)3	Property in General
92k4091	Zoning and Land Use
92k4092	In general

36 **Constitutional Law**

Zoning and Planning

Plaintiffs who sought permits to use their homes as short-term rental properties did not have a protected property interest in short-term rental permits, as required to support their claim that the city's moratorium and ordinance halting the issuance of short-term rental permits violated their right to substantive due process; plaintiffs' proposed uses were not allowed by the city's zoning regulations absent a permit, and plaintiffs were first-time permit applicants. U.S. Const. Amend. 14.

92	Constitutional Law
92XXVII	Due Process
92XXVII(G)	Particular Issues and Applications
92XXVII(G)3	Property in General
92k4091	Zoning and Land Use
92k4093	Particular issues and applications
414	Zoning and Planning
414VIII	Permits, Certificates, and Approvals
414VIII(A)	In General
414k1377	Hotels, lodging, and short-term rentals

37 **Constitutional Law**

Whether person has property interest is traditionally question of state law; federal constitutional law, however, determines whether that interest rises to level of legitimate claim of entitlement protected by due process clause. U.S. Const. Amend. 14.

92	Constitutional Law
92XXVII	Due Process
92XXVII(B)	Protections Provided and Deprivations Prohibited in General
92k3868	Rights, Interests, Benefits, or Privileges Involved in General
92k3874	Property Rights and Interests
92k3874(2)	Source of right or interest

38 **Zoning and Planning**

A first-time applicant for a permit does not have a protected property interest in the

414	Zoning and Planning

permit.

414VIII	Permits, Certificates, and Approvals
414VIII(A)	In General
414k1350	Right to Permission, and Discretion
414k1351	In general

39 **Constitutional Law**

A protected interest is an essential element of a substantive due process claim. U.S. Const. Amend. 14.

92	Constitutional Law
92XXVII	Due Process
92XXVII(B)	Protections Provided and Deprivations Prohibited in General
92k3892	Substantive Due Process in General
92k3894	Rights and interests protected; fundamental rights

40 **Constitutional Law**

Zoning and Planning

City's moratorium and ordinance halting the issuance of short-term rental permits were rationally related to concerns about the impact of short-term rentals on the quality of life in the city, and thus were not so irrational that they shocked the conscience, as required to support substantive due process claim brought by plaintiffs who sought permits to use their homes as short-term rental properties. U.S. Const. Amend. 14.

92	Constitutional Law
92XXVII	Due Process
92XXVII(G)	Particular Issues and Applications
92XXVII(G)3	Property in General
92k4091	Zoning and Land Use
92k4093	Particular issues and applications

414	Zoning and Planning
414II	Validity of Zoning Regulations
414II(B)	Particular Matters
414k1097	Hotels, lodging, and short-term rentals

414	Zoning and Planning
414II	Validity of Zoning Regulations
414II(B)	Particular Matters
414k1121	Moratorium regulations

41 **Constitutional Law**

A showing of arbitrary and capricious action is necessary for a substantive due process claim. U.S. Const. Amend. 14.

92	Constitutional Law
92XXVII	Due Process
92XXVII(B)	Protections Provided and Deprivations Prohibited in General
92k3892	Substantive Due Process in General
92k3893	In general

42 **Constitutional Law**

Zoning decisions do not shock the conscience, as required to support a substantive due process claim, if they survive rational-basis review; under that standard, the plaintiff must negate every conceivable basis supporting the decision. U.S. Const. Amend. 14.

92	Constitutional Law
92XXVII	Due Process
92XXVII(G)	Particular Issues and Applications
92XXVII(G)3	Property in General
92k4091	Zoning and Land Use
92k4092	In general

43 **Constitutional Law**

Under rational basis review of a substantive due process claim, the defendant has no obligation to produce evidence to sustain the rationality of its actions; its choice is presumptively valid and may be based on rational speculation unsupported by evidence or empirical data. U.S. Const. Amend. 14.

1 Case that cites this headnote

92	Constitutional Law
92VI	Enforcement of Constitutional Provisions
92VI(C)	Determination of Constitutional Questions
92VI(C)3	Presumptions and Construction as to Constitutionality
92k1006	Particular Issues and Applications
92k1022	Due process

92	Constitutional Law
92VI	Enforcement of Constitutional Provisions
92VI(C)	Determination of Constitutional Questions
92VI(C)4	Burden of Proof
92k1032	Particular Issues and Applications
92k1039	Due process

92	Constitutional Law
92XXVII	Due Process
92XXVII(B)	Protections Provided and Deprivations Prohibited in General
92k3892	Substantive Due Process in General
92k3895	Reasonableness, rationality, and relationship to object

44 **Zoning and Planning**

Municipalities may regulate in order to protect communities' residential character.

414	Zoning and Planning
414II	Validity of Zoning Regulations
414II(B)	Particular Matters
414k1074	Residence Districts
414k1075	In general

45 **Constitutional Law**

Zoning and Planning

City's moratorium and ordinance halting the issuance of short-term rental permits did not violate the procedural due process rights of plaintiffs who sought permits to use their homes as short-term rental properties; plaintiffs as first-time permit applicants had no protected property interest, moratorium and ordinance did not single out plaintiffs, and city afforded adequate process by publishing notice of its meetings, recording the minutes of meetings where the moratorium was adopted and extended, holding a public meeting at which the ordinance was discussed and adopted, and publishing notice of the ordinance in a local newspaper with information about how to obtain a copy. U.S. Const. Amend. 14; Mich. Comp. Laws Ann. § 117.3(k).

92	Constitutional Law
92XXVII	Due Process
92XXVII(G)	Particular Issues and Applications
92XXVII(G)3	Property in General
92k4091	Zoning and Land Use
92k4096	Proceedings and review

414	Zoning and Planning
414II	Validity of Zoning Regulations
414II(C)	Procedural Requirements
414k1128	Notice and Hearing
414k1129	In general

46 **Constitutional Law**

To prevail on procedural due process claim, plaintiffs must show that they had constitutionally protected interest, that they were deprived of that interest, and that state did not afford them adequate procedures. U.S. Const. Amend. 14.

92	Constitutional Law
92XXVII	Due Process

92XXVII(B)	Protections Provided and Deprivations Prohibited in General
92k3867	Procedural due process in general

47 **Constitutional Law**

To establish a claim for relief under the Equal Protection Clause, a plaintiff must demonstrate that the government treated the plaintiff disparately as compared to similarly situated persons and that such disparate treatment either burdens a fundamental right, targets a suspect class, or has no rational basis. U.S. Const. Amend. 14.

92	Constitutional Law
92XXVI	Equal Protection
92XXVI(A)	In General
92XXVI(A)5	Scope of Doctrine in General
92k3038	Discrimination and Classification
92k3041	Similarly situated persons; like circumstances

92	Constitutional Law
92XXVI	Equal Protection
92XXVI(A)	In General
92XXVI(A)6	Levels of Scrutiny
92k3051	Differing levels set forth or compared

48 **Constitutional Law**

Zoning and Planning

City moratorium and ordinance that halted the issuance of short-term rental permits did not violate the equal protection rights of plaintiffs who sought permits to use their homes as short-term rental properties by treating them differently than long-term renters; city had a rational basis for treating short-term rentals serving transient populations differently than long-term rentals aimed at more permanent residents. U.S. Const. Amend. 14.

92	Constitutional Law
92XXVI	Equal Protection
92XXVI(E)	Particular Issues and Applications
92XXVI(E)3	Property in General
92k3511	Zoning and Land Use
92k3512	In general

414	Zoning and Planning
414II	Validity of Zoning Regulations
414II(B)	Particular Matters
414k1097	Hotels, lodging, and short-term rentals

414	Zoning and Planning
414II	Validity of Zoning Regulations

414II(B)	Particular Matters
414k1121	Moratorium regulations

49 **Constitutional Law**

Zoning and Planning

City that issued moratorium and ordinance halting the issuance of short-term rental permits did not violate the equal protection rights of plaintiffs who sought permits to use their homes as short-term rental properties by granting a short-term rental permit to other homeowners under an exception to the moratorium, where plaintiffs had not submitted a permit application under the moratorium's exceptions, and city had a rational basis for creating a limited exception for property owners with investment-backed expectations developed shortly before the moratorium was implemented. U.S. Const. Amend. 14.

92	Constitutional Law
92XXVI	Equal Protection
92XXVI(E)	Particular Issues and Applications
92XXVI(E)3	Property in General
92k3511	Zoning and Land Use
92k3512	In general
414	Zoning and Planning
414VIII	Permits, Certificates, and Approvals
414VIII(A)	In General
414k1377	Hotels, lodging, and short-term rentals

50 **Constitutional Law**

Timing and context are both relevant to the similarly-situated inquiry of an equal protection claim because differential treatment may indicate a change in policy rather than an intent to discriminate. U.S. Const. Amend. 14.

92	Constitutional Law
92XXVI	Equal Protection
92XXVI(A)	In General
92XXVI(A)5	Scope of Doctrine in General
92k3038	Discrimination and Classification
92k3041	Similarly situated persons; like circumstances

51 **Constitutional Law**

Limited liability company (LLC) that sought short-term rental permit had standing to pursue equal protection claim against city that issued moratorium and ordinance halting the issuance of short-term rental permits, although LLC did not own the property when the original owners were denied a permit; original owners transferred their claims and right to relief to LLC. U.S. Const. Amend. 14.

92	Constitutional Law
92VI	Enforcement of Constitutional Provisions
92VI(A)	Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)11	Equal Protection
92k940	Zoning and land use

52 **Assignments**

An assignee has standing to assert the rights of the assignor, including the right to assert claims that accrued to the assignor.

38	Assignments
38VI	Actions
38k118	By Assignee
38k119	In general

53 **Constitutional Law**

Zoning and Planning

City violated the equal protection rights of limited liability company (LLC), as assignee of original owners of property, by denying application for short-term rental permit submitted by original owners, where original owners were qualified for a permit under an exception to city's moratorium halting issuance of short-term rental permits, and city offered no rational basis for denying the permit application. U.S. Const. Amend. 14.

92	Constitutional Law
92XXVI	Equal Protection
92XXVI(E)	Particular Issues and Applications
92XXVI(E)3	Property in General
92k3511	Zoning and Land Use
92k3512	In general

414	Zoning and Planning
414VIII	Permits, Certificates, and Approvals
414VIII(A)	In General
414k1377	Hotels, lodging, and short-term rentals

54 **Eminent Domain**

A "physical taking" occurs when government physically takes possession of interest in property for some public purpose. U.S. Const. Amend. 5.

148	Eminent Domain
148I	Nature, Extent, and Delegation of Power
148k2	What Constitutes a Taking; Police and Other Powers Distinguished
148k2.1	In general

55 **Eminent Domain**

A "regulatory taking" occurs when regulations prohibit property owner from making certain uses of her private property. U.S. Const. Amend. 5.

148	Eminent Domain
148I	Nature, Extent, and Delegation of Power
148k2	What Constitutes a Taking; Police and Other Powers Distinguished
148k2.1	In general

56 **Eminent Domain**

A physical taking of private property by the government always requires compensation, whereas a regulatory taking necessarily entails complex factual assessments of purposes and economic effects of government actions. U.S. Const. Amend. 5.

148	Eminent Domain
148I	Nature, Extent, and Delegation of Power
148k2	What Constitutes a Taking; Police and Other Powers Distinguished
148k2.1	In general

148	Eminent Domain
148II	Compensation
148II(A)	Necessity and Sufficiency in General
148k69	Necessity of making compensation in general

57 **Eminent Domain**

If regulation of private property goes too far, it will be recognized as a taking requiring compensation. U.S. Const. Amend. 5.

148	Eminent Domain
148I	Nature, Extent, and Delegation of Power
148k2	What Constitutes a Taking; Police and Other Powers Distinguished
148k2.1	In general

58 **Eminent Domain**

When a regulation calls upon the owner of real property to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, the property owner is categorically entitled to compensation for the taking, except to the extent that background principles of nuisance and property law independently restrict the owner's intended use of the property; this categorical rule applies only to the extraordinary case in which a regulation permanently deprives property of all value. U.S. Const. Amend. 5.

148	Eminent Domain
148I	Nature, Extent, and Delegation of Power
148k2	What Constitutes a Taking; Police and Other Powers Distinguished
148k2.10	Zoning, Planning, or Land Use; Building Codes
148k2.10(1)	In general

59 **Eminent Domain**

City moratorium and ordinance halting the issuance of short-term rental permits did not

148	Eminent Domain

constitute a regulatory taking of the property of plaintiffs who sought permits to use their homes as short-term rental properties, where plaintiffs did not have a vested property interest in the nonconforming use of their homes under the city's zoning code in the absence of a permit. U.S. Const. Amend. 5.

148I	Nature, Extent, and Delegation of Power
148k2	What Constitutes a Taking; Police and Other Powers Distinguished
148k2.10	Zoning, Planning, or Land Use; Building Codes
148k2.10(4)	Zoning and Permits
148k2.10(6)	Particular cases

60 **Eminent Domain**

Under the *Penn Central* test, the court considers several factors in the context of a non-categorical taking of private property, including: (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action —for instance whether it amounts to a physical invasion or instead merely affects property interests through some public program adjusting the benefits and burdens of economic life to promote the common good. U.S. Const. Amend. 5.

148	Eminent Domain
148I	Nature, Extent, and Delegation of Power
148k2	What Constitutes a Taking; Police and Other Powers Distinguished
148k2.1	In general

61 **Eminent Domain**

The *Penn Central* test is the proper test for a regulatory taking of private property which does not permanently deprive a property of all value. U.S. Const. Amend. 5.

148	Eminent Domain
148I	Nature, Extent, and Delegation of Power
148k2	What Constitutes a Taking; Police and Other Powers Distinguished
148k2.1	In general

62 **Eminent Domain**

A regulation does not constitute a taking if the party's interests were not part of his title to begin with. U.S. Const. Amend. 5.

148	Eminent Domain
148I	Nature, Extent, and Delegation of Power
148k2	What Constitutes a Taking; Police and Other Powers Distinguished
148k2.1	In general

63 **Municipal Corporations**

A state law can preempt a local regulation where there is a direct conflict between the two, i.e., when the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits.

268	Municipal Corporations
268X	Police Power and Regulations
268X(A)	Delegation, Extent, and Exercise of Power
268k592	Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1)	In general

268	Municipal Corporations
268X	Police Power and Regulations
268X(A)	Delegation, Extent, and Exercise of Power
268k592	Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(4)	Ordinances permitting acts which state law prohibits

64 **Zoning and Planning**

City's moratorium on the issuance of short-term rental permits did not conflict with the Michigan Zoning Enabling Act (MZEA), where the moratorium was not a zoning ordinance. Mich. Comp. Laws Ann. § 125.3208(1).

414	Zoning and Planning
414I	In General
414k1019	Concurrent or Conflicting Regulations; Preemption
414k1033	Other particular cases

65 **Zoning and Planning**

Plaintiffs who sought permits to use their homes as short-term rental properties failed to show that city's ordinance halting the issuance of short-term rental permits conflicted with the Michigan Zoning Enabling Act (MZEA); short-term rentals were not lawful uses that the MZEA would protect under the previous zoning ordinance. Mich. Comp. Laws Ann. § 125.3208(1).

414	Zoning and Planning
414I	In General
414k1019	Concurrent or Conflicting Regulations; Preemption
414k1033	Other particular cases

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OPINION

HALA Y. JARBOU, CHIEF UNITED STATES DISTRICT JUDGE

*778 Plaintiffs in this consolidated action own homes in the City of New Buffalo, Michigan, that they have used, or intend to use, as short-term rental properties. In 2019, the City passed an ordinance requiring homeowners in the City to obtain a permit before using their homes as short-term rentals. In 2020, the City adopted a resolution that suspended the issuance of such permits. Plaintiffs brought this action against the City to challenge the validity of that resolution under state and federal law. Before the Court is Plaintiffs' motion for partial summary judgment (ECF No. 116) [1] on Counts V and VII of the amended complaint. Also before the Court is the City's motion for summary judgment (ECF No. 117). For the reasons herein, the Court will grant Plaintiffs' motion in part and grant the City's motion in part. The Court will grant summary judgment in favor of 218 S Bronson LLC on the equal protection claim. The Court will dismiss all other claims.

I. BACKGROUND

A. History

The City of New Buffalo is located on the Lake Michigan shoreline near the Indiana border. It is a popular destination for tourists from Michigan, Indiana, and Illinois, especially during the summertime. Plaintiffs purchased homes in the City with the intent to rent them to visitors on a short-term basis, *i.e.*, for terms of less than a month at a time.

1. Ordinance 237 Requires Permits for Short-Term Rentals

In April 2019, after some members of the City Council became concerned about the impacts of short-term rentals on the character of the community, the City passed Ordinance 237, which required homeowners to apply for and obtain a permit from the City in order to use their homes as short-term rentals. (Ordinance 237, ECF No. 13-2.) To qualify for a permit, applicants had to provide their contact information and the contact information for a local agent. Also, they had to provide information about their home, certify that they had working smoke alarms and fire extinguishers, consent to inspections upon request, and create a brochure for guests providing their contact information. (*Id.*, PageID.311-312.) Finally, they had to submit to an annual inspection "for compliance with applicable codes and ordinances," including "zoning, construction, fire, and property maintenance codes[.]" (*Id.*, PageID.313.) Failure to "satisfactorily complete an inspection" could be grounds for withholding a permit or deeming it void. (*Id.*, PageID.312.) The ordinance also put a limit on the number of people that could occupy a dwelling. (*Id.*, PageID.315.) There was no cap on the number of permits that the City would issue.

2. Moratorium

On May 18, 2020, the City Council adopted Resolution 2020-11, which imposed an eight-month moratorium ("Moratorium") on all permit applications for, and *779 registrations of, short-term rental units in the City. (Resolution 2020-11, ECF No. 61-3.) The City Council indicated that it was "concerned that further increases in short-term rentals in certain areas of the City could undermine the character and stability of neighborhoods in certain districts" by, among other things, decreasing the number of long-term residents, decreasing enrollment in schools, decreasing the availability of long-term housing, permitting significant numbers of vacant homes during winter months, and increasing noise levels, traffic, and on-street parking during summer months. (*Id.*, PageID.2362.) The City Council also indicated that it was considering "appropriate ordinance amendments to address this concern relating to the City's existing-short term rental ordinance[.]" (*Id.*)

On May 22, 2020, the City Clerk accidentally distributed a draft copy of Resolution 2020-11 that contained exceptions that were not part of the final version. (Fidler Dep., ECF No. 117-2, PageID.3564.)

A few weeks later, on June 15, 2020, the City Council adopted Resolution 2020-16, which carved out exceptions to the Moratorium for certain property owners with "investment-backed expectations" in their property, including those who had made "substantial investments in prospective rental properties" before the Moratorium. (Resolution 2020-16, ECF No. 61-6.) It allowed the City to process applications received during the next 30 days, where: (1) the property was already registered as a short-term rental and was conveyed to new owner before June 15, 2020; (2) the applicant took title to the property between March 1, 2020 and May 18, 2020, with

the intent to use it as a short-term rental; (3) the applicant recently completed construction or renovations with intent to use the property as a short term rental and was issued a certificate of occupancy after March 1, 2020; (4) the applicant entered into a contract to purchase the property on or before May 18, 2020, with intent to use it as a short-term rental; or (5) the applicant had a valid building permit for construction or renovation of a dwelling as of May 18, 2020, with intent to render it suitable for use as a short-term rental. (*Id.*)

B. Review of Ordinance Amendments

In November 2020, three new members were elected to the City Council, including the City's Mayor, John Humphrey. (11/16/2020 City Council Minutes, ECF No. 121-7.)

By December 2020, the City Council's review of proposed regulations for short-term rentals was not complete. The Interim City Manager reported that "additional research needs to be done" and that "enforcement of the ordinance needs [to be] addressed." (Manager's Rep., ECF No. 13-10.) The review had been complicated by the fact that the City Manager had fallen ill with COVID-19 before Thanksgiving and passed away in early December. The Interim City Manager recommended extending the Moratorium for an additional eight months. The City Council did so on December 21, 2020.

On March 17, 2021, the City Council and the City's Planning Commission held a joint meeting to review a draft amendment to Ordinance 237 and a draft amendment to the City's Zoning Ordinance that addressed short-term rentals. (3/17/2021 Meeting Agenda, ECF No. 121-8.) The proposed zoning ordinance amendment would cap the number of short-term rentals in the R-1 residential district at the "existing level" of 65. (Proposed Ordinance, ECF No. 121-8, PageID.5452-5453.)

The Planning Commission held a public hearing on the proposed amendment to the zoning ordinance on April 13, 2021, after *780 which it tabled the amendment for further discussion. (4/13/2021 Planning Comm'n Minutes, ECF No. 121-9, PageID.5465.) At its next meeting a week later, the Planning Commission recommended that the City Council make a few small changes to the proposed zoning ordinance amendment. (4/20/2021 Planning Comm'n Minutes, ECF No. 121-10, PageID.5470.)

On May 17, 2021, the City Council adopted Ordinance 248, which amended Ordinance 237 by adding additional requirements for obtaining, maintaining, and transferring a short-term rental permit. (*See* Ordinance 248, ECF No. 41-7.) The Moratorium continued.

On August 31, 2021, the City Council extended the Moratorium for another two months, until November 1, 2021, in order to continue considering the "proposed zoning amendment." (Resolution 2021-21, ECF No. 117-3, PageID.3601.) That same day, the City Council proposed an alternative zoning ordinance amendment that

would prohibit short-term rentals in the R-1, R-2, and R-3 zoning districts. Those are the districts where almost all of Plaintiffs' properties are located. It referred this proposed amendment to the Planning Commission. (*See* 8/31/2021 City Council Minutes, ECF No. 117-4, PageID.3605.) In support of extending the Moratorium, the City Manager explained

> [T]he city has made considerable progress in studying various issues relating to short-term rentals; developing a modified set of regulations; implementing a strategy for not only short-term rentals, but city-wide enforcement; and the commencement of data collection. This progress was also to include the Planning Commission and City Council determining the need for improved zoning regulations.
>
> The city's ultimate goal has been to develop the necessary framework for terminating the moratorium in the city. In order to achieve this, the most imperative of which is the Planning Commission's work in developing zoning ordinance amendments. The city has...received bids for a consultant to assist with this endeavor....

(8/31/2021 Mem. from City Manager to Mayor, ECF No. 121-12.) He recommended an extension of the Moratorium "to facilitate the review and updating of the city's Zoning Ordinance." (*Id.*)

On September 16, 2021, the Planning Commission held a public hearing on the two alternative proposed zoning ordinance amendments. (9/16/2021 Planning Comm'n Minutes, ECF No. 118-35.) The Planning Commission tabled the matter until its next meeting on September 21.

On September 20, 2021, the City Council adopted a resolution directing the Planning Commission to make a recommendation on the two zoning amendments at the September 21 meeting "so that the Council can commence its deliberations on the proposed amendment in October, before the moratorium expires." (Resolution 2021-22.a, ECF No. 121-14.)

At its meeting on September 21, 2021, the Planning Commission recommended against both of the proposed amendments. (9/21/2021 Planning Comm'n Minutes, ECF No. 118-38.) Part of the meeting was held in a closed session to discuss an "attorney-client privileged memorandum." (*Id.*, PageID.4655.)

Because the Planning Commission's recommendation was not binding, the City Council held the "first reading" on the proposed amendments on October 4, 2021. (10/4/2021 City Council Agenda, ECF No. 117-5.) Before the second reading, property owners demanded a public hearing on the amendments. The City Council held a public hearing and the second reading on November 23, 2021. (Special Council Meeting Agenda, ECF No. 117-7.)

*781 **C. Ordinance 253 Prohibits New Short-Term Rentals in Certain Districts**

At the public meeting on November 23, 2021, the City Council adopted Ordinance 253, which generally prohibits the use of homes as short-term rentals in the R-1, R-2, and R-3 residential zoning districts. (*See* Ordinance No. 253, ECF No. 117-10, PageID.3688-3690.) Short-term rental units "that existed and were registered" as of November 23, 2021, could continue as "nonconforming uses" if they complied with the City's regulatory requirements. (*Id.*, PageID.3690.) Ordinance 253 became effective on December 13, 2021, the day that the Moratorium expired.

D. Procedural History

1. Plaintiffs' Complaint

The plaintiffs in each case filed their respective actions while the Moratorium was in effect. The plaintiffs in Case No. 1:21-cv-144 filed their original complaint in this Court in February 2021. The plaintiffs in Case No. 1:21-cv-674 filed their original complaint in Berrien County Circuit Court in June 2021. The City subsequently removed that action to this Court, where it was eventually consolidated with Case No. 1:21-cv-144. The most recent versions of the complaints in each case are substantially the same as one another, so the Court will refer to those pleadings as the complaint.

Plaintiffs are 26 individuals and several entities owning approximately 17 homes in the City. They claim that they have been unable to obtain a permit to use their properties as short-term rentals. They submitted applications for short-term rental permits but the City did not process them due to the Moratorium. And because of Ordinance 253, they claim that they will not be able to use their homes as short-term rentals in the future.

Plaintiffs assert the following claims against the City: violation of the "doctrine of legislative equivalency" [2] (Count I); violation of Michigan's Zoning Enabling Act (MZEA), Mich. Comp. Laws § 125.3101 et seq. (Count II); violation of the Commerce Clause of the U.S. Constitution (Count III); violation of Michigan's Open Meetings Act (OMA), Mich. Comp. Laws § 15.623 (Count IV); violation of the right to substantive due process in the Michigan constitution and the Fifth and Fourteenth Amendments to the U.S. Constitution (Count V); denial of procedural due process under the Michigan constitution and the Fifth and Fourteenth Amendments to the U.S. Constitution (Count VI); denial of the right to equal protection in the Michigan Constitution and the Fourteenth Amendment to the U.S. Constitution (Count VII); the City took their property without just compensation, in violation of the Michigan and U.S. constitutions (Count VIII); and preemption under the Michigan Constitution (Count IX).

2. Court's Prior Opinions

On April 15, 2021, the Court denied Plaintiffs' request in Case No. 1:21-cv-144 to enjoin the Moratorium because the Court was not persuaded that they had shown a

substantial likelihood of success or irreparable harm in the absence of an injunction. (4/15/2021 Op., ECF No. 22.)

On February 3, 2022, the Court denied Plaintiffs' motion for partial summary judgment on Counts I and II of the complaint because those counts challenged the validity of the Moratorium, which no longer existed. Plaintiffs filed their motion in July 2021. Before the Court ruled on that motion, the Moratorium expired. The *782 Court asked the parties to provide supplemental briefing on the effect of that expiration on Plaintiffs' motion. After they did so, the Court denied Plaintiffs' motion, summarizing its reasoning as follows:

> [A]t this stage of the proceedings, the Court is not persuaded that it can grant any relief on Counts I and II, which challenge the validity of a moratorium that no longer exists. Neither Plaintiffs' motion for summary judgment on those claims, nor their subsequent briefing, adequately account for the fact that the Moratorium has expired. Plaintiffs cite no persuasive authority for the proposition that the Court can award meaningful relief in these circumstances. Plaintiffs might be entitled to some form of injunctive relief if they can satisfy an exception to the general rule that the Court is obligated to apply the zoning law in effect at the time of its decision. However, Plaintiffs have not squarely addressed that issue.

(2/3/2022 Op. 9, ECF No. 84.)

Plaintiffs now seek summary judgment on Counts V (substantive due process) and VII (equal protection). The City seeks summary judgment on all counts.

II. SUMMARY JUDGMENT STANDARD

1 2 3 Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The Court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Summary judgment is not an opportunity for the Court to resolve factual disputes. *Id.* at 249, 106 S.Ct. 2505. The Court "must shy away from weighing the evidence and instead view all the facts in the light most favorable to the nonmoving party and draw all justifiable inferences in their favor." *Wyatt v. Nissan N. Am., Inc.*, 999 F.3d 400, 410 (6th Cir. 2021). "This standard of review remains the same for reviewing cross-motions for summary judgment." *Ohio State Univ. v. Redbubble, Inc.*, 989 F.3d 435, 441 (6th Cir. 2021). "[A] case involving cross-motions for summary judgment requires 'evaluat[ing] each party's motion on its own merits, taking care in each instance to draw all reasonable inferences against the party whose motion is under

consideration.' " *Id.* at 442 (quoting *EMW Women's Surgical Ctr., P.S.C. v. Beshear*, 920 F.3d 421, 425 (6th Cir. 2019)).

III. ANALYSIS

A. Standing Generally

The City argues that some Plaintiffs lack standing.

1. Gene Khalimsky and Edan Gelt

The City initially argued that Plaintiffs Khalimsky and Gelt lacked standing in this matter because they had transferred their property to themselves as trustees of The Gene M. Khalimsky and Edan J. Gelt Trust. They applied for a permit on behalf of the trust. Plaintiffs note that Khalimsky and Gelt have standing because they are agents of the Trust and the Trust assigned its rights in its claims to them. Accordingly, the City has withdrawn its standing argument as to these Plaintiffs. (*See* Def.'s Reply Br. 3, ECF No. 123.)

2. Jodi Grant and Jeff Segbarth

4 The City argues that Plaintiffs Grant and Segbarth lack standing because their properties are located in WM and PUD districts, respectively. However, these plaintiffs have standing because they claim injury as a result of Ordinance 237 and the Moratorium, which required them to obtain a permit for using their home as *783 a short-term rental and then prevented them from doing so. Accordingly, they have suffered an injury in fact necessary to establish standing.

B. Counts I & II

The City argues that the Court should grant summary judgment in their favor on *all* claims that challenge the validity of the Moratorium, which has expired. The City argues that these claims are moot. As the Court discussed in its February 3, 2022, opinion, the Court is not persuaded that it can grant damages under Counts I and II of the amended complaint. (2/3/2022 Op. 9.) Count I asserts that the Moratorium was invalid under the doctrine of legislative equivalency and Count II asserts that the Moratorium was invalid under the MZEA. Plaintiffs cite no precedent for damages relief under the doctrine of legislative equivalency or for a violation of the MZEA. But as Plaintiffs point out, they also seek damages under their *other* claims, which arise under the U.S. and Michigan constitutions. Where damages are available, Plaintiffs' claims are not moot.

5 In its February 3, 2022, opinion the Court also concluded that Plaintiffs would not be entitled to declaratory or injunctive relief under Counts I and II because Michigan courts generally apply the law " 'which was in effect at the time of decision [by the trial court]. Thus, if a zoning ordinance has been amended [after suit was filed]...a court will give effect to the amendment[.]' " *Grand/Sakwa of Northfield, LLC v. Northfield Twp.*, 304 Mich.App. 137, 851 N.W.2d 574, 578 (2014) (quoting *Klyman v. City of Troy*, 40 Mich.App. 273, 198 N.W.2d 822, 824 (1972)). Here, the law in effect is Ordinance 253, which prohibits short-term rentals in the areas where the homes of most of the plaintiffs are located. Although Ordinances 237 and 248 allowed short-

term rentals with a permit, Ordinance 253 prohibits permits for new properties. If Michigan law requires the Court to give effect to Ordinance 253, rather than 237 or 248, then Plaintiff's challenges to the validity of the Moratorium in Counts I and II are effectively moot. Enjoining the Moratorium or declaring it invalid would serve no purpose. Plaintiffs seek to have the Court enforce Ordinance 248 without the Moratorium, but the general rule in *Grand/Sakwa* prevents the Court from doing so.

6 The Court's previous opinion is not the final word, however, because the rule in *Grand/Sakwa* is subject to "two narrow exceptions." *Id.* " 'A court will not apply an amendment to a zoning ordinance where (1) the amendment would destroy a vested property interest acquired before its enactment, or (2) the amendment was enacted in bad faith and with unjustified delay.' " *Id.* (quoting *Rodney Lockwood & Co. v. City of Southfield*, 93 Mich.App. 206, 286 N.W.2d 87, 89 (1979)). Plaintiffs did not argue these exceptions in their previous motion for partial summary judgment, so the Court did not address them. Plaintiffs now contend that both exceptions apply.

7 *Exception 1: Vested Property Interest.* Plaintiffs contend that they acquired a vested property interest in using their homes as short-term rentals by using them as such, or preparing to do so, before the enactment of Ordinance 253. The Michigan Supreme Court has described a "prior nonconforming use [as] a vested right in the use of particular property that does not conform to zoning restrictions, but is protected because it lawfully existed before the zoning regulation's effective date." *Heath Twp. v. Sall*, 442 Mich. 434, 502 N.W.2d 627, 629 (1993). "To be protected, the nonconforming use must have been legal at one time; a use that violates the zoning ordinances since its inception *784 does not draw such protection." *Lyon Charter Twp. v. Petty*, 317 Mich.App. 482, 896 N.W.2d 477, 481 (2016).

8 Similarly, the MZEA expressly protects nonconforming uses that were legal before the enactment of a zoning ordinance:

> If the use of a dwelling, building, or structure or of the land is lawful at the time of enactment of a zoning ordinance or an amendment to a zoning ordinance, then that use may be continued although the use does not conform to the zoning ordinance or amendment....

Mich. Comp. Laws § 125.3208(1). In other words, "alterations to zoning or other property-use ordinances may only apply prospectively and may not destroy already-vested property interests." *Twp. of Indianfields v. Carpenter*, No. 350116, 2020 WL 4249168, at *7 (Mich. Ct. App. July 23, 2020).

9 To obtain a vested right in a nonconforming use, a property owner must actually use their property lawfully in the nonconforming way or conduct "work of a 'substantial character'...by way of preparation for an actual use of the premises"

before the zoning requirements change. *Bloomfield Twp. v. Beardslee*, 349 Mich. 296, 84 N.W.2d 537, 542 (1957). "Mere 'preliminary' operations, e.g., ordering of plans, surveying the land, removal of old buildings, are not sufficient." *Id.* (quoting *City of Lansing v. Dawley*, 247 Mich. 394, 225 N.W. 500 (1929)). Here, Plaintiffs aver that, before the enactment of Ordinance 253, they were either lawfully using their homes as short-term rental properties or they had performed substantial work to prepare their homes for that use. (*See* Pls.' Affs., ECF Nos. 118-2 to 118-24.)

The City responds that, in fact, Plaintiffs' uses were not lawful under the City's Zoning Ordinance. That ordinance provided, in relevant part:

> E. Uses permitted by right. All land development specifically listed under the heading "Uses Permitted by Right" shall be allowed when determined to be in accordance with all provisions of this ordinance and all other applicable laws, regulations or ordinances having jurisdiction over the proposed use of land. *Where not specifically permitted, uses are prohibited, unless construed to be similar to a use as expressly determined in accordance with Section 1-4G.*
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> * * *
>
> G. Uses not specifically mentioned. 1. Any use of land or development activity not specifically mentioned in this ordinance may be classified by the Zoning Administrator as the use most similar in character to the proposed use.
>
> 2. If the Zoning Administrator needs further interpretation of the proposed use, the Official may refer the proposed use to the Board of Zoning Appeals for classification.
>
> 3. If the Board of Zoning Appeals finds that the use is not similar in character to uses listed in the Ordinance they shall so find. The applicant may then make application to the Planning Commission for consideration of an amendment to the Zoning Ordinance to include the proposed use in one or more of the zoning districts of this ordinance, either as a Use Permitted by Right or a Use Permitted by Special Land Use.

(Zoning Ordinance § 1-4, ECF No. 121-2 (emphasis added).)

In other words, the Zoning Ordinance prohibited uses that were not expressly permitted. Plaintiffs do not contend that the Zoning Ordinance expressly permitted the use of residential property for short-term rentals, and there is no evidence that the Zoning Administrator or the Board of Zoning Appeals decided to classify that use as a permitted use or as similar to one. *785 Accordingly, the Zoning Ordinance indicates that Plaintiffs did not acquire a vested property interest in using their properties as short-term rentals because that use was never "lawful."

The City acknowledges that there was some "historical ambiguity" on this point. (Def.'s Br. in Resp. in Pls.' Mot. 4, ECF No. 121.) At a meeting with the City Council in October 2020, the City Attorney indicated that the City "has interpreted the zoning ordinance to allow [short-term rentals as] a part of the various permitted 'dwelling' uses," meaning that such rentals "are allowed by right in residential zoning districts[.]" *See* Video of City Council-Planning Commission Special Joint Meeting: October 12, 2020, available at https://cityofnewbuffalo.org/meetings/city-council-planning-commission-special-joint-meeting-october-12-2020/. He made similar statements in his deposition. (Curcio Dep. 51, 148, ECF No. 118-25.) But as the City notes, those statements are legal opinions. They do not bind the City or the Court in this litigation. The City Attorney acts as an advisor to the City Council; his statements are not the law. (*See* City Charter § 4.5(b), ECF No. 117-8.) Plaintiffs offer no interpretation of the Zoning Ordinance that would support their position.

10 Plaintiffs argue that the City's decision to pass Ordinance 237, which expressly prohibited short-term rentals without a valid permit, establishes that such uses were, in fact, permitted by the Zoning Ordinance. Generally speaking, "[p]ermits are not issued by local authorities when the contemplated use for which the permit is issued conflicts with a local zoning ordinance." *Dingeman Advert. v. Algoma Twp.*, 393 Mich. 89, 223 N.W.2d 689, 691 (1974). But that is not always the case. *See, e.g.*, *Pittsfield Twp. v. Malcolm*, 375 Mich. 135, 134 N.W.2d 166, 172 (1965) (city granted building permit despite violation of zoning ordinance). A municipality could decide to regulate and monitor certain uses, as the City did here, rather than enforce a zoning ordinance that would prohibit them. And at any rate, this Court must interpret the Zoning Ordinance as it is written. *See Brandon Charter Twp. v. Tippett*, 241 Mich.App. 417, 616 N.W.2d 243, 245 (2000) (noting that ordinances are interpreted in the same manner as statutes). Plaintiffs have provided no plausible argument for construing the text of the City's Zoning Ordinance to permit short-term rentals.

11 This might have been a different case if the City had given permits to Plaintiffs, who then relied on those permits to use their homes for short-term rentals. In that situation, Plaintiffs could potentially claim a protected interest in the permits. *See Dingeman Advert.*, 223 N.W.2d at 691 ("[T]he issuance of a permit..., the possession thereof, and substantial reliance thereon, will give" "vested rights to a nonconforming use to the holder thereof[.]"). But that is not what happened here. Plaintiffs never received permits from the City to use their homes as short-term rentals. Accordingly, Plaintiffs do not have a protected property interest in the nonconforming use of their homes as short-term rentals because that use was not permitted by the City's Zoning Ordinance.

In the alternative, the City argues that Plaintiffs cannot claim a protected property interest because they were not using their homes "lawfully" under Ordinance 237,

which required a permit for short-term rentals. That argument is not persuasive. The Michigan Supreme Court's decision in *Drysdale v. Beachnau*, 359 Mich. 152, 101 N.W.2d 346 (1960) undermines the City's position. There, the property owner operated a garbage dump in violation of county health regulations. *Id.* at 347. The township later enacted a zoning ordinance that rendered the property's use as a dump a nonconforming use. Three years *786 later, the county health department contacted the property owner, who promptly complied with the health regulations. The appellants argued that the owner's violation of the health regulations meant that the nonconforming use was not "lawful." The Michigan Supreme Court disagreed, stating that "violation of a...*regulatory ordinance* [does not] necessarily destroy[ ] the lawfulness of the basic use where compliance with the regulation can be had on demand and where such compliance actually follows." *Id.* (emphasis added).

Years later, the Michigan Court of Appeals cited *Drysdale* and suggested in dicta that a landowner's failure to obtain an operating license before the passage of a zoning ordinance did not destroy his right to the nonconforming use in his property. *See Warholak v. Northfield Twp. Supervisor*, 57 Mich.App. 360, 225 N.W.2d 767, 770 (1975) ("If a failure to make a timely application for a license under the original resolution was the plaintiff's only problem in establishing a nonconforming use prior to adoption of the 1972 resolution and zoning amendment, then he would be entitled to sympathetic treatment by a court of equity.").

12 Consistent with *Drysdale* and *Warholak*, Plaintiffs interpret the "lawful use" requirement in Mich. Comp. Laws § 125.3208(1) to refer to compliance with *zoning* ordinances, rather than compliance with *regulatory* ordinances. *See* 8A McQuillin Mun. Corp. § 25:259 (3d ed.) ("Where illegality results from a statutory provision not related to land use or zoning, one view is that the use does not thereby lose its status as a valid nonconforming use.") (citing cases, but acknowledging that some courts take a different view); *accord* 4 Rathkopf's The Law of Zoning and Planning § 72:14 (4th ed.). Indeed, the MZEA refers to the lawful "use" of a dwelling, building, structure, or land. Michigan courts have associated "use" of a building with zoning ordinances. According to the Michigan Court of Appeals, zoning ordinances "regulate[ ] the *use* of land and buildings according to districts, areas, or locations," whereas regulatory ordinances control how "*activity* must be conducted pursuant to certain regulations, [such as] obtain[ing] a permit[.]" *Nat. Aggregates Corp. v. Brighton Twp.*, 213 Mich.App. 287, 539 N.W.2d 761, 768 (1995) (emphases added).

Plaintiffs' argument is also consistent with the MZEA more generally, which governs zoning matters. Thus, the Court concludes that a Michigan court would interpret "lawful" in the MZEA to refer to compliance with existing zoning restrictions. *Cf. Morgan v. Jackson Cnty.*, 290 Or.App. 111, 414 P.3d 917, 921-22 (2018) (distinguishing compliance with "business or occupational licensing" from compliance with "zoning

or land use regulation" and holding that failure to obtain a business license did not render an auto yard's nonconforming use unlawful under Oregon's zoning statute). It does not refer to compliance with regulatory ordinances.

Ordinance 237 was a regulatory ordinance, not a zoning ordinance. It was adopted as part of Chapter 11 of the City's Code of Ordinances; it did not amend the City's Zoning Ordinance. Also, it did not prohibit short-term rentals altogether. Instead, it regulated the *manner* in which such rentals were operated by imposing "safeguards" to "ensure that the operation of short-term rentals is done in a safe and controllable manner for the well-being of all in the community." (Ordinance 237, PageID.309.) Accordingly, that ordinance did not render Plaintiffs' use of their property unlawful within the meaning of the MZEA.

In summary, Plaintiffs' failure or inability to obtain a short-term rental permit did not prevent them from obtaining a vested property interest in the nonconforming use of their properties as short-term rentals. *787 Instead, they did not obtain a vested property interest because their nonconforming use did not comply with the Zoning Ordinance in effect before Ordinance 253. Thus, the first exception in *Grand/Sakwa* does not apply because Plaintiffs have not shown that they acquired a vested property interest that was destroyed by Ordinance 253.

13 14 15 *Exception 2: Bad Faith & Unjustified Delay*. Plaintiffs also argue that they satisfy the bad faith exception to application of the current zoning ordinance. " '[T]he test to determine bad faith is whether the amendment was enacted for the purpose of manufacturing a defense to plaintiff's suit.' " *Landon Holdings, Inc. v. Grattan Twp.*, 257 Mich.App. 154, 667 N.W.2d 93, 98 (2003) (quoting *Rodney Lockwood*, 286 N.W.2d at 89). The Court can apply a new ordinance even if "it serve[s] to strengthen [the municipality's] litigating position." *Grand/Sakwa*, 851 N.W.2d at 579. "The factual determination that must control is whether the *predominant* motivation for the ordinance change was improvement of the municipality's litigation position." *Id.*

16 The Michigan Court of Appeals has identified some factors a court can consider, including:

> (a) whether the plaintiff had an unquestionable right to issuance of a permit before the amendment, (b) whether the municipality had not forbidden the type of construction the plaintiff proposed before the amendment, (c) whether the ordinance was amended for the purpose of manufacturing a defense to the plaintiff's suit, and (d) whether the city waited until the last possible minute to assert the defense.

Great Lakes Soc'y v. Georgetown Charter Twp., 281 Mich.App. 396, 761 N.W.2d 371, 386 (2008).

In *Rodney Lockwood*, the Michigan Court of Appeals found that the bad faith exception did not apply in the following circumstances:

> There is evidence to indicate that the amendment was intended to clarify an ambiguous ordinance. There is also evidence that it had always been the intent of the city council to prohibit persons from living on three levels within the zoning classification. The amendment did not simply rezone plaintiffs' property, but applied equally to all apartment structures throughout the city.

Rodney Lockwood, 286 N.W.2d at 89; *see Great Lakes Soc'y*, 761 N.W.2d at 386-87 (considering the same factors).

17 Similar circumstances are present here. When the City Council first adopted the Moratorium in May 2020, it stated that it was concerned by the effects of "further increases in short-term rentals in several areas of the City[.]" (Resolution 2020-11, PageID.2362.) It also stated that it was "considering appropriate ordinance amendments to address this concern relating to the City's existing short-term rental ordinance[.]" (*Id.*) It hoped to "adopt new regulations" within the next six months. (*Id.*) These statements indicate that the City was considering regulatory amendments (i.e., amendments to Ordinance 237) specifically, but that its *overall concern* was the increasing *number* of properties used as short-term rentals. Indeed, at the meeting where the City Council adopted the Moratorium, the City Attorney advised that the "moratorium would put a freeze in play until the City makes a permanent decision in regards to rentals, such as, the *number* of rentals the City would allow." (5/18/2020 City Council Minutes, ECF No. 13-5, PageID.325.)

On February 11, 2021, the day before Plaintiffs filed the first of their two lawsuits, the Interim City Manager reported to the City Council that the "City Staff and City Attorney are working on revisions to *788 the proposed [short-term rental] regulatory ordinance....The Planning commission will simultaneously begin discussion of a *possible zoning amendment to restrict new [short-term rentals]* at a soon to be scheduled special meeting[.]" (2/11/2021 Manager's Rep., ECF No. 13-14, PageID.352 (emphasis added).)

The plaintiffs in Case No. 1:21-cv-144 filed their initial complaint on February 12, 2021. [3] (Compl., ECF No. 1.) A few weeks later, the City Council held a special meeting with the City's Planning Commission to review a draft amendment to Ordinance 237 *and* a proposed amendment to the Zoning Ordinance that restricted the number of short-term rentals in part of the City. (*See* 3/17/2021 Special Meeting

Agenda, ECF No. 121-8.) The Interim City Manager explained that the amended zoning ordinance would "[c]ap[ ] the total number of short-term rental units in the R-1 zoning district at existing levels." (Workshop Staff Rep., ECF No. 121-8, PageID.5451.) The proposed amendment to the zoning ordinance cited the same concerns with short-term rentals that were identified in the resolution imposing the Moratorium. (*See* Draft Zoning Ordinance Amendment, ECF No. 121-8, PageID.5452.) In other words, before Plaintiffs ever filed their complaints, the City expressed concerns about the number of short-term rentals and began considering legal changes that would address those concerns, *including* a zoning amendment that would limit the number of properties used as short-term rentals. Ordinance 253 became that amendment. This timing indicates that Plaintiffs' lawsuits were not the predominant motivation for Ordinance 253.

Further, this case is similar to *Rodney Lockwood* in that Ordinance 253 did not target Plaintiffs' properties specifically. It applies to everyone who owns homes in the R-1, R-2, and R3 districts. And it does not apply to the few plaintiffs who own homes outside those districts.

Finally, as in *Rodney Lockwood*, there is evidence that the City amended its Zoning Ordinance to address a potential ambiguity regarding short-term rentals. As the City Attorney explained at the City's planning meeting in October 2020, the City had interpreted the Zoning Ordinance to allow short-term rentals because the ordinance did not specifically mention short-term rentals, or any type of rental occupancy. And as discussed below, the City's Mayor, John Humphrey, referred to this issue at a City Council meeting in September 2021. Ordinance 253 clarifies any possible ambiguity by addressing both short-term and long-term rentals.

As evidence in their favor, Plaintiffs point to statements by Humphrey at the City Council meeting on September 20, 2021. At that meeting, Council Member O'Donnell expressed concerns about moving forward on the proposed zoning restrictions for short-term rentals because he wanted more data; he wanted to know "what areas [of the City] are the worst." *See* 9/20/2021 Council Meeting Video 1:13:49, https://cityofnewbuffalo.org/meetings/citycouncil-regular-meeting-september-20-2021/. He argued that "there's no rhyme or reason" why the City was proposing to restrict short-term rentals in all three residential districts or even one. [4] *Id.* at 1:16:24. Humphrey responded, *789 "There definitely is....This was brought to us by our attorneys based on what is going on with our lawsuit." *Id.* Humphrey asserted that rentals were not defined in the City's "charter," so the existing ones were "technically" illegal in the residential zones. *Id.* at 1:16:44. In order to regulate rentals going forward, Humphrey argued that the City needed to be consistent in how it treated them in all three residential zoning districts. *Id.* at 1:17:28. After passing the amendment to the Zoning Ordinance, the City could "make all the changes that we want"; in other words, the City could decide at a

future date to limit the number of short-term rentals to a different number based on "data" regarding "how many we need." *Id.* at 1:18:01-1:18:56. Humphrey also bemoaned the lack of enforcement action in the past against "illegal rentals." *Id.* at 1:19:17. In that context, Humphrey stated that the City had been "asking [its] attorneys based on the situation to make this go through in order to meet the deadlines[.]" *Id.* at 1:20:06.

Later in the meeting, there was a discussion about imposing a tax on short-term rentals to compensate for their local effects and the costs of enforcement. *Id.* at 1:23:03-1:24:11. Humphrey asserted that a tax was not possible and that it would not be fair to tax everyone in the City, including those who do not own rental properties. *Id.* at 1:24:44. The "fair" solution, Humphrey argued, was to "separate these uses through the zoning [ordinance]." *Id.* He stated that he understood the "position" against zoning, but "[the zoning amendments are] recommended to us by our attorneys who feel that, given the lawsuits against the City, following their recommendations is best." *Id.* at 1:25:43.

At another point, O'Donnell expressed concern about restricting short-term rentals in all three residential zones. He wanted more data to evaluate "density in all these areas"; he thought the City was "arbitrarily just making decisions" and that Humphrey was "just trying to push this through." *Id.* at 1:37:13-1:37:31. He suggested that the City Council "wait a couple months." *Id.* at 1:40:35. After some discussion, Humphrey responded that the Council had been "working on" the issue for three years; he mentioned "reports" and "maps" that had been created to examine the "saturation" of short-term rentals. *Id.* at 1:42:55-1:43:32. O'Donnell derided Humphrey's position as "just rushing this through because of the lawsuit." *Id.* at 1:43:40. Humphrey responded, "I wouldn't say we are rushing it; we are doing it based on the recommendation of our attorneys...and you should have a conversation with Matt Zelewski [5] about that." *Id.* at 1:43:50.

Plaintiffs characterize Humphrey's statements as a disclosure that the City was adopting Ordinance 253 in order to improve its position in this lawsuit. To the contrary, all his statements were directed at O'Donnell's concern about imposing restrictions on short-term rentals in one or more residential districts before considering more data. O'Donnell wanted to delay action by the City in order to obtain more information, but Humphrey argued that the City had been considering the issue for an extended period of time and that it had already gathered sufficient data. Humphrey argued that a zoning amendment was the best way forward, legally and equitably. His references to the lawsuit and to the attorneys' advice were made in support of that argument, which had little to do with gaining a legal advantage in Plaintiffs' lawsuits. Further, his reference to "deadlines" was an apparent reference to the deadline for expiration of the Moratorium. Accordingly, Humphrey's statements *790 provide little support for Plaintiffs' argument.

Plaintiffs also point to testimony by Donald Stoneburner, who was a member of the Planning Commission. He testified that he was told at the Planning Commission's September 21, 2020, meeting that "the City Council needed to pass the short-term rental zoning ordinance amendment because of legal challenges to the moratorium." (Stoneburner Dep. 45, ECF No. 121-15.) But he does not recall who told him this. (*Id.* at 46.) He did not speak with anyone on the City Council about the short-term rental amendments, other than Mayor Humphrey. (*Id.* at 48.) And that conversation with Humphrey occurred "[w]ay before" the September meeting. (*Id.*) In that conversation, Humphrey told Stoneburner that short-term rentals "needed to be addressed immediately because there [were] too many short-term rentals affecting too many residents." (*Id.* at 49.)

In Stoneburner's view, *part* of the reason why the City Council wanted to pass a short-term rental ordinance amendment was "the legal challenges to the moratorium[.]" (*Id.* at 57.) But he also thought that the City Council was pushing forward because it "wanted the short-term rental ordinance enforced." (*Id.*) He could not say whether the lawsuits were the "predominant" reason. (*Id.*) Indeed, he was not a member of the City Council, so he could not give an opinion on the motivation of its members. (*See id.* at 47.)

As Stoneburner himself acknowledged, his statements are speculation about the motives of the City Council. And none of them suggest that the City Council's predominant motivation was to obtain an advantage in Plaintiffs' lawsuits. Indeed, Plaintiffs' lawsuits have focused on the Moratorium, as Stoneburner recognized. If anything, Stoneburner's comments suggest that the lawsuits were spurring the City to act more quickly so that it could end the Moratorium, which is not a bad faith basis for passing a zoning ordinance that it had been considering for some time.

Plaintiffs also contend that the text of Ordinance 253 supports their argument because it "reclassifie[s] short-term rentals from a permitted use to a prohibited use[.]" (Pls.' Br. in Supp. of Mot. for Summ. J. 21, ECF No. 118.) Plaintiffs do not identify the textual support for this assertion, and the Court cannot find any. Ordinance 253 says that short-term rental units that "existed and were registered" before its enactment "may be continued as nonconforming uses"; it does not say that such uses were previously permitted by the prior Zoning Ordinance, so it does not "reclassify" them in that respect. (*See* Ordinance 253, PageID.3690.) Accordingly, this argument is not supported.

Finally, Plaintiffs argue that the November 23, 2021, date in Ordinance 253 by which a property owner had to obtain a permit in order to qualify their short-term rental as a nonconforming use "serves no purpose other than prohibiting Plaintiffs from using their properties as short-term rentals." (Pls.' Reply Br. in Supp. of Mot. for Summ. J. 6, ECF No. 122.) But that is not the case. It is not directed at Plaintiffs in particular; it applies to all homeowners. It is consistent with the City's actions before

Plaintiffs filed their lawsuit and with its concerns about the increase in short-term rentals. And it corresponds to the date that the City Council adopted Ordinance 253.

In short, Plaintiffs have not shown bad faith. And to the extent "unjustified delay" is a necessary component of the bad faith exception, Plaintiffs have not expressly addressed that component. Therefore, Plaintiffs have not shown that they meet the standard in Michigan law for enforcing a previous version of an ordinance that was *791 amended while a lawsuit was pending. That being the case, Plaintiffs' challenges to Ordinance 237 and the Moratorium under state law in Counts I and II are moot because no relief is available to them. Plaintiffs who own properties in the R-1, R-2, or R-3 residential districts are subject to Ordinance 253, and the Court must apply that ordinance. Plaintiffs who own properties outside those districts are not subject to Ordinance 253, so they do not require injunctive relief.

C. Count III (Commerce Clause)

18 19 20 The City seeks summary judgment on Plaintiffs' claim that the Moratorium violated the Commerce Clause of the U.S. Constitution. As the Court explained in its April 15, 2021, Opinion,

> "Courts generally reserve dormant Commerce Clause review for laws that protect in-state economic interests at the expense of out-of-state competitors." *Garber v. Menendez*, 888 F.3d 839, 843 (6th Cir. 2018). State laws that explicitly discriminate against interstate commerce "are almost always invalid," as are laws "that appear neutral but have an impermissibly protectionist purpose or effect." *Id.* In this case, however, there is no evidence of discrimination or protectionist purpose or effect. [Ordinance 237] and the [M]oratorium treat residents and non-residents of the state the same. In addition, they treat interstate and intrastate commerce the same. Residents of Michigan who wish to rent a home in New Buffalo on a short-term basis (as rentors or rentees) are in the same position as non-residents.
>
> Where a law "has only an incidental effect on interstate commerce, laxer review applies. Such laws will be upheld unless they impose burdens on interstate commerce that clearly exceed their local benefits." *Id.* (citing *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 144-46 [90 S.Ct. 844, 25 L.Ed.2d 174] (1970)). In this case, however, there is no indication that the ordinance or moratorium imposes any undue burden whatsoever on interstate commerce. To the extent that the ordinance and moratorium prevent homeowners or renters from using homes in New Buffalo for short-term rentals, the burden is the same regardless of whether the homeowner or renter are from this state or not. Plaintiffs fail to cite any relevant authority in which a court struck down a law or regulation under the Commerce Clause because the regulation inhibited commercial transactions that sometimes involve out-of-state participants.
>
> Indeed, such a rule would put many local laws to the test simply because they regulate businesses involved in interstate transactions.

(4/15/2021 Op. 6.)

Plaintiffs now argue that the Moratorium imposed an excessive burden on interstate commerce that outweighed any local benefits. They argue that it prevented homeowners from earning lost rental income. Some of these homeowners reside outside Michigan, so rentals involving those homeowners might involve interstate transactions. Plaintiffs also argue that the Moratorium prevented them, and many other homeowners on the short-term rental "waitlist" (*see* Short Term Rental Contact List, ECF No. 118-16 (identifying permit applicants)), from providing lodging for travelers, many of whom travel to Michigan from other states.

21 22 23 24 The Sixth Circuit has adopted "a two-step analysis to evaluate challenges to the dormant Commerce Clause." *Am. Beverage Ass'n v. Snyder*, 735 F.3d 362, 369 (6th Cir. 2013). Under the first step, the Court looks at whether the state regulation " 'directly regulates or discriminates against interstate commerce, or [whether] its effect is to favor in-state economic interests *792 over out-of-state interests.' " *Id.* at 369-70 (quoting *Int'l Dairy Foods Ass'n v. Boggs*, 622 F.3d 628, 644 (6th Cir. 2010)). " 'A [state regulation] can discriminate against out-of-state interests in three different ways: (a) facially, (b) purposefully, or (c) in practical effect.' " *Id.* at 370 (quoting *Int'l Dairy Foods*, 622 F.3d at 648). " '[T]he critical consideration is the overall effect of the statute on both local and interstate activity.' " *Id.* (quoting *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579, 106 S.Ct. 2080, 90 L.Ed.2d 552 (1986)). Plaintiffs bear the initial burden of proof to show that the state regulation is discriminatory. *Id.*

25 26 If Plaintiffs satisfy their burden, then " 'a discriminatory law is virtually *per se* invalid and will survive only if it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives.' " *Id.* (quoting *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 338, 128 S.Ct. 1801, 170 L.Ed.2d 685 (2008)). But if the state regulation is "neither discriminatory nor extraterritorial, then the Court must apply the balancing test established in *Pike*." *Id.*

27 28 Here, Plaintiffs do not contend that the Moratorium regulated or discriminated against interstate commerce. Instead, they argue that it fails the balancing test in *Pike* because the burdens that it imposed on interstate commerce clearly outweighed any local benefits. However, Plaintiffs have not offered evidence that would allow a court to make that analysis. They provide no real evidence of how much the Moratorium burdened interstate commerce, let alone an undue burden in relation to local benefits. The burdens identified by Plaintiffs (i.e., a loss of rental income for out-of-state homeowners and a reduction in the amount of available lodging for travelers) may have had no meaningful impact on interstate commerce, particularly if other options for lodging were available. It is also possible that any burdens affected *intra*state commerce more than *inter*state commerce. At any rate, conjecture "is no replacement for the kind of proof of real burdens, as

opposed to 'hypothetical' burdens, needed to support such a challenge." *Garber*, 888 F.3d at 845. "[C]ourts have held that the party challenging the law bears the responsibility of proving that the burdens placed on interstate commerce outweigh the law's benefits, and have turned away challengers who failed to meet that responsibility[.]" *Id.* (citations omitted). Plaintiffs have not fulfilled their responsibility here. Accordingly, the Court will dismiss their claim in Count III.

D. Count IV (Open Meetings Act)

The City moves for summary judgment on Count IV, which asserts that the Moratorium violated the requirements of the OMA. Plaintiffs seek to invalidate the Moratorium (and certain resolutions modifying or extending it) under Mich. Comp. Laws § 15.270(2). Specifically, Plaintiffs target Resolutions 2020-11 and 2020-16, as well as the City Council's vote to extend the Moratorium on December 21, 2021.

1. Available Relief

29 Damages are not available under this claim because Plaintiffs have not sued a public official. *See* Mich. Comp. Laws § 15.273(1) (providing for a damages remedy in a suit against a public official for an intentional violation of the OMA).

And as discussed above, a declaration that the Moratorium was invalid under state law would serve no purpose because the Moratorium has expired and Michigan precedent requires this Court to apply the state law in effect at the time of its decision. Accordingly, this claim is effectively moot because no relief is available to Plaintiffs.

30 *793

Plaintiffs argue that there is an exception to mootness for cases that are "capable of repetition, yet evading review." *S. Pac. Terminal Co. v. Interstate Commerce Comm'n*, 219 U.S. 498, 515, 31 S.Ct. 279, 55 L.Ed. 310 (1911). However, the issue here is that the Court is bound to apply Michigan law as a Michigan court would. If a Michigan court would not grant relief in these circumstances, then this Court cannot do so either.

2. Statute of Limitations

31 In addition, the City notes that much of the claim is untimely. The statute of limitations for bringing a claim under Mich. Comp. Laws § 15.270 is "60 days after the approved minutes are made available to the public by the public body[.]" Mich. Comp. Laws § 15.270(3)(a). Here, the City Council started the Moratorium by adopting Resolution 2020-11 at its May 18, 2020, meeting. It carved out exceptions to the Moratorium through Resolution 2020-16, which was adopted at its June 15, 2020, meeting. It extended the Moratorium through a vote at a City Council meeting on December 21, 2020. The minutes for these meetings were approved on June 15, 2020 (6/15/2020 City Council Minutes, ECF No. 13-8), June 24, 2020 (6/24/2020 City Council Minutes, ECF No. 13-20), and January 19, 2021 (1/19/2021 City Council Minutes, ECF No. 13-21), respectively. Accordingly, the 60-day limitation periods for challenging those actions expired on August 17, 2020, August 24, 2020, and March

22, 2021, respectively. The plaintiffs in Case No. 1:21-cv-144 filed their complaint before the March 2021 date. The other plaintiffs filed their complaint months later. Thus, the only claim not barred by the statute of limitations is the challenge to the Moratorium extension vote on December 21, 2020, brought by the plaintiffs in Case No. 1:21-cv-144.

3. Merits

32 The remaining aspect of the claim is meritless. The City conducted its December 21, 2020, meeting by Zoom. For a meeting held electronically, the OMA required the following in terms of advance notice:

> (a) Why the public body is meeting electronically.
>
> (b) How members of the public may participate in the meeting electronically. If a telephone number, internet address, or both are needed to participate, that information must be provided specifically.
>
> (c) How members of the public may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.
>
> (d) How persons with disabilities may participate in the meeting.

Mich. Comp. Laws § 15.263a(4).

Here, the City points to the notice that it provided in advance of the meeting. (*See* Notice of Public Meeting via Video Conference, ECF No. 117-20.) The City Clerk, Ann Fidler, posted this notice on the City's website. (Fidler Dep., ECF No. 117-2, PageID.3518-3519.) On its face, the notice satisfies all the requirements of Mich. Comp. Laws § 15.263a(4).

Plaintiffs assert that the City's notice failed to satisfy subsections (a), (b), and (d) of Mich. Comp. Laws § 15.263a(4). In their brief, however, Plaintiffs rely on what appears to be a different version of the notice obtained from the City's website. Fidler testified that the City's website changed in 2021, and the notice she published in 2020 was not transferred to the new website. (Fidler Dep., PageID.3519.) Plaintiffs do not discuss the notice provided by the City or Fidler's testimony supporting it. Nor do *794 Plaintiffs provide support for the version they have provided.

33 Further, to establish a claim under the OMA, Plaintiffs must show that "noncompliance with the OMA has impaired the rights of the public." *Jude v. Heselschwerdt*, 228 Mich.App. 667, 578 N.W.2d 704, 707 (1998). Here, Plaintiffs contend, without evidence, that their rights were impaired because the City failed to post information about how the public could participate electronically, leaving them unable to participate. However, the City's notice provided a Zoom link for participation. It also stated that members of the public could submit their

comments in writing by email to the City Clerk. (*See* Notice of Public Meeting, PageID.4079.) Plaintiffs do not explain why the information provided by the City was inadequate and prevented them from participating. Accordingly, the City is entitled to summary judgment for this claim.

E. Count V (Substantive Due Process)

34 35 Both sides seek summary judgment on Count V, which asserts violations of substantive due process under federal and state law. " '[S]ubstantive due process requires that both state legislative and administrative actions that deprive the citizen of 'life, liberty or property' must have some rational basis.' " *EJS Props., LLC v. City of Toledo*, 698 F.3d 845, 862 (6th Cir. 2012) (quoting *Pearson v. City of Grand Blanc*, 961 F.2d 1211, 1223 (6th Cir. 1992)). "A plaintiff alleging a substantive due process violation resulting from a zoning decision must show 'that (1) a constitutionally protected property or liberty interest exists, and (2) the constitutionally protected interest has been deprived through arbitrary and capricious action.' " *Tollbrook, LLC v. City of Troy*, 774 F. App'x 929, 934 (6th Cir. 2019) (quoting *EJS Props.*, 698 F.3d at 855).

36 37 *Protected Property Interest.* The City argues that Plaintiffs did not have a protected property interest that would give rise to a due process claim. "Whether a person has a property interest is traditionally a question of state law. Federal constitutional law, however, 'determines whether that interest rises to the level of a legitimate claim of entitlement protected by the Due Process Clause.' " *Id.* (quoting *EJS Props.*, 698 F.3d at 856). The Court of Appeals for the Sixth Circuit has indicated that Michigan property owners have a protected interest in uses that were permitted by a zoning classification. *See* *Nasierowski Bros. Inv. Co. v. City of Sterling Heights*, 949 F.2d 890, 897 (6th Cir. 1991); *see also Tollbrook*, 774 F. App'x at 934 ("[A] property owner may have a property interest in the existing zoning classification of his or her property."). As discussed above, however, Plaintiffs have not shown that their uses were permitted by the City's Zoning Ordinance.

38 The City also notes that, even if Plaintiffs have a protected interest in using their properties as short-term rentals, they would still have to comply with the permitting requirement in Ordinance 248. And Plaintiffs do not have a protected interest in a short-term rental permit because a first-time applicant for a permit does not have such an interest. *See Wojcik v. Romulus*, 257 F.3d 600, 610 (6th Cir. 2001) ("[A] first time liquor license applicant [is] not entitled to procedural due process rights under Michigan law."); *Women's Med. Prof. Corp. v. Baird*, 438 F.3d 595, 611 (6th Cir. 2006) (citing *Wojcik* and holding that the plaintiff "has no property or liberty interest in a license for its operation because it was a first-time applicant for the ASF license").

Plaintiffs respond that *Wojcik*, *Women's Medical*, and similar cases involved the *discretionary* grant of a license; however, *795 those cases do not discuss the issue

of discretion. Instead, they rely on the distinction between the *holder* of a license and a first-time applicant for one. Like the first-time applicants in *Wojcik* and *Women's Medical*, Plaintiffs did not have a protected property interest in obtaining permits for operating their homes as short-term rentals.

Plaintiffs also rely on cases suggesting that there might be a legitimate claim of entitlement to a land use permit where the issuance of the permit is not discretionary. *See, e.g.*, *Triomphe Invs. v. City of Northwood*, 49 F.3d 198, 203 (6th Cir. 1995) (citing *Silver v. Franklin Twp. Bd. of Zoning App.*, 966 F.2d 1031, 1036 (6th Cir. 1992)); *Andreano v. City of Westlake*, 136 F. App'x 865 (6th Cir. 2005); *Oakwood Homeowners Assoc. at Stonecliffe v. City of Mackinac Island*, No. 99-1139, 2000 WL 1434708 (6th Cir. Sept. 20, 2000). But those cases are not helpful for Plaintiffs. There, courts concluded that there was no legitimate claim of entitlement to the permit because the decisions to issue the permit were discretionary, *see Triomphe Invs.*, 49 F.3d at 202-03 (also discussing *Silver*); *Andreano*, 136 F. App'x at 871, or because the plaintiffs never applied for one, *see Oakwood Homeowners Assoc.*, 2000 WL 1434708, at *3. *See also EJS Props.*, 698 F.3d at 859 ("The law is clear that a party cannot have a property interest in a discretionary benefit[.]"). Those courts did not find that first-time applicants for a permit had a protected interest in one.

Also, those cases are distinguishable because they involved special use permits under zoning regulations. They did not involve a permit to conduct a business activity like the permit at issue here, which requires inspections and compliance with a regulatory scheme. Thus, Plaintiffs' case is more analogous to *Wojcik* and *Women's Medical* than *Triomphe* or *Silver*.

39 Next, Plaintiffs argue that they have an "interest" in being "free from arbitrary and irrational zoning decisions." (Pls.' Reply Br. 7, ECF No. 122 (citing *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 263, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977)).) Here, Plaintiffs are conflating their constitutional claim with an interest protected by due process. The City did not deprive Plaintiffs of their claim. Accordingly, Plaintiffs have failed to demonstrate a protected interest, which is an essential element of a substantive due process claim.

40 41 42 *Arbitrary & Capricious Action.* In addition, Plaintiffs have not shown arbitrary and capricious action necessary for a substantive due process claim because they have not shown that the City's actions were so irrational that they "shock the conscience." *See EJS Props.*, 698 F.3d at 862. Zoning decisions do not shock the conscience if they survive "rational-basis review." *See id.* Under that standard, Plaintiffs must "negate every conceivable basis supporting the City Council's action." *Id.* at 865 (quotation marks omitted); *see Houdek v. Centerville Twp.*, 276 Mich.App. 568, 741 N.W.2d 587, 597 (2007) ("[T]o show that an ordinance is not rationally related to a legitimate governmental interest, a challenger must negate every conceivable basis that might support the ordinance or show that the

ordinance is based solely on reasons totally unrelated to the pursuit of the State's goals.") (quotation marks omitted).

43 "Under rational basis review, the defendant 'has no obligation to produce evidence to sustain the rationality of its actions; its choice is presumptively valid and may be based on rational speculation unsupported by evidence or empirical data.' " *Loesel v. City of Frankenmuth*, 692 F.3d 452, 465 (6th Cir. 2012) (quoting *796 *TriHealth, Inc. v. Bd. of Comm'rs*, 430 F.3d 783, 790 (6th Cir. 2005)). Thus, it is Plaintiffs' burden to demonstrate that the City's actions lack a rational basis. *Id.* They have not met that burden.

44 The City ostensibly passed the Moratorium due to various concerns about the impact of short-term rentals on the quality of life in the City, including declining school enrollment, declining long-term housing stock, declining long-term resident population, and an increase in vacant homes during winter months. (*See* Resolution 2020-11, PageID.2362.) It is not difficult to see how an increase in the number of properties used as short-term rentals could have the negative effects identified by the City. Plaintiffs provide evidence suggesting that some of these concerns are not supported by available data, but Plaintiffs do not negate every conceivable basis for restrictions on short-term rentals, such as a decrease in available housing stock for long-term residents. Furthermore, "courts have long recognized that municipalities may regulate in order to protect communities' 'residential character[.]' " *Styller v. Zoning Bd. of App. of Lynnfield,* 487 Mass. 588, 169 N.E.3d 160, 171 (2021) (quoting *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394, 47 S.Ct. 114, 71 L.Ed. 303 (1926)). "Short-term rental use of a one family home is inconsistent with the zoning purpose of the single-residence zoning district in which it is situated, i.e., to preserve the residential character of the neighborhood." *Id.*; *see also Nekrilov v. City of Jersey City*, 45 F.4th 662, 681 (3d Cir. 2022) (upholding a short-term rental zoning restriction against a substantive due process challenge because it furthered "several legitimate state interests," including "(1) protecting the long-term housing supply; (2) reducing 'deleterious effects' on neighborhoods caused by short-term rentals; and (3) protecting the residential character and density of neighborhoods").

The Moratorium paused the grant of new permits for short-term rentals while the City considered "appropriate ordinance amendments" to address the City's concerns. (Resolution 2020-11, PageID.2362.) The City initially amended its regulatory ordinance through Ordinance 248. Later, the City addressed its concerns about short-term rentals by limiting the total number of them through Ordinance 253. Thus, both the Moratorium and Ordinance 253 were rationally related to the City's legitimate concerns. Plaintiffs have not negated each of the City's concerns and the relationship between the City's actions and those concerns. Accordingly, Plaintiffs have not shown arbitrary or capricious action.

Plaintiffs contend that Ordinance 253 is "oppressive" because it operates retroactively to restrict Plaintiffs' property rights, in violation of state law. (Pls.' Resp. to Def.'s Mot. for Summ. J. 26, ECF No. 120.) However, a violation of state law does not necessarily give rise to a constitutional claim. And the violation alleged here does not shock the conscience. Therefore, the Court will dismiss Plaintiffs' substantive due process claim.

F. Count VI (Procedural Due Process)

45 The City seeks summary judgment on Plaintiffs' procedural due process claim. Plaintiffs argue that the City deprived them of due process by failing to provide them with adequate notice of Ordinance 237 and the Moratorium. They assert that the City did not provide individual notice by mail of Ordinance 237. Also, Plaintiffs contend that the City provided no notice to the public before it adopted the Moratorium.

46 To prevail on a procedural due process claim, Plaintiffs must show "(1) [they] had a constitutionally protected interest, *797 (2) [they were] deprived of that interest, and (3) the state did not afford [them] adequate procedures." *Golf Vill. N., LLC v. City of Powell*, 42 F.4th 593, 598 (6th Cir. 2022).

Protected Interest. Plaintiffs' due process claim fails to satisfy the first element. As discussed above, Plaintiffs have not shown that they possessed a protected property interest.

Adequate Process. The City also argues that it afforded Plaintiffs adequate process. First, the City Council published notice of its meetings and then held a public meeting on April 15, 2019, at which Ordinance 237 was discussed and adopted. It then published notice of the ordinance in a local newspaper along with information about how to obtain a copy, in accordance with Mich. Comp. Laws § 117.3(k). (*See* Aff. of Publication, ECF No. 117-27, PageID.4127-4128.)

Next, the City adopted and extended the Moratorium via resolutions. Under state law, resolutions do not require publication. Instead, they require that the vote be recorded in the meeting minutes. *See* Mich. Comp. Laws § 15.269(1). That is what occurred here. (*See* 6/15/2020 Minutes, ECF No. 13-8.)

In their response, Plaintiffs do not contest the process provided in connection with Ordinance 237. Instead, they challenge the process provided in connection with the Moratorium. They assert that, in the context of zoning amendments, "when a relatively small number of persons are affected on individual grounds, the right to a hearing is triggered." *Nasierowski Bros.*, 949 F.2d at 896. The latter category includes a situation where "a government unit singles out and specifically targets an individual's property for a zoning change after notice of a general plan of amendment has been published." *Id.*

Plaintiffs do not fall into the category identified in *Nasierowski*. First, the Moratorium was not a zoning amendment. It did not rezone or reclassify any property. Instead, it paused the grant of permits under a regulatory scheme for short-term rentals. Second, the Moratorium did not single out or target a particular person, or even a relatively small number of persons, on individual grounds. Everyone in the City who was interested in using their property for short-term rentals and who did not already have a permit was affected by the Moratorium. Accordingly, Plaintiffs have not shown that they were entitled to notice or an opportunity to be heard before the City Council passed the Moratorium. Therefore, for all the foregoing reasons, Plaintiffs' procedural due process claim is meritless.

G. Count VII (Equal Protection)

Both sides seek summary judgment on Plaintiffs' equal protection claim. Plaintiffs contend that the City has treated them differently from homeowners who rent their properties for the long term, i.e., more than 30 days at a time. They also contend that the City treated them differently from homeowners who were granted permits while the Moratorium was still in effect.

47 "To establish a claim for relief under the Equal Protection Clause, a plaintiff must demonstrate that the government treated the plaintiff disparately as compared to similarly situated persons and that such disparate treatment either burdens a fundamental right, targets a suspect class, or has no rational basis." *Club Italia Soccer & Sports Org., Inc. v. Charter Twp. of Shelby*, 470 F.3d 286, 298 (6th Cir. 2006), *overruled on other grounds as recognized by Davis v. Prison Health Servs.*, 679 F.3d 433, 442 n.3 (6th Cir. 2012). Plaintiffs do not assert that the City burdened a fundamental right or targeted a suspect class, so if they can prove disparate *798 treatment, they must also prove that the City's disparate treatment had no rational basis. As indicated above, rational basis review means that the City's actions "must be sustained if *any* conceivable basis rationally supports [them]." *TriHealth*, 430 F.3d at 790.

1. Long-Term Renters

48 Plaintiffs argue that they are similarly situated with owners who rent their properties for more than thirty days, and that there is no rational basis for treating them differently. The Court disagrees. As the City puts it, short-term rentals "operate more akin to commercial lodging and cater to transient populations, vacationers, bachelor/bachelorette parties, and others that have no stake in the community." (Def.'s Br. in Supp. of Mot. for Summ. J. 30, ECF No. 117.) In contrast, "long-term rentals...connote a permanency of residence akin to a homesteaded residence." (*Id.*) In other words, long-term rentals house people who are more likely to contribute to the community. There is a rational basis for treating them differently.

2. Permits Granted During Moratorium

49 50 Plaintiffs assert that they are similarly situated with Jeff McClorey and Ron Oselka, who were granted permits under exceptions to the Moratorium set forth in

Resolution 2020-16. (*See* 6/28/2020 City Attorney Mem. re McClorey Application, ECF No. 122-6; Watson Dep., ECF No. 117-17, PageID.3875.) But with the possible exception of former Plaintiffs Ryan and Shawn Nofziger, none of the Plaintiffs submitted a permit application under the Moratorium exclusions in Resolution 2020-16. "[T]iming and context are both relevant to the similarly-situated inquiry" because " 'differential treatment...may indicate a change in policy rather than an intent to discriminate.' " *Taylor Acquisitions, LLC v. City of Taylor*, 313 F. App'x 826, 836 (6th Cir. 2009). Here, the City changed its policy by granting exceptions to the Moratorium for a limited time. Plaintiffs are not similarly situated with those who applied under the exceptions in Resolution 2020-16 because that resolution created a different policy for granting permits.

Furthermore, the City had a rational basis for this new policy, which created exceptions to the Moratorium for property owners with "investment-backed expectations" that developed shortly before the Moratorium was implemented. In addition, the City had a rational basis for limiting the number of applicants who could qualify under these exceptions by limiting the time period for submitting those applications. The purpose of the Moratorium was to freeze the number of existing short-term rental permits while the City considered modifications to its regulations for short-term rentals. It did not have to grant any exceptions to the Moratorium to satisfy Plaintiffs' right to equal protection, but in doing so, it was not irrational to provide a window for submitting applications that sought a permit under specific exceptions.

Plaintiffs argue that McClorey and Oselka did not actually qualify for permits under Resolution 2020-16, yet the City gave them permits anyway. For instance, the City Attorney determined that Oselka had a permit for construction of a new dwelling or renovation, yet Oselka submitted his application in December 2020, long after the Moratorium exception period expired. (*See* Watson Dep., PageID.3888-3893.) And McClorey apparently did not have a valid building permit, despite the City's belief that he did. Regardless, Plaintiffs were not similarly situated with McClorey and Oselka because the latter applied at a different time and were considered for permits under a different set of rules. Other than the Nofzigers, none of the Plaintiffs contend that they applied for *799 a permit under any of the Moratorium exceptions in Resolution 2020-16.

3. Nofzigers

Unlike the other Plaintiffs, the Nofzigers applied in June 2020 under a Moratorium exception. (*See* Nofziger Aff. ¶ 15, ECF No. 118-12, PageID.4309.) They owned property located at 218 S. Bronson Street and possessed a building permit to make renovations in order to make their property suitable for short-term rentals. (*Id.* ¶¶ 2, 16.) The City denied their permit application. The Nofzigers asked City officials for reconsideration several times, to no avail. The City now acknowledges that the

Nofzigers qualified for a permit under an exception in Resolution 2020-16. (Watson Dep., PageID.3935.)

(a) Standing

51 The Nofzigers are no longer part of the case. In March 2021, they recorded a quitclaim deed assigning their property to their company, 218 S Bronson LLC. (Quit Claim Deed, ECF No. 117-15.) After the Court consolidated Plaintiffs' cases in September 2021, the Nofzigers transferred their claims and their right to relief to 218 S Bronson LLC, which has replaced them as a party. (*See* Nofziger Aff ¶ 4; Assignment of Claims, ECF No. 118-12, PageID.4316.) [6]

52 The City contends that 218 S Bronson LLC lacks standing because it did not own the property when the Nofzigers were denied a permit. However, an assignee has standing to assert the rights of the assignor, including the right to assert claims that accrued to the assignor. *See Sprint Commc'ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 271, 128 S.Ct. 2531, 171 L.Ed.2d 424 (2008).

The City asserts that, because the property transfer preceded the transfer of claims by several months, the Nofzigers' claims were somehow mooted by the property transfer. That argument does not follow. For instance, an individual's ability to recover damages for past harm would not be mooted by the transfer of their property. Accordingly, 218 S Bronson LLC has standing to assert claims for injuries suffered by the Nofzigers.

(b) Merits

53 Plaintiffs assert that there was no rational basis for denying the Nofzigers' permit application, and the Court cannot discern one. The City suggests that the denial may have been a mistake, but a jury could infer otherwise based on the City's repeated denial of the Nofzigers' application. Also, the City offers no evidence to support their assertion, apart from speculation by the City's Attorney. Thus, Plaintiffs have provided sufficient evidence to undercut the City's explanation and the City offers no evidence in response. Accordingly, there is no genuine dispute that the City denied the Nofzigers' right to equal protection because it denied their application, intentionally treating them differently from similarly situated applicants without a rational basis for doing so. The Court will grant summary judgment on this claim in favor of 218 S Bronson LLC.

H. Count VIII (Takings)

54 55 56 57 The United States and Michigan constitutions prohibit government taking of private property for public use without just compensation. There are two types of takings, physical takings and regulatory takings. A physical taking occurs when "the government physically takes possession of an interest in property for some public purpose[.]" *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 321, 122 S.Ct. 1465, 152 L.Ed.2d 517 (2002). Here, Plaintiffs assert a regulatory taking, which occurs *800 when "regulations...prohibit a property owner from making certain uses of her private property." *Id.* at 321-22,

122 S.Ct. 1465. A physical taking always requires compensation, whereas a regulatory taking " 'necessarily entails complex factual assessments of the purposes and economic effects of government actions.' " *Id.* at 323, 122 S.Ct. 1465 (quoting *Yee v. Escondido*, 503 U.S. 519, 523, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992)). In other words, " 'if regulation goes too far, it will be recognized as a taking' " requiring compensation. *Id.* at 326, 122 S.Ct. 1465 (quoting *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 415, 43 S.Ct. 158, 67 L.Ed. 322 (1922)).

58 In *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992), the Supreme Court held that a regulation "goes too far" when it calls upon the owner of real property to "sacrifice *all* economically beneficial uses in the name of the common good, that is, to leave his property economically idle[.]" *Id.* at 1019, 112 S.Ct. 2886. In such a case, the property owner is *categorically* entitled to compensation, "except to the extent that 'background principles of nuisance and property law' independently restrict the owner's intended use of the property." *Lingle v. Chevron, U.S.A., Inc.*, 544 U.S. 528, 538, 125 S.Ct. 2074, 161 L.Ed.2d 876 (2005) (citing *Lucas*, 505 U.S. at 1026-32, 112 S.Ct. 2886). But *Lucas* does not apply here. The categorical rule in *Lucas* only applies to "the extraordinary case in which a regulation *permanently* deprives property of all value[.]" *Tahoe-Sierra*, 535 U.S. at 332, 122 S.Ct. 1465 (emphasis added). The City correctly asserts that Plaintiffs have not shown that the City's actions have permanently deprived their properties of all value. For instance, those properties are still valuable as dwellings.

59 60 61 Plaintiffs respond that the City has deprived them of a property interest in using their properties as short-term rentals. They rely on the test in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978), which considers several factors in the context of a non-categorical taking, including: (1) "[t]he economic impact of the regulation on the claimant"; (2) "the extent to which the regulation has interfered with distinct investment-backed expectations"; and (3) "the 'character of the governmental action'—for instance whether it amounts to a physical invasion or instead merely affects property interests through 'some public program adjusting the benefits and burdens of economic life to promote the common good[.]' " *Lingle*, 544 U.S. at 538-39, 125 S.Ct. 2074 (quoting *Penn Central*, 438 U.S. at 124, 98 S.Ct. 2646). The *Penn Central* test is the proper test for a regulatory taking like the one here, which does not permanently deprive a property of all value. The City does not address these factors in its briefing.

62 However, the City also argues that it did not take anything because Plaintiffs never possessed a vested right to a permit. A regulation does not constitute a taking if the party's interests "were not part of his title to begin with." *Lucas*, 505 U.S. at 1027, 112 S.Ct. 2886; *see Wyatt v. United States*, 271 F.3d 1090, 1097 (Fed. Cir. 2001) ("[T]he existence of a valid property interest is necessary in all takings claims.").

Plaintiffs respond that the property right at issue is a "vested interest in the nonconforming use of their properties as short-term rentals." (Pls.' Resp. to Mot. for Summ. J. 31, ECF No. 120.) But Plaintiffs did not possess such a property interest for the reasons described in Section III.A, above. Accordingly, they have not shown that they are entitled to compensation under Count VIII.

I. Count IX (State Law Preemption)

63 64 In their last claim, Plaintiffs assert that the Moratorium was preempted *801 by the MZEA, which allows lawful nonconforming uses to continue under a new zoning ordinance. *See* Mich. Comp. Laws § 125.3208(1). A state law can preempt a local regulation where there is a direct conflict between the two, i.e., "when 'the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits.' " *DeRuiter v. Twp. of Byron*, 505 Mich. 130, 949 N.W.2d 91, 96 (2020) (quoting *People v. Llewellyn*, 401 Mich. 314, 257 N.W.2d 902, 904 n.4 (1977)). Here, there is no conflict between the MZEA and the Moratorium because the Moratorium was not an ordinance, let alone a zoning ordinance.

65 Plaintiffs respond that *Ordinance 253* conflicts with the MZEA because it expressly limits short-term rentals to those properties that had obtained a short-term rental permit. Plaintiffs contend that Ordinance 253 should allow all short-term rentals to continue as nonconforming uses. This claim is not properly before the Court because it is not part of Plaintiffs' complaint, which asserts that "the moratorium is preempted by [the MZEA]." (*See* 2d Am. Compl. ¶ 365, ECF No. 61; 1st Am. Compl. ¶ 334, ECF No. 62.) The complaint does not assert that Ordinance 253 is preempted by the MZEA.

At any rate, Plaintiffs' new claim is meritless because Plaintiffs have not shown that the Zoning Ordinance in effect before Ordinance 253 permitted short-term rentals. In other words, they have not shown that short-term rentals were lawful uses that the MZEA would protect. Accordingly, the City is entitled to summary judgment for this claim.

IV. CONCLUSION

For all the foregoing reasons, the Court will grant Plaintiffs' motion for summary judgment in part and deny the City's motion for summary judgment in part, solely as to the equal protection claim asserted by 218 S Bronson LLC in Count VII of the complaint. In all other respects, Plaintiffs' motion for summary judgment will be denied and the City's motion for summary judgment will be granted. Accordingly, the Court will dismiss all other claims.

An order will enter consistent with this Opinion.

All Citations

638 F.Supp.3d 770

Footnotes

1 All citations to the record refer to the record in Case No. 1:21-cv-144 unless otherwise noted.

2 Plaintiffs contend that the Moratorium effectively suspended Ordinance 237. They argue that the City could not suspend an ordinance using a resolution.

3 The plaintiffs in Case No. 1:21-cv-674 filed their initial complaint in state court on October 5, 2021. (*Nofziger v. City of New Buffalo*, No. 1:21-cv-674 (W.D. Mich.), ECF No. 1-1.)

4 Recall that the City Council was discussing a resolution to direct the Planning Commission to consider two proposed amendments to the Zoning Ordinance. One draft proposed limits on short-term rentals in only the R-1 district, whereas the other draft proposed limits in the R-1, R-2, and R-3 districts.

5 Zelewski is an attorney representing the City in these legal proceedings.

6 The assignment document is undated, but it references the consolidation of these cases.

End of Document

EXHIBIT 7

Moskovic v. City of New Buffalo

United States District Court, W.D. Michigan, Southern Division. • January 13, 20

Moskovic II

2023 WL 179680

Only the Westlaw citation is currently available.

United States District Court, W.D. Michigan, Southern Division.

Joanne MOSKOVIC, et al., Plaintiffs,

v.

CITY OF NEW BUFFALO, Defendant.

218 S Bronson LLC, et al., Plaintiffs,

v.

City of New Buffalo, Defendant.

Case No. 1:21-cv-144, Case No. 1:21-cv-674

Signed January 13, 2023

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OPINION

HALA Y. JARBOU, CHIEF UNITED STATES DISTRICT JUDGE

*1 Plaintiffs have filed a motion for reconsideration (ECF No. 139) [1] of the Court's opinion on the parties' motions for summary judgment. For the reasons herein, the Court will deny Plaintiffs' motion.

I. STANDARDS

Under Rule 54(b) of the Federal Rules of Civil Procedure, a non-final order is subject to reconsideration at any time before entry of a final judgment. *Id.*; *see also ACLU v. McCreary Cnty.*, 607 F.3d 439, 450 (6th Cir. 2010). Western District of Michigan Local Civil Rule 7.4(a) also provides that "motions for reconsideration which merely present the same issues ruled upon by the court shall not be granted." Further, reconsideration is appropriate only when the movant "demonstrate[s] a palpable defect by which the court and the parties have been misled ... [and] that a different disposition of the case must result from a correction thereof." *Id.*

Because Plaintiffs oppose the Court's conclusion that the City is entitled to summary judgment, the summary judgment standards also apply. The Court must view all the facts and evidence in the light most favorable to Plaintiffs and decide whether there is a genuine dispute of material fact requiring submission of the case to a jury. (*See* 10/31/2022 Op. 8-9, ECF No. 134.)

II. PROCEDURAL HISTORY

Plaintiffs' motion for reconsideration focuses primarily on whether or not the City's original Zoning Ordinance (the "ZO") permitted the use of single-family homes located in the R-1, R-2, and R-3 zoning districts as short-term rentals. Plaintiffs alluded to this issue in their summary judgment briefing but did not provide the Court with any analysis of the text of the ZO to support their position. When reviewing that ordinance, this Court concluded it did not permit such uses. (*See* 10/31/2022 Op. 12-15.)

Some of Plaintiffs' claims, including their takings claim, require them to show that the City deprived them of a protected property interest. Among other things, Plaintiffs asserted a protected interest in the use of their homes as short-term rentals before the City amended the ZO. Plaintiffs argued that the City's recent amendment of the ZO illegally deprived them of their right to continue using their homes as short-term rentals because that use qualified as a prior nonconforming use. "A prior nonconforming use is a vested right in the use of particular property that does not conform to zoning restrictions, but is protected because it lawfully existed before the zoning regulation's effective date." *Heath Twp. v. Sall*, 502 N.W.2d 627, 629 (Mich. 1993).

"To be protected, the nonconforming use must have been legal at one time; a use that violates the zoning ordinances since its inception does not draw such protection." *Lyon Charter Twp. v. Petty*, 896 N.W.2d 477, 481 (Mich. Ct. App. 2016). The Court reasoned that, because the ZO did not permit short-term rentals, Plaintiffs' prior uses were not lawful. Consequently, Plaintiffs do not possess a protected property interest in those nonconforming uses.

A. Procedural Challenges

*2 Plaintiffs assert several procedural errors in the Court's decision.

1. Granting Summary Judgment to the City

First, Plaintiffs contend that it was improper for the Court to rule in favor of the City based on the Court's interpretation of the ZO because the City did not raise this issue in its motion for summary judgment. Plaintiffs moved for summary judgment on two counts of the complaint, Count V (substantive due process) and Count VII (equal protection), and the City moved for summary judgment on all counts. When seeking summary judgment on their substantive due process claim, Plaintiffs argued that they possessed a protected interest in the use of their homes as short-term rentals because those uses were permitted under the ZO. (Pls.' Br. in Supp. of Mot. for Summ. J. 15-16, ECF No. 118.) Plaintiffs relied on deposition testimony by the City Attorney, Nick Curcio, instead of the text of the ordinance itself. (*Id.*; *see* Curcio Dep. 49, ECF No. 118-25 (stating that "the City Zoning Ordinance ... doesn't mention short-term rentals, but ... the City has interpreted" the ordinance to permit them).) The City Attorney had also explained at a board meeting in October 2020 that the ZO does not mention short-term rentals, but the City had interpreted it to allow them as part of "the various permitted dwelling uses." *See* 10/12/2020 Meeting Video, available at https://cityofnewbuffalo.org/meetings/city-council-planning-commission-special-joint-meeting-october-12-2020/.

The City responded that Plaintiffs' reliance on statements by the City Attorney was misplaced and that the ZO did not permit short-term rentals *because* that use was not expressly mentioned in the ZO. (Def.'s Resp. Br. 2-3, ECF No. 121.) As indicated below, the ZO prohibits uses that are not specifically permitted. In their reply, Plaintiffs did not address the City's textual argument. Instead, they relied upon the City's "witnesses and actions[.]" (Pls.' Reply Br. 2-3, ECF No. 122.)

In the City's own motion for summary judgment, it argued that Plaintiffs lacked a protected property interest for a different reason. It argued that Plaintiffs never obtained a permit to use their homes as short-term rentals as required by the City's regulatory ordinance, Ordinance 237. The City *assumed*, without conceding, that the ZO

permitted short-term rentals. (Def.'s Mot. for Summ. J. 25, ECF No. 117.) In other words, the City did not expressly argue in support of its own motion that the ZO prohibited short-term rentals.

After reviewing the parties' arguments and the text of the ZO, the Court concluded that the ZO did not permit short-term rentals. Consequently, Plaintiffs could not claim that the City deprived them of a protected property interest in such use. (10/31/2022 Op. 40-41.) Accordingly, the Court granted summary judgment in favor of the City on Plaintiffs' takings claim.

Plaintiffs are correct that the City did not rely on the text of the ZO when seeking summary judgment on the takings claim. However, Plaintiffs put the interpretation of the ZO before the Court when asserting that the ZO permitted them to use their properties as short-term rentals. To address that issue, the Court examined the ZO and concluded that it did not permit short-term rentals. A necessary consequence of that conclusion was that Plaintiffs could not rely on the use of their properties as short-term rentals to establish a vested property interest. In addition, Plaintiffs could not establish a basis for their takings claim.

*3 Even if the City did not rely on the text of the ZO when seeking summary judgment, the Court could grant summary judgment in the City's favor on the issue. The Court has authority to "enter summary judgments *sua sponte*, so long as the losing party was on notice that she had to come forward with all her evidence." *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986). Here, Plaintiffs were on notice of the City's motion for summary judgment and of the evidence necessary to support their claims. That evidence included the ZO, a copy of which Plaintiffs provided to the Court. They were also on notice that their interpretation of the ZO was a critical component of their claims. Thus, the Court did not make a procedural error when granting the City summary judgment on that issue.

In any case, even if the Court erred, Plaintiffs have now provided textual arguments for their interpretation of the ZO. The Court will consider Plaintiffs' arguments, rendering any possible error harmless.

2. Failing to Consider the Testimony of Watson

Next, Plaintiffs also contend that the Court failed to consider the testimony of the City's 30(b)(6) witness, Darwin Watson, [2] who purportedly admitted that the ZO permitted short-term rentals. The Court did not fail to consider this testimony. Instead, the Court did not discuss it because it does not support Plaintiffs' position. In his deposition, Watson agreed that the City Attorney stated at a meeting in October 2020 that short-term rentals "were a permitted use in all

residential restrictions, by right, under the City's zoning ordinance[.]" (Watson Dep., ECF No. 117-17, PageID.3850-3851.) And Watson agreed with the City Attorney's deposition statement that "short-term rentals remained a permitted use in all residential districts under the City Zoning Ordinance until the City amended its zoning ordinance by adopting Ordinance 253[.]" (*Id.*, PageID.3858.) However, Watson also stated that he disagreed with the City Attorney's interpretation of the ZO because "there is nothing in the zoning ordinance ... that speaks about short-term rentals." (*Id.*, PageID.3853-3857.) Thus, contrary to Plaintiffs' assertion, Watson did not adopt the City Attorney's interpretation of the ZO. At most, he agreed that the City had permitted short-term rentals under the ZO, which is not disputed. The City did not take steps to restrict short-term rentals until it passed Ordinance 237, which required home owners to obtain a permit for that use. And those who obtained a permit were allowed to use their homes as short-term rentals.

But even if Watson agreed that the ZO permitted short-term rentals, the City's witnesses cannot make an admission about the law. It is the Court's province and duty to "say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). Statements by the parties do not control the Court's analysis of the ZO. The Court looks first and foremost at the text of the ZO to ascertain its meaning. (*See* 10/31/2022 Op. 14 (citing *Brandon Charter Twp. v. Tippett*, 616 N.W.2d 243, 245 (Mich. Ct. App. 2000).)

To the extent Watson's testimony is relevant to the City's past practice of allowing short-term rentals, that practice does not transform Plaintiffs' uses of their properties as short-term rentals into a vested property interest. *See Lyon Charter Twp. v. Petty*, 896 N.W.2d 477, 481 (Mich. Ct. App. 2016) ("[A] historical failure to enforce a particular zoning ordinance, standing alone, is insufficient to preclude enforcement in the present."); *accord* *Reaume v. Twp. of Spring Lake*, 937 N.W.2d 734, 742 (Mich. Ct. App. 2019), *overruled on other grounds by* 943 N.W.2d 394 (Mich. 2020). Accordingly, Watson's testimony does not change the outcome of the Court's decision.

[*4] Plaintiffs also note in their reply brief that the City's former Mayor, Louis O'Donnell, also made statements about the ZO in his deposition. He initially testified that he did not know whether the ZO permitted short-term rentals, but then he agreed with the City's Attorney's statement from October 2020 that "short-term rentals were a permitted use" under the ZO. (O'Donnell Dep. 71-73, ECF No. 121-6.) For the reasons discussed above and below with respect to Watson and Curcio, O'Donnell's statements do not alter the Court's conclusions about the ZO.

B. Substantive Challenges

Plaintiffs also contend that the Court erred when interpreting the ZO. They now provide arguments as to why the Court should interpret the ZO as permitting short-term rentals.

1. Textual Analysis

The court "interpret[s] ordinances in the same manner that [it] interpret[s] statutes." *Brandon Charter Twp.*, 616 N.W.2d at 245.

> If the language is clear and unambiguous, the courts may only apply the language as written. However, if reasonable minds could differ regarding the meaning of the ordinance, the courts may construe the ordinance. [The courts] follow these rules of construction in order to give effect to the legislative body's intent.

Id. (citations omitted). "When interpreting the language of an ordinance to determine the extent of a restriction upon the use of property, the language must be interpreted, where doubt exists regarding legislative intent, in favor of the property owner." *Talcott v. City of Midland*, 387 N.W.2d 845, 847 (Mich. 1985).

Section 1-4 of the ZO provided, in relevant part:

D. Applicability of zoning ordinance regulations. Except as otherwise provided for in this ordinance, every building and structure erected, every use of any lot, building, or structure established, every structural alteration or relocation of an existing building or structure, and every enlargement of, or addition to, an existing use, building and structure occurring after the effective date of this ordinance, shall be subject to this ordinance

E. Uses permitted by right. All land development specifically listed under the heading "Uses Permitted by Right" shall be allowed when determined to be in accordance with all provisions of this ordinance and all other applicable laws, regulations or ordinances having jurisdiction over the proposed use of land. *Where not specifically permitted, uses are prohibited, unless construed to be similar to a use as expressly determined in accordance with Section 1-4G.*

***

G. Uses not specifically mentioned.

1. Any use of land or development activity not specifically mentioned in this ordinance may be classified by the Zoning Administrator as the use most similar in character to the proposed use.

2. If the Zoning Administrator needs further interpretation of the proposed use, the Official may refer the proposed use to the Board of Zoning Appeals for classification.

3. If the Board of Zoning Appeals finds that the use is not similar in character to uses listed in the Ordinance they shall so find. The applicant may then make application to the Planning Commission for consideration of an amendment to the Zoning Ordinance to include the proposed use in one or more of the zoning districts of this ordinance, either as a Use Permitted by Right or a Use Permitted by Special Land Use.

(Zoning Ordinance, ECF No. 120-4, PageID.4767-4768 (emphasis added).)

Plaintiffs rely on the uses "permitted by right" in the R-1, R-2, and R-3 residential zoning districts. For those districts, the ZO stated, in relevant part:

ARTICLE 6

R-1 Single Family District

*5 **Section 6-1. Intent and purpose.**

This district is intended primarily for single-family detached residential use and support services or facilities which are typically found in single-family areas and which can be located in a manner to be compatible with the single-family neighborhood.

Section 6-2. Uses permitted by right. [Amended 2-19-2008 by Ord. No. 175]

Land and/or buildings in the R-1 District may be used for the following purposes by right:

A. Single-family detached dwelling units.

B. Accessory uses pursuant to Section 3-2.

C. Home occupations pursuant to Section 3-26.

D. State-licensed residential care family facilities.

E. State-licensed family day-care centers.

F. Municipal parks.

* * *

ARTICLE 7

R-2 Medium Density Residential District

Section 7-1. Intent and purpose.

This district is intended primarily for single-family detached and two-family dwellings and support services or facilities which are typically found in residential areas and which can be located in a manner to be compatible with such residential uses.

Section 7-2. Uses permitted by right. [Amended 2-19-2008 by Ord. No. 175]

Land and/or buildings in the R-2 District may be used for the following purposes by right:

A. Single-family detached dwelling units.

B. Two-family dwelling units.

C. Accessory uses pursuant to Section 3-2.

D. Home occupations pursuant to Section 3-26.

E. State-licensed residential care family facilities.

F. State-licensed family day-care centers.

G. Municipal parks.

* * *

ARTICLE 8

R-3 High Density Residential District

Section 8-1. Intent and purpose.

This district is intended for buildings containing multiple-dwelling units, including both attached single-family dwelling units and apartment-style residential development. It is intended to provide additional variety in housing opportunity and choices, and to recognize the need to provide affordable housing.

Section 8-2. Uses permitted by right. [Amended 2-19-2008 by Ord. No. 175; 6-17-2019 by Ord. No. 238]

Land and/or buildings in the R-3 District may be used for the following purposes by right:

A. Multiple-family dwelling units, including single-family attached dwelling units, and apartment buildings.

B. Single-family detached dwelling units.

C. Accessory buildings and uses associated with the above permitted uses....

D. Home occupations pursuant to Section 3-26.

E. State-licensed residential care family facilities.

F. State-licensed family day-care centers.

G. Municipal parks.

H. Public utility or service buildings, not requiring the outdoor storage of materials.

(Zoning Ordinance, PageID.4814, 4816, 4818.)

Specifically, Plaintiffs contend that the use of their homes for short-term rentals fits within the definition of single-family dwelling units. The ZO defines "dwelling," "single-family dwelling," and "family" as follows:

DWELLING — A detached building or portion thereof designed or used exclusively as the home, residence or sleeping place of one or more persons, not including accessory buildings or structures, either attached or detached....

*6

* * *

DWELLING, SINGLE-FAMILY — A detached building, designed for or occupied exclusively by one family.

* * *

FAMILY –

A. An individual or group of two or more persons related by blood, marriage, or adoption, together with foster children and servants of the principal occupants who are domiciled together as a single housekeeping unit in a dwelling unit; or

B. A collective number of individuals domiciled together in one dwelling unit whose relationship is of a continuing, non-transient domestic character and who are cooking and living as a single nonprofit housekeeping unit. This definition shall not include any society, club, fraternity, sorority, association, half-way house, lodge, coterie, organization, group of students, or other individual whose domestic relationship is of a transitory or seasonal nature, is for an anticipated limited duration of school term or during a period of rehabilitation or treatment, or is otherwise not intended to be of a permanent nature

(*Id.*, PageID.4775-4776.)

Plaintiffs note that the definition of single-family dwelling requires that the building be "designed for *or* occupied exclusively by one

family." (*Id.* (emphasis added).) Plaintiffs apparently contend that the "or" in that definition means that, because their homes are *designed* to be occupied by one family, those homes fit that definition, no matter how they are actually used or occupied. Plaintiffs also contend (without support) that they rent their homes as a sleeping place for one family at a time, so their rental use is consistent with the definition as well.

Plaintiffs' interpretation does not fit with the rest of the ZO and would lead to absurd results. In particular, Plaintiffs' reliance on the design of their homes would render their homes acceptable for almost any use, whether commercial, recreational, industrial, or otherwise, when that is clearly not the intent of the ZO. In general, the ZO relegates residential uses, commercial uses, and industrial uses to different districts. That segregation would disintegrate if a person could use a single or multi-family dwelling for industrial or commercial purposes simply because that building was *designed* for use by one or more families.

The reason for the "designed or used" disjunction in the definition of single-family dwelling is better explained by the ZO's distinction between the "use of land" and "development activity." (*Id.*, PageID.4767.) Or as the ZO puts it elsewhere, the "right to continue a land use or activity" as opposed to the right to "construct a building or structure." (*Id.*) The ZO defines "land use" as "[a] description of how land is occupied or utilized." (*Id.*, PageID.4778.) And the ZO defines "development" as

> The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; and mining, excavation, landfilling or land disturbance, and any extension of an existing use of land.

(*Id.*, PageID.4774.) Relatedly, the ZO gives separate definitions for a "nonconforming *use*" and a "nonconforming *building*." (*Id.*, PageID.4781 (defining these terms; emphases added).) These separate definitions are necessary because ZO specifies both the *design* of structures that may be constructed in certain areas, including their placement and dimensions, *as well as* the manner in which occupants may *use* those structures. The design is relevant to the development and construction stage. Here, the ZO permits the construction of buildings designed as single-family dwellings in the R-1, R-2, and R-3 districts. The use of those buildings becomes relevant after their construction is complete. After all, it would make no sense to tell developers that they can only construct dwellings that are currently occupied or used in a particular manner. Thus, the

"or" in the definition of single-family dwellings accounts for those two different stages. Relevant here is the *use* of Plaintiffs' homes when occupied, not just their design. Consequently, the ZO required that Plaintiffs use their single-family dwellings "as the home, residence, or sleeping place of" one "family."

*7 Plaintiffs' interpretation also fails to account for the ZO's definition of "family." Under the ZO, a family is either (1) a group of individuals related by blood who are "domiciled together," or (2) a group of individuals "domiciled together" in a relationship that is of a "continuing, non-transient domestic character." (*Id.*, PageID.4776.) Short-term renters are not "domiciled" with one another when using a rental home. *See Concerned Prop. Owners of Garfield Twp., Inc. v. Charter Twp. of Garfield*, No. 342831, 2018 WL 5305235, at *2 (Mich. Ct. App. Oct. 25, 2018) (Murphy, J., concurring) ("[D]omiciled together ... in a dwelling unit indicat[es] permanence not transience. A family renting a dwelling for a short period is not *domiciled* together in the dwelling.") (citations omitted). Instead, they are more like the "transient" guests of a bed-and-breakfast or motel. (*See* Zoning Ordinance, PageID.4773, 4780 (defining "bed-and-breakfast" as a "use within a single-family dwelling in which transient guests are provided a sleeping room, breakfast and access to bathing and lavatory facilities in return for payment" and defining "motel" as a series of rental units in which "transient, overnight, lodging or boarding are offered to the public for compensation").) The ZO permitted the latter uses in the "central business district" and the "general commercial district," not in the three residential districts where Plaintiffs' homes are located. (*See id.*, PageID.4826, 4831.) Thus, the definition of single-family dwelling did not encompass the use of such buildings for short-term rentals.

The stated intents and purposes for the R-1, R-2, and R-3 districts support this interpretation. According to the ZO, the R-1 district "is intended primarily for ... residential use[.]" (Zoning Ordinance, PageID.4814.) Buildings in the R-2 district are intended to be "compatible with" single-family and two-family "residential uses." (*Id.*, PageID.4816.) And the R-3 district is intended for single-family and "apartment-style" "residential development." (*Id.*, PageID.4818.) Like the word domicile, the term "residential" connotes "permanence" and a "continuity of presence" that is generally inconsistent with the use of property for short-term rentals. *See Concerned Prop. Owners*, 2018 WL 5305235, at *3 (noting that "the term 'residence' excludes uses of a transitory nature") (citing *O'Connor v. Resort Custom Builder, Inc.*, 591 N.W.2d 216, 221 (Mich. 1999)).

Also, as some Michigan courts have noted, "commercial or business uses of property—that is, uses intended to generate a profit—are generally inconsistent with residential uses of property." *Reaume*, 937 N.W.2d at 742 (citing *Terrien v. Zwit*, 648 N.W.2d 602, 605-07 (Mich. 2002)). The use of a home for short-term rentals is a commercial or business use. *See id.*; *see also People v. Dorr*, No. 349910, 2020 WL 6374724, at *2 (Mich. Ct. App. Oct. 29, 2020) ("Because defendant was engaged in using his home to offer short-term *rental* accommodations, he was operating a business out of his home."); *John H. Bauckham Tr. v. Petter*, No. 332643, 2017 WL 4158025, at *4 (Mich. Ct. App. Sept. 19, 2017) ("The act of renting property to a third-party for any length of time involves a commercial use because the property owner is likely to yield a profit from the activity."). Although not dispositive here, the tension between commercial activity and residential uses further supports the Court's interpretation of the ZO. [3]

*8 The City characterizes Plaintiffs' use of their homes for short-term rentals as "home occupations," which the ZO permitted only in certain circumstances. (*See* Zoning Ordinance, PageID.4805.) A home occupation is "[an] occupation customarily conducted in a dwelling unit that is clearly an incidental and secondary use of the dwelling." (*Id.*, PageID.4778.) The City contends that Plaintiffs' short-term rental uses were not proper home occupations because they were the primary, rather than incidental and secondary, uses of their homes. However, Plaintiffs note that they did not live in their properties and did not physically conduct their rental activities in those properties. They lived elsewhere. Consequently, they were not conducting their occupations from within the single-family dwellings that they own in the City. For the same reason, the Court is not persuaded that the home-occupation restriction applies here. *Cf. Dorr*, 2020 WL 6374724, at *2 (applying a similar provision to a defendant who continued to live in his home while also renting it for short-term rentals). Nevertheless, that restriction reinforces the ZO's intent to limit the use of single-family dwellings for commercial activity.

Plaintiffs rely on the Michigan Supreme Court's decision in *Reaume*, in which that court held that a zoning ordinance's definition of family, which excluded transient relationships like the ZO does here, did not necessarily mean that the use of single-family homes for short-term rentals violated the ordinance. *Reaume*, 943 N.W.2d at 394. The Michigan Supreme Court held that "[t]he Court of Appeals erred by conflating the concept of a transient *relationship between people* with the concept of transient *occupancy* of the property." *Id.* (emphases added).

That decision is distinguishable because the ordinance at issue there defined a dwelling "to include a '[b]uilding ... occupied ... as a home, residence, or sleeping place, either permanently *or temporarily*, [by one (1) or more Families]....' " *Id.* In other words, the ordinance expressly permitted the transient occupancy of dwellings. In contrast, the ZO did not expressly permit the transient use of a single-family dwelling as a home, residence, or sleeping place. Instead, as discussed above, the ZO referred to use by a group of individuals who are "domiciled" together. That term connotes a permanence of occupancy that does not apply to transient, short-term renters.

Accordingly, for all the foregoing reasons, the ZO did not permit Plaintiffs to use their homes as short-term rentals.

2. Deference

Alternatively, Plaintiffs argue that the Court must defer to the City's past interpretation of the ZO, as exemplified by the statements of Watson, O'Donnell, and Curcio. Plaintiffs cite *Tuscola Wind III, LLC v. Almer Charter Township*, No. 17-cv-10497, 2018 WL 1250476 (E.D. Mich. Mar. 12, 2018), but that case underscores the problem with Plaintiffs' argument. There, the plaintiffs challenged the interpretation of a zoning ordinance by the township board. *Id.* at *2. The court held that it should defer to the township board's interpretation because the board was " 'the legislative body which enacted the Zoning Ordinance in the first place[.]' " *Id.* at *5 (quoting *Macenas v. Vill. of Michiana*, 446 N.W.2d 102, 110 (Mich. 1989)). The court also noted that " '[i]n cases of ambiguity in a municipal zoning ordinance, where a construction has been applied over an extended period by the officer or agency charged with its administration, that construction should be accorded great weight in determining the meaning of the ordinance.' " *Id.* (quoting *Macenas*, 446 N.W.2d at 110). But here, the ZO is not ambiguous with respect to short-term rentals.

Moreover, unlike the plaintiffs in *Tuscola Wind* and *Macenas*, Plaintiffs are not challenging a decision by a zoning board or a township board applying the zoning ordinance. Statements by the City Attorney at a town hall meeting or by the City's employees during depositions are not equivalent to interpretations by a "legislative body" or by "the officer or agency" charged with administration of the ZO. Indeed, the ZO gives the Zoning Administrator and the Zoning Board of Appeals authority to decide whether particular uses are consistent with the ZO. Plaintiffs have not pointed to any instances in which the City Council, the Zoning Administrator, or the Zoning Board of Appeals concluded that the ZO permitted short-term rentals in single-family dwellings.

*9 Furthermore, the statements by Watson, O'Donnell, and the City Attorney are not evidence of an administrative construction of the ZO "applied over an extended period." *Cf. Macenas*, 446 N.W.2d at 110. They recognize the City's past practice of not enforcing the ZO against short-term rentals, but that practice does not bind the City or this Court. *See Lyon Charter Twp.*, 896 N.W.2d at 481.

Plaintiffs cite other cases that rely on the same principle discussed in *Tuscola Wind*; those cases are distinguishable for similar reasons. *See Davis v. Bd. of Ed. for Sch. Dist. of River Rouge*, 280 N.W.2d 453, 454 (Mich. 1979) ("[T]he construction placed upon a statute by the agency legislatively chosen to administer it is entitled to great weight."); *Robinson v. City of Bloomfield Hills*, 86 N.W.2d 166 (Mich. 1957) (noting that the court's role is not to "substitute [its] judgment for that of the legislative body charged with the duty and responsibility in the premises"); *Sinelli v. Birmingham Bd. of Zoning App.*, 408 N.W.2d 412, 414 (Mich. Ct. App. 1987) ("A zoning board of appeals has the power to interpret the zoning ordinance which it must administer.... [C]ourts will consider and give weight to the construction of the ordinance by those administering the ordinance."). Neither Watson, O'Donnell, nor Curcio are or were legislative bodies or enforcement agencies who rendered opinions to which this Court must defer.

Plaintiffs also rely on Ordinance 237, in which the City Council created a permit requirement for short-term rentals. However, that ordinance did not purport to interpret the ZO. It simply states that compliance with "applicable zoning, construction, fire, and property maintenance codes" is a condition for a permit. (Ordinance 237, ECF No. 61-1, PageID.2352.) And as discussed above, the ZO is not ambiguous. Accordingly, Ordinance 237 is not an interpretation of the ZO to which the Court must defer.

III. CONCLUSION

In summary, Plaintiffs' arguments are not persuasive and do not warrant relief. Any procedural error by the Court has been rendered harmless. Further, a plain reading of the ZO indicates that it prohibited short-term rentals. Accordingly, the Court will deny Plaintiffs' motion for reconsideration because they have not shown that a different disposition of the case is warranted.

The Court will enter an order consistent with this Opinion.

All Citations

Not Reported in Fed. Supp., 2023 WL 179680

Footnotes

1 Citations to the record refer to the record in Case No. 1:21-cv-144.

2 Watson was the City Manager from 2014 to 2019. (Watson Dep., ECF No. 117-17, PageID.3732.)

3 Plaintiffs are correct that the R-3 district permits "apartment buildings" (Zoning Ordinance, PageID. 4818), and that such buildings typically contain rental units, which also involve commercial activity. *See* Apartment, Merriam Webster Dictionary, https://www.merriam-webster.com/dictionary/apartment (defining apartment as "a room or set of rooms ... usually leased as a dwelling."). However, the allowance of one type of commercial residential building in one residential district does not detract from the overall intent of the ZO to limit commercial activity in residential areas. That is especially true here because the apartment buildings were "intended to provide additional variety in *housing* opportunity and choices, and ... to provide affordable *housing.*" (Zoning Ordinance, PageID.4818 (emphases added).) In other words, the apartment buildings *support* residential activity; they were not intended for the temporary lodging that Plaintiffs' commercial activity provided.

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EXHIBIT 8

2023 WL 8651272
Only the Westlaw citation is currently available.
United States Court of Appeals, Sixth Circuit.

Joanne MOSKOVIC, et al., Plaintiffs - Appellants,
v.
CITY OF NEW BUFFALO, MICHIGAN, Defendant - Appellee.

No. 23-1165
FILED December 14, 2023

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

Attorneys and Law Firms

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Matthew Jason Zalewski, Melanie Margaret Hesano, Rosati Schultz Joppich & Amtsbuechler, Farmington Hills, MI, for Defendant - Appellee.

Before: GIBBONS, BUSH, and DAVIS, Circuit Judges.

OPINION

JOHN K. BUSH, Circuit Judge.

*1 The City of New Buffalo, Michigan (the City) restricted property owners from using properties within certain zoning districts as short-term rentals (STRs), that is, a rental of less than thirty consecutive days. The City first imposed a moratorium on issuing STR permits and then prohibited STRs within those districts entirely. Plaintiffs, who wish to use their properties as STRs, challenged the City's actions as unconstitutional and contrary to Michigan law. The district court granted summary judgment for the City on those claims, concluding that Plaintiffs lacked a protected property interest. For the reasons discussed below, we **AFFIRM** the district court.

I.

According to Plaintiffs, they purchased the properties here intending to use them as STRs. Each home fell within zoning districts—almost entirely the R-1, R-2, and R-3 zoning districts—that permitted single-family detached dwelling units. Until 2019,

the City's zoning ordinance did not specifically address STRs, although it banned all uses that it did not specifically authorize.

In April 2019, the City passed Ordinance 237. It required property owners who wished to use their homes as STRs to acquire a permit after satisfying certain prerequisites. But on May 18, 2020, the city council imposed a moratorium on the issuance of new STR permits, even if an applicant satisfied those prerequisites. Also, during the moratorium, the city council adopted Ordinance 248, which amended Ordinance 237 to add additional permitting requirements. Even though Plaintiffs eventually met these requirements, they did not apply for an STR permit until after the City had imposed the moratorium. Thus, they never received the requisite permit. The city council ultimately extended the moratorium until December 13, 2021.

On November 23, 2021, after government deliberations and public hearings, the city council adopted Zoning Ordinance 253, which generally banned STRs in R-1, R-2, and R-3 zoning districts, dating back to May 18, 2020. Zoning Ordinance 253 took effect on December 13, 2021. However, section 20-8 of Zoning Ordinance 253 allowed nonconforming STRs "that existed and were registered under Chapter 11 of the Code of Ordinances as of November 23, 2021" to continue their nonconforming use if they conformed with other regulations. Zoning Ordinance 253, R. 117-10, PageID 3690.

II.

In response to the moratorium, Plaintiffs sued the City in separate actions, which the district court later consolidated. In December 2021, Plaintiffs filed the operative complaint, which asserted (among other claims) that the City violated the Michigan Zoning Enabling Act (MZEA), Plaintiffs' substantive due process rights under the United States and Michigan Constitutions, and the takings clauses of those charters. The parties cross-moved for summary judgment in June 2022—the City on all counts and Plaintiffs on their substantive due process and equal protection claims. In October 2022, the district court granted partial summary judgment to Plaintiff 218 S. Bronson, LLC on its equal protection claim, but granted partial summary judgment to the City on all remaining claims. Plaintiffs moved for reconsideration of that order, which the district court denied. The district court then dismissed the consolidated actions, and Plaintiffs timely appealed.

III.

*2 We review a grant of summary judgment de novo. *Morgan v. Trierweiler*, 67 F.4th 362, 366 (6th Cir. 2023). Summary judgment is appropriate if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In this analysis, the court "must view all the evidence and draw all reasonable inferences in

the light most favorable to the non-moving party." *Rhinehart v. Scutt*, 894 F.3d 721, 735 (6th Cir. 2018) (citing *Anderson*, 477 U.S. at 255).

IV.

Plaintiffs appeal the district court's grant of summary judgment for the City on their substantive due process, regulatory takings, and MZEA claims.

A. Substantive Due Process Claims

Both the United States and Michigan Constitutions protect individuals from government deprivation of certain property interests without due process of law. U.S. Const. amend. XIV; Mich. Const. art. 1, § 17. Due process clauses implicate both procedure and substance. *EJS Props., LLC v. City of Toledo*, 698 F.3d 845, 855 (6th Cir. 2012). This appeal concerns only its substantive component.

"[S]ubstantive due-process claims raised in the context of zoning regulations require a plaintiff to show that ... a constitutionally protected property or liberty interest exists." *Id.* at 855 (internal quotation marks and citation omitted) (addressing a claim under the federal due process clause); *see Cummins v. Robinson Twp.*, 770 N.W.2d 421, 438 (Mich. Ct. App. 2009) (stating that Michigan's due process clause "is coextensive with its federal counterpart") (citing *People v. Sierb*, 581 N.W.2d 219, 221 (Mich. 1998)). The existence of a protected property interest here turns on state law, but "*federal constitutional law* determines whether that interest rises to the level of a legitimate claim of entitlement protected by the Due Process Clause." *EJS Props.*, 698 F.3d at 855–56 (internal quotation marks omitted) (quoting *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 757 (2005)). Plaintiffs argue that they had two protected property interests: (1) an interest in the nonconforming use of their properties as STRs and (2) an interest in receiving STR permits for which they applied. We address each below.

1. Do Plaintiffs have a protected property interest in the nonconforming use of their properties as STRs?

We first consider whether the City's original zoning ordinance (i.e., the ordinance in effect before Zoning Ordinance 253) permitted STRs, such that Plaintiffs possessed a vested right to their nonconforming use. Under Michigan law, a "prior nonconforming use is a vested right in the use of particular property that does not conform to zoning restrictions, but is protected because it lawfully existed before the zoning regulation's effective date." *Heath Twp. v. Sall*, 502 N.W.2d 627, 629 (Mich. 1993). "In other words, it is a lawful use that existed before the restriction, and therefore continues after the zoning regulation's enactment." *Id.* "Once a nonconforming use is established, a subsequently enacted zoning restriction, although reasonable, will not divest the property owner of the vested right." *Id.* The MZEA also guarantees a prior lawful nonconforming use. Mich. Comp. Laws Ann. § 125.3208(1) (West 2010).

To determine whether a prior lawful nonconforming use vested, we interpret the relevant zoning law using the rules of statutory construction. *Brandon Charter Twp.*

v. Tippett, 616 N.W.2d 243, 245 (Mich. Ct. App. 2000); *see Golf Vill. N. LLC v. City of Powell*, 826 F. App'x 426, 434 (6th Cir. 2020) (applying state statutory construction law to interpret a zoning ordinance). If the zoning ordinance's language "is clear and unambiguous, the courts may only apply the language as written." *Tippett*, 616 N.W.2d at 245.

*3 Under the zoning ordinance in effect before Zoning Ordinance 253,

> [a]ll land development specifically listed under the heading "Uses Permitted by Right" shall be allowed when determined to be in accordance with all provisions of this ordinance and all other applicable laws, regulations or ordinances having jurisdiction over the proposed use of land. *Where not specifically permitted, uses are prohibited*, unless construed to be similar to a use as expressly determined in accordance with Section 1-4G.

Zoning Ordinance § 1-4E, R. 121-2, PageID 5126 (emphasis added). We apply this ordinance first by determining whether an STR is specifically listed under "Uses Permitted by Right." It is not. Therefore, under the ordinance, we must determine whether an STR is similar to a property use that Section 1-4G expressly permits.

Section 1-4G provided a process for classifying uses not specifically mentioned under the "Uses Permitted by Right" heading. *Id.* § 1-4G, R. 121-2, PageID 5126–27. Under this heading, the City's original zoning ordinance permitted owners to use properties in R-1, R-2, and R-3 zoning districts as "[s]ingle-family detached dwelling units." Zoning Ordinance Arts. 6-8, R. 120-4, Page ID 4814–20. The original zoning ordinance defined "dwelling," "single-family dwelling," and "family" as follows:

> DWELLING — A detached building or portion thereof designed or used exclusively as the home, residence or sleeping place of one or more persons, not including accessory buildings or structures, either attached or detached.
>
> ...
>
> DWELLING, SINGLE-FAMILY — A detached building, designed for or occupied exclusively by one family.
>
> ...
>
> FAMILY —
>
> A. An individual or group of two or more persons related by blood, marriage, or adoption, together with foster children and servants of the principal occupants who are domiciled together as a single housekeeping unit in a dwelling unit; or

> B. A collective number of individuals domiciled together in one dwelling unit whose relationship is of a continuing, non-transient domestic character and who are cooking and living as a single nonprofit housekeeping unit. This definition shall not include any society, club, fraternity, sorority, association, half-way house, lodge, coterie, organization, group of students, or other individual whose domestic relationship is of a transitory or seasonal nature, is for an anticipated limited duration of school term or during a period of rehabilitation or treatment, or is otherwise not intended to be of a permanent nature.

Zoning Ordinance § 2-3, R. 120-4, Page ID 4775–4776. Plaintiffs contend that using their properties as STRs reflects this permitted use because (1) "dwelling" does not prohibit temporary occupancy of the structure, (2) each contested property is designed to be occupied by a single family, and (3) "domicile" as used in the definition of "family" does not necessarily include a permanent occupancy requirement.

In its order on the motion to reconsider, [1] the district court concluded that STRs fail to meet this permitted use because the original zoning ordinance required property owners to use properties within the R-1, R-2, and R-3 zoning districts as domiciles, as reflected in the definition of "family," and residentially, [2] not commercially. The original zoning ordinance defined neither "domicile" nor "residential." But Michigan courts define "domicile" as "the place where a person has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning." *Grange Ins. Co. of Mich. v. Lawrence*, 835 N.W.2d 363, 372 (Mich. 2013) (internal quotation marks and citation omitted). And Michigan courts have defined "residence" in STR contexts as "exclud[ing] uses of a transitory nature." *Concerned Prop. Owners of Garfield Twp., Inc. v. Charter Twp. of Garfield*, No. 342831, 2018 WL 5305235, at *3 (Mich. Ct. App. Oct. 25, 2018) (citing ***O'Connor*** *v. Resort Custom Builders, Inc.*, 591 N.W.2d 216, 220–221 (Mich. 1999)). The inherent transitory nature of STRs means that their occupants do not use them as domiciles or residentially under these definitions, so the original zoning ordinance's text alone excludes STRs as permitted uses in R-1, R-2, and R-3 zoning districts. [3]

*4 Notwithstanding this textual prohibition, Plaintiffs argue that the City issued 93 STR permits in the R-1, R-2, and R-3 zoning districts under Ordinances 237 and 248, which shows that the City interpreted the original zoning ordinance to permit STRs in these districts. But those ordinances require a permit to use a property as an STR, and it is undisputed that Plaintiffs never received any of those 93 permits. Thus, although Ordinances 237 and 248 allowed owners to use their properties as STRs with a permit, Plaintiffs never received a permit to vest their right to use their properties as STRs.

The district court therefore correctly interpreted the original zoning ordinance: it prohibited all uses that it did not expressly permit. And using the contested properties as STRs without a permit was not a permitted use. As a result, Plaintiffs lacked a protected property interest in the nonconforming use of their properties as STRs. [4]

2. Do Plaintiffs have a protected property interest in receiving STR permits for which they applied?

Plaintiffs also argue that they possessed a substantive due process right to receive permits for which they applied, because Ordinances 237 and 248 required the City to issue an STR permit if the applicant complied with the permitting requirements. Ordinance 237 § 11-4C, R. 13-2, PageID 312 (stating that "a short-term rental unit permit shall be granted" if applicants complied with regulatory requirements); Ordinance 248 § 11-3(D), R. 41-7, PageID 1200 (same). But first-time applicants for a permit lack a protected property interest in that permit. *Wojcik v. City of Romulus*, 257 F.3d 600, 609–10 (6th Cir. 2001) (explaining that, under Michigan law, first-time applicants for liquor licenses and entertainment permits lack a constitutionally protected property interest to support a substantive due process claim); *Women's Med. Pro. Corp. v. Baird*, 438 F.3d 595, 611 (6th Cir. 2006) (concluding that a first-time applicant for a medical license lacked a "property or liberty interest in [that] license"), *abrogated in part on other grounds by Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

Plaintiffs argue that *Wojcik* and *Baird* are inapposite because they involved discretionary permitting schemes, whereas the STR permitting scheme here mandated that the City issue an STR permit once a property owner satisfied its prerequisites. [5] But *Wojcik* and *Baird* do not discuss discretion; instead, they turn on whether a property owner already held a license. *Wojcik*, 257 F.3d at 609–10; *Baird*, 438 F.3d at 611. And Plaintiffs never applied for STR permits until after the City had imposed the moratorium. *See, e.g.*, Skoczylas Aff., R. 118-2, PageID 4212 (stating that her family applied for an STR permit in "late January 2021"). Because they waited until after the moratorium was in place to apply for STR permits, Plaintiffs lacked "a legitimate claim of entitlement" to the permits to create a protected property interest in them. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972); *Silver v. Franklin Twp. Bd. of Zoning Appeals*, 966 F.2d 1031, 1036 (6th Cir. 1992) (concluding that, when the government body could deny a conditional zoning certificate even if the applicant met mandatory requirements, the applicant lacked a justifiable expectation to receive the certificate). The moratorium enabled the City to reject permits, notwithstanding the permitting scheme established by Ordinances 237 and 248, so Plaintiffs did not have a protected property interest in receiving STRs permits when they applied.

B. Other Claims

*5 Plaintiffs also appeal the district court's grant of summary judgment for the City on their regulatory takings and MZEA claims. Plaintiffs contend that (1) Zoning Ordinance 253 constituted a regulatory taking because it transformed their conforming use into a nonconforming use through prohibiting STRs and (2) section 20-8 of Zoning Ordinance 253 violated the MZEA by retroactively divesting them of a vested right to use their properties as STRs. Like their substantive due process claims, however, these claims fail because Plaintiffs did not establish that the City deprived them of a vested property interest. *McCarthy v. Middle Tenn. Elec. Membership Corp.*, 466 F.3d 399, 412 (6th Cir. 2006) ("[D]ue process and takings claims require that the plaintiffs first demonstrate that they have a legally cognizable property interest."); *Twp. of Indianfields v. Carpenter*, No. 350116, 2020 WL 4249168, at *7 (Mich. Ct. App. July 23, 2020) (recognizing that zoning ordinances "may not destroy already-vested property interests" retroactively). Thus, the district court correctly granted summary judgment for the City on Plaintiffs' takings and MZEA claims.

V.

In sum, Plaintiffs lacked a protected property interest in using their homes as STRs, so their substantive due process, regulatory takings, and MZEA claims fail. We therefore **AFFIRM** the judgment of the district court.

All Citations

Not Reported in Fed. Rptr., 2023 WL 8651272

Footnotes

1 Plaintiffs did not specifically make the text-based argument described above until their motion to reconsider, so the City argues that Plaintiffs waived it on appeal. The "traditional rule" for addressing on appeal precise issues not raised below is that once "a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995). Plaintiffs have consistently claimed that they possess a vested right to use their properties as STRs before the adoption of Zoning Ordinance 253, so they did not waive this issue.

2 The stated purpose for each of these zoning districts is residential use. *Tippett*, 616 N.W.2d at 245 (stating that courts follow the rules of statutory construction "to give effect to the legislative body's intent").

3 Plaintiffs argue that adopting the district court's reasoning would erroneously omit "cabins, cottages, lake house, and other non-homestead properties in the city" from the Zoning Ordinance. Appellants' Br. at 40. But the Supreme Court of Michigan has more broadly defined "residence" as having "a permanent presence" rather than permanent occupancy, which would include those non-homestead properties. ***O'Connor** v. Resort Custom Builders, Inc.*, 591 N.W.2d 216, 221 (Mich. 1999). For that same reason, the commercial use provided

for R-3 apartment rentals also fits within the Michigan Supreme Court's definition of "residence."

4 Plaintiffs cite testimony from the City Attorney and the City Manager, who also served as the Zoning Administrator and stood as the City's Rule 30(b)(6) deponent, expressing opinions that the original zoning ordinance permitted STRs. But those city officials' limited authority precludes their testimony from contravening what the original zoning ordinance's text provides. *See* City Charter § 4.5(b), R. 117-8, PageID 3640 (in the section defining the City Attorney's function and duties, failing to expressly authorize him to issue legal opinions that bind the City); *Mays v. LaRose*, 951 F.3d 775, 790 (6th Cir. 2020) ("Most courts don't treat concessions by Rule 30(b)(6) designees as binding.").

5 Plaintiffs refer to cases generally stating that an applicant would have a protected interest if they "complied with certain minimum, mandatory requirements." *Silver v. Franklin Twp. Bd. of Zoning Appeals*, 966 F.2d 1031, 1036 (6th Cir. 1992); *accord Triomphe Invs. v. City of Northwood*, 49 F.3d 198, 202-03 (6th Cir. 1995); *G.M. Eng'rs & Assocs., Inc. v. W. Bloomfield Twp.*, 922 F.2d 328, 331 (6th Cir. 1990). But Plaintiffs identify no on-point, binding authority establishing that first-time applicants under a non-discretionary permitting scheme possess a vested right to receive the permit sufficient to establish a substantive due process claim.

End of Document

EXHIBIT 9

513 Mich. 898
Supreme Court of Michigan.

Lindsey DEZMAN and Jon Geiger, Plaintiffs-Appellees,
v.
CHARTER TOWNSHIP OF BLOOMFIELD and Charter Township of Bloomfield Board of Zoning Appeals, Defendants-Appellants.

SC: 165878
COA: 360406
November 22, 2023

Oakland CC: 2021-190703-AV

Order

On order of the Court, the application for leave to appeal the June 1, 2023 judgment of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals holding that the plaintiffs were not required to seek a variance and permission to keep chickens in a chicken coop on their property. The zoning ordinance stated what activities are permitted at the one-family detached dwelling on plaintiffs' property: accessory uses and accessory structures customarily incidental to one-family detached dwellings. Zoning Ordinance § 42-3.1.3(B)(i) and (vi). "Under the ordinance which specifically sets forth permissible uses under each zoning classification ... absence of the specifically stated use must be regarded as excluding that use." *Pittsfield Twp v Malcolm*, 375 Mich. 135, 142, 134 N.W.2d 166 (1965). We REMAND this case to the Court of Appeals for consideration of whether the Oakland Circuit Court erred in affirming the decision of the Charter Township of Bloomfield Zoning Board of Appeals to deny the plaintiffs' request to keep chickens in a chicken coop on their property.

We do not retain jurisdiction.

All Citations

513 Mich. 898, 997 N.W.2d 42 (Mem)

EXHIBIT 10

Pigeon v. Ashkay Island, LLC

Court of Appeals of Michigan. • January 28, 2021 • Not Reported in N.W. Rptr. • 2021 WL 299329 (Approx. 5 pages)

2021 WL 299329

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED

Court of Appeals of Michigan.

Jeffrey PIGEON, Greg Berkley, Blandis Family Living Trust, Deborah Blackmore, Fred Blackmore, Jr., John F. Burnison, Kevin Culkowski, Nancy Culkowski, Jonathan Doyle, Frank E. Duncan, John W. Garrett, Deborah E. Garrett, John Mason Himich, Melia Himich, Timothy H. Kohler, Karen Kraus, William H. Kraus, Charles A. Kumnick, Christina Kumnick, Linda L. Moore Living Trust, Mary J. Mawby, Thomas E. Mawby, Dawn I. Moore, Gordon L. Moore, Sandra S. Moore, Wayne L. Moore, Antoni Oldakowski, Mark Oldakowski, Rozalia Oldakowski, Harry Sabourin, Susan Sabourin, Douglas Ray Sexton, Jr., Geraldine Sexton, Donald J. Sparks, Stephen Trammell, Brooke Wilbanks, and Jack J. Wilhelm, Plaintiffs/Counter-Defendants-Appellants,

and

Randall F. Dieter, Plaintiff/Counter-Defendant,

v.

ASHKAY ISLAND, LLC, Defendant/Counter-Plaintiff-Appellee.

No. 351235

January 28, 2021

Washtenaw Circuit Court, LC No. 18-000070-CZ

Before: Shapiro, P.J., and Sawyer and Beckering, JJ.

Opinion

Per Curiam.

*1 Plaintiffs' suit primarily alleges that defendant is conducting rental activity on its property in violation of the Manchester Township Zoning Ordinance (MTZO). The trial court denied plaintiffs' motion for summary disposition of that claim and granted summary disposition to defendant under MCR 2.116(I)(2) (nonmoving party entitled to judgment). Plaintiffs appeal that decision by leave granted. [1] Manchester Township filed an amicus brief in support of plaintiffs' argument on appeal. For the reasons stated in this opinion, we reverse.

I. BACKGROUND

Defendant is owned by Andrew and Nicole Bobo. At some point, the Bobos purchased a 70-acre parcel in Manchester Township. Much of the parcel is covered by Iron Mill Pond, an artificial, private lake which contains an eight-acre island (Ashkay Island). In 2014, the Bobos received a permit to build a "seasonal use cabin" on Ashkay Island. They then advertised the cabin, which the parties refer to as a house, for short-term rentals. In 2016, the Bobos conveyed the property to defendant via quit claim deed.

Plaintiffs are owners of real property that borders Iron Mill Pond. In January 2018, they sued defendant alleging that its use of Ashkay Island "as a resort, with short term rental of the house," violated the MTZO and constituted a nuisance per se as well as a private nuisance. Ashkay Island is located in the Rural Agricultural Zoning District (AR District), and plaintiffs alleged that defendant's use of the property as a vacation rental did not fall within any of the AR District's permitted uses. Plaintiffs requested an order enjoining defendant from operating a resort on its property. Plaintiffs filed an amended complaint asserting additional claims of breach of easement, quiet title, and adverse possession. [2]

In October 2018, plaintiffs moved for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact) on their claim of nuisance per se. Plaintiffs stated that the operative facts were undisputed: after the house on Ashkay Island was built it was advertised for short-term rentals, and the Bobos did not reside in the house. Plaintiffs argued that, under the MTZO, transient lodging was not permitted in the AR District. They relied on caselaw indicating that short-term rentals were inconsistent with a "single family dwelling."

In response, defendant argued that its use of the house satisfied the MTZO's definition of a single-family dwelling, which is permitted in the AR District. Specifically, defendant contended that the house was

residential in nature and that it was designed for, and used or held ready for use by, one family. Defendant presented the affidavit of Andrew Bobo who averred that he built the house for use by his family and for renters to use when his family was not using it. According to Andrew, there had only been four instances between May 2016 and October 2018 in which the renters of the house were not a "family" as defined by the MTZO. Andrew further stated that he would no longer rent the house to any group of unrelated persons.

*2 The trial court held a hearing on plaintiffs' motion and took the motion under advisement. The parties thereafter filed supplemental briefs in which they reiterated their arguments. After a second motion hearing, the trial court again took the motion under advisement, and later entered an order denying plaintiffs' motion for summary disposition and granting summary disposition to defendant on plaintiffs' claim of nuisance per se. The order provided in pertinent part:

> The Court finds that the rental of the said dwelling from time to time, for determinable periods of time, to one [1] single family, whether it is or not the same or a different family, is a permitted use under said Ordinance because that Ordinance does not require occupancy by a family for any stated or limited period of time. Therefore, the rental to different families from time to time is not prohibited by said Ordinance.

The trial court denied plaintiffs' motion for reconsideration.

II. ANALYSIS

Plaintiffs argue that the trial court erred by denying their motion for summary disposition of the nuisance-per-se claim. We agree. [3]

A use of land or a dwelling, building, or structure in violation of a zoning ordinance is a nuisance per se. MCL 125.3407. A private citizen may bring an action to abate a nuisance "arising from the violation of zoning ordinances or otherwise[ ] when the individuals can show damages of a special character distinct and different from the injury suffered by the public generally." *Towne v. Harr*, 185 Mich. App. 230, 232; 460 N.W.2d 596 (1990).

A zoning ordinance is interpreted in accordance with the rules of statutory interpretation. *Brandon Charter Twp. v. Tippett*, 241 Mich. App. 417, 422; 616 N.W.2d 243 (2000). "When construing the provisions of a zoning ordinance, this Court seeks to discover and give effect to the legislative intent." *High v. Cascade Hills Country Club*, 173 Mich. App. 622, 626; 434 N.W.2d 199 (1988). "A zoning

ordinance must be construed reasonably with regard both to the objects sought to be attained and to the general structure of the ordinance as a whole." *Fass v. Highland Park*, 320 Mich. 182, 186; 30 N.W.2d 828 (1948).

Under the MTZO, a single-family dwelling is a permitted use in the AR District. The parties disagree whether the house on Ashkay Island, because it is rented out by defendant only to individual families, constitutes a single-family dwelling. The parties focus on the following definitions found in the MTZO:

> **Dwelling**: Any building, or part thereof, containing sleeping, kitchen, and bathroom facilities designed for and occupied by one family....
>
> * * *
>
> **Dwelling, One-Family Or Single-Family**: An independent, detached residential dwelling designed for and used or held ready for use by one (1) family only. Single-family dwellings are commonly the only principal use on a parcel or lot.
>
> * * *
>
> **Family**: One (1) or more persons related by blood, bonds of marriage, or legal adoption, plus up to a total of three (3) additional persons not so related who are either domestic servants or gratuitous guests, occupying a single dwelling unit and living as a single nonprofit housekeeping unit[.]
>
> [*3] A collective number of individuals living together in one dwelling unit, whose relationship is of a continuing non-transient domestic character, and who are cooking as a single nonprofit housekeeping unit. This definition shall not include any society, club, fraternity, sorority, association, lodge, coterie, or group of transitory or seasonal nature or for a limited duration of a school term or terms of other similar determinable period.

According to plaintiffs, the key word in the MTZO's definition of a "dwelling, one-family or single family," is "residential." They cite caselaw indicating that a "residence," at least for purposes of restrictive covenants, is a place where someone lives or has a permanent presence. See e.g., *Eager v. Peasley*, 322 Mich. App. 174, 189; 911 N.W.2d 470 (2017). Plaintiffs argue that because renters are not residents of the house on Ashkay Island, defendant's property is not being used as a single-family dwelling. Defendant counters that the MTZO does not contain any requirement regarding how long a family must live in a dwelling, and argues that renting the house to one family (as that word is defined by the MTZO) at a time satisfies

the requirement that the dwelling be "used or held for use by one [1] family only."

We need not resolve the parties' competing interpretations of what constitutes a single-family dwelling, however, because we agree with the Township that defendant's use of the house meets the definition a "tourist home," which is not permitted in the AR District. A tourist home is defined as follows: "A dwelling in which overnight accommodations are provided or offered to transient guests for compensation. A tourist home shall not be considered or construed to be a multiple dwelling, motel, hotel, boarding or rooming house." Tourist homes are permitted only in the Community Commercial Center Zoning District (CC District).

The house on Ashkay Island is a dwelling that is being rented overnight to transient guests for compensation. Defendant asserts that the house is not a tourist home because the guests are not provided overnight accommodations. Defendant does not elaborate on that assertion, however, and "[a] party cannot simply ... announce a position and then leave it to this Court to discover and rationalize the basis for [its] claims ...." *Mitchell v. Mitchell*, 296 Mich. App. 513, 524; 823 N.W.2d 153 (2012) (quotation marks and citation omitted). In any event, defendant is undoubtedly providing overnight accommodations as the renters are given exclusive occupation of the house along with numerous other amenities such as the use of the boats on the property. Accordingly, defendant is using the house as a tourist home.

Section 4.03A of the MTZO provides that "[u]ses shall be permitted [in a District] only if they are specifically listed herein." Because tourist homes are permitted only in the CC District, they are necessarily prohibited in the other districts, including the AR District where Ashkay Island is located. See *Pittsfield Twp. v. Malcom*, 375 Mich. 135, 142; 134 N.W.2d 166 (1965) ("Under [an] ordinance which specifically sets forth permissible uses under each zoning classification, ... absence of the specifically stated use must be regarded as excluding that use."); *Independence Twp. v. Skibowski*, 136 Mich. App. 178, 184; 355 N.W.2d 903 (1984) ("A permissive format states the permissive uses under the [zoning] classification, and necessarily implies the exclusion of any other non-listed use."). Therefore, defendant is violating the MTZO by operating a tourist home in the AR District. Plaintiffs are entitled to summary disposition of their nuisance-per-se claim. [4]

*4 Reversed and remanded for further proceedings consistent with this opinion. Plaintiffs, as the prevailing party, may tax costs. MCR 7.219(A). We do not retain jurisdiction.

All Citations

Not Reported in N.W. Rptr., 2021 WL 299329

Footnotes

1 *Pigeon v. Ashkay Island LLC*, unpublished order of the Court of Appeals, entered March 10, 2020 (Docket No. 351235).

2 The additional claims, as well as defendant's counterclaim, are not relevant to the zoning issue and therefore will not be discussed.

3 We review de novo a trial court's decision on a motion for summary disposition. See *Maiden v. Rozwood*, 461 Mich. 109, 118; 597 N.W.2d 817 (1999). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v. Gen. Motors Corp.*, 469 Mich. 177, 183; 665 N.W.2d 468 (2003). We also review de novo the interpretation of a zoning ordinance. *Brandon Charter Twp. v. Tippett*, 241 Mich. App. 417, 421; 616 N.W.2d 243 (2000).

4 Plaintiffs and the Township rely on ***Reaume*** *v. Twp. of* ***Spring*** *Lake*, --- Mich. ---- (2020) (Docket No. 159874), in which the Supreme Court affirmed our holding that the plaintiff's use of a home as a short-term rental did not constitute a "dwelling" under the zoning ordinance because it met the ordinance's definition of a "motel." Although *Reaume* presents somewhat similar facts, we agree with defendant that the case is not controlling given the textual differences between the zoning ordinances. For example, in *Reaume* the zoning ordinance's definition of "dwelling" allowed for temporary occupation but expressly excluded "[m]otels or tourist rooms." ***Reaume*** *v. Twp. of* ***Spring*** *Lake*, 328 Mich. App. 321, 332; 937 N.W.2d 734 (2019), vacated in part --- Mich. ----. The ordinance in *Reaume* did not define tourist room, *id.* at 333, nor was there any reference to a tourist *home*. Because our goal is to discern the intent behind the MTZO, the interpretation of a similar, yet substantially different, ordinance does not aid our analysis.

End of Document

EXHIBIT 11

Park Township Zoning Ordinance (2018-03)

Effective August 26, 2018

Definition for "Single-Family Dwelling"

CORNER LOT
A lot located at the intersection of two or more public streets, private roads, or combination of public streets and private roads, where the corner interior angle formed by the intersection of the streets, and/or roads, is 135° or less or a lot abutting upon a curved street, and/or road, if tangents to the curve, at the two points where the lot lines meet the curve, form an interior angle of 135° or less.

DOCK
Any structure, whether permanent or removable, that extends from the shoreline into a lake, river or stream and to which one or more boats or other watercraft may be docked or moored.

DWELLING
Any building or portion of a building that is occupied in whole or in part as a home or residence, either permanently or temporarily, by one or more families, but not including motels, hotels, resorts, tourist rooms or cabins. Subject to compliance with the requirements of Section 38-507, a mobile home shall be considered to be a dwelling.

MULTIFAMILY — A building designed for use and occupancy by three or more families.

SINGLE-FAMILY — A building designed for use and occupancy by one family only.

TWO-FAMILY — A building designed for use and occupancy by two families only.

DWELLING UNIT
A building, or a portion of a building, with one or more rooms, including bathroom, kitchen, and sleeping facilities, connected together in a manner designed and maintained as a self-contained unit for residential occupancy by one or more people living as a single housekeeping unit.

FAMILY
One or more persons occupying a single dwelling unit and using common cooking facilities; provided, however, that unless members are related by blood, marriage or adoption, no such family shall contain more than five persons.

FLOOR AREA
The gross floor area of all floors of a building or an addition to an existing building. For all office buildings and for any other building, except dwelling units, where the principal use thereof shall include the basement, the basement floor area shall be included except that part thereof which contains heating and cooling equipment and other basic utilities.

Park Township Zoning Ordinance (2018-02)

Effective July 27, 2018

Definition for "Single-Family Dwelling"

may be docked or moored.

DWELLING

Any building or portion of a building that is occupied in whole or in part as a home or residence, either permanently or temporarily, by one or more families, but not including motels, hotels, resorts, tourist rooms or cabins. Subject to compliance with the requirements of Section **38-507**, a mobile home shall be considered to be a dwelling.

MULTIFAMILY — A building designed for use and occupancy by three or more families.

SINGLE-FAMILY — A building designed for use and occupancy by one family only.

TWO-FAMILY — A building designed for use and occupancy by two families only.

DWELLING UNIT

A building, or a portion of a building, with one or more rooms, including bathroom, kitchen, and sleeping facilities, connected together in a manner designed and maintained as a self-contained unit for residential occupancy by one or more people living as a single housekeeping unit.

FAMILY

One or more persons occupying a single dwelling unit and using common cooking facilities; provided, however, that unless members are related by blood, marriage or adoption, no such family shall contain more than five persons.

FLOOR AREA

The gross floor area of all floors of a building or an addition to an existing building. For all office buildings and for any other building, except dwelling units, where the principal use thereof shall include the basement, the basement floor area shall be included except that part thereof which contains heating and cooling equipment and other basic utilities.

GREENBELT

An undeveloped or natural area, which may only be improved with landscaping and/or nature trails.

GROSS SITE ACREAGE

The total area in acres in any PUD that is determined according to the requirements of Section 38-367 (2) a. and that may include road right-of-way if the legal description for the land includes the road right-of-way.

Park Township Zoning Ordinance

Effective September 5, 2003

Definition for "Single-Family Dwelling"

SECTION 3.13 DWELLING.

Any building or portion of a building that is occupied in whole or in part as a home or residence, either permanently or temporarily, by one or more families, but not including motels, hotels, resorts, tourist rooms or cabins. Subject to compliance with the requirements of Section 4.29, a mobile home shall be considered to be a dwelling.

(a) Dwelling, Single-Family - A building designed for use and occupancy by one (1) family only.

(b) Dwelling, Two-Family - A building designed for use and occupancy by two (2) families only.

(c) Dwelling, Multi-Family - A building designed for use and occupancy by three (3) or more families.

Section 4. Deletion of Section 3.14. Section 3.14 of the Park Township Zoning Ordinance, Dwelling Unit, shall be deleted and Section 3.14 shall be reserved for future use.

Section 5. Addition of Section 3.18A. Section 3.18A, Hotel, shall be added to the Park Township Zoning Ordinance, to be located after Section 3.18, and shall state in its entirety as follows:

SECTION 3.18A HOTEL.

A commercial establishment that offers lodging accommodations and additional services, such as restaurants, meeting rooms, entertainment, or recreational facilities, to transient guests in return for payment. Access to the lodging facilities is generally from indoor corridors.

Section 6. Amendment to and Restatement of Section 3.27. Section 3.27 of the Park Township Zoning Ordinance, Motel, shall be amended and restated in its entirety as follows:

SECTION 3.27 MOTEL.

A commercial establishment consisting of a building or group of buildings on the same lot, whether detached or in connected rows, which offers lodging accommodations and sleeping rooms to transient guests in return for payment. Access to the lodging facilities is generally from the outside.

Section 7. Addition of Section 3.35A. Section 3.35A, Resort, shall be added to the Park Township Zoning Ordinance, to be located after Section 3.35, and shall state in its entirety as follows:

Park Township Zoning Ordinance

Effective February 7, 1974

Definition for "Single-Family Dwelling"

(e) Name Plate--A structure affixed flat against the wall of a building which serves solely to designate the name or the name and profession or business occupation of a person or persons occupying the building.

SECTION 3.08 BUILDING. Anything which is constructed or erected, including a mobile home, having a roof supported by columns, walls, or other supports, which is used for the purpose of housing or storing of persons, animals, or personal property or carrying on business activities or other similar uses.

SECTION 3.09 BUILDING HEIGHT. The vertical distance measured from the top of the main or ground level foundation wall, whichever is lowest, to the highest point of the roof surface of flat roofs, to the deck of mansard roofs, and to the mean height level between eaves and ridge of gable, hip and gambrel roofs.

SECTION 3.10 BUILDING SETBACK. The measurement from the property line to the nearest point of the main wall of the building or structure. Steps may be located within the building setback. Porches are considered as part of the building or structure and may not be located within the building setback.

SECTION 3.11 CORNER LOT. A lot located at the intersection of two (2) or more streets where the corner interior angle formed by the intersection of the streets is one hundred thirty-five (135°) degrees or less or a lot abutting upon a curved street or streets if tangents to the curve, at the two (2) points where the lot lines meet the curve, form an interior angle of one hundred thirty-five (135°) degrees or less.

SECTION 3.12 COMMON OPEN SPACE. Any area or space other than required yard areas which is unobstructed and unoccupied by buildings, structures, roads, or other man-made objects and is readily accessible to all those for whom it is required.

SECTION 3.13 DWELLING. Any building or portion thereof which is occupied in whole or in part as a home, residence, or sleeping place, either permanently or temporarily, by one or more families, but not including motels, hotels, tourist rooms or cabins, or mobile homes.

(a) Dwelling, Single-Family--A building designed for use and occupancy by one (1) family only.

(b) Dwelling, Two-Family--A building designed for use and occupancy by two (2) families only.

(c) Dwelling, Multi-Family--A building designed for use and occupancy by three (3) or more families.

SECTION 3.14 DWELLING UNIT. One (1) room or suite or two (2) or more rooms designed for use or occupancy by one (1) family for living and sleeping purpose with housekeeping facilities.

SECTION 3.15 FAMILY. One (1) or more persons occupying a single dwelling unit and using common cooking facilities; provided, however, that unless all members are related by blood or marriage, no such family shall contain more than five (5) persons.

SECTION 3.16 FLOOR AREA. The gross floor area of all floors of a building or an addition to an existing building. For all office buildings and for any other building, except dwelling units, where the principal use thereof shall include the basement, the basement floor area shall be included except that part thereof which contains heating and cooling equipment and other basis utilities.

SECTION 3.17 GROSS USABLE ACRE. The total area per acre in any PUD District which is suitable for development (i.e., excluding areas of swamps, steep slopes, or other natural or man-made limitations which preclude or limit development).

SECTION 3.18 HOME OCCUPATION. A gainful occupation traditionally or customarily carried on in the home as a use incidental to the use of the home as a dwelling place. Home occupations may include any profession, vocation, or trade, but shall not include beauty shops, barber shops, nursery schools caring for more than three (3) children, photographic studios, restaurants, retail sales, or vehicle repairs.

Park Township Zoning Ordinance (2018-03)

Effective August 26, 2018

Definition for "Motel"

MOBILE HOME SUBDIVISION
A mobile home park except that the mobile home lots are subdivided, surveyed, recorded, and sold in accordance with Public Act No. 288 of 1967 (MCL 560.101 et seq.).

MOTEL
A commercial establishment consisting of a building or group of buildings on the same lot, whether detached or in connected rows, which offers lodging accommodations and sleeping rooms to transient guests in return for payment. Access to the lodging facilities is generally from the outside.

MOTOR VEHICLE
Every vehicle that is self-propelled.

NET BUILDABLE ACREAGE
The area in acres in any PUD that is determined according to the requirements of Section 38-367 (2).

NONCOMMERCIAL ORGANIZATION
An organization which does not produce an income for any person; a nonprofit organization which raises funds for itself and which has 15 or more stockholders or members shall be considered a noncommercial organization.

NURSING HOME
A facility licensed under Public Act No. 368 of 1978 (MCL 333.1101 et seq.).

OWNERSHIP INTEREST
A proprietary interest in land which confers certain rights and responsibilities, held by any individual, firm, association, syndicate, partnership, or corporation.

OUTDOOR POND
Any outdoor body of standing water accumulated in a natural or artificially constructed basin or depression in the earth, either above or below or partly above or partly below grade, capable of holding water to a depth of greater than two feet when filled to capacity.

PARKING AREA, SPACE OR LOT
An off-street open area, the principal use of which is for the parking of automobiles, whether for compensation or not, or as an accommodation to clients, customers, visitors or employees. The term "parking area" includes access drives within the actual parking area. For purposes of this definition, and as used throughout this chapter, the term "off-street," when related to off-street parking requirements, includes both public streets and private roads, thereby requiring the parking area to be located off both public streets and private roads.

PARKING BAY
A hard surface area adjacent and connected to, but distinct from a street or

Park Township Zoning Ordinance (2018-02)

Effective July 27, 2018

Definition for "Motel"

power or a vehicle moved on or drawn by another vehicle.

DOUBLE WIDE — A combination of two mobile homes designed and constructed to be connected along the longitudinal axis, thus providing double the living space of a conventional single wide unit without duplicating any of the service facilities such as kitchen equipment or furnace.

SINGLE WIDE — A mobile home with longitudinal width of no greater than 14 feet for its full length.

MOBILE HOME COMMISSION ACT
The Michigan Public Act No. 96 of 1987 (MCL 125.2301 et seq.), or other similar successor statute having similar licensing jurisdiction.

MOBILE HOME LOT
A measured parcel of land within a mobile home park which is delineated by lot lines on a final development plan and which is intended for the placement of a mobile home and the exclusive use of the occupants of such mobile home.

MOBILE HOME PAD
That portion of a mobile home lot reserved for the placement of a mobile home, appurtenant structures, or additions.

MOBILE HOME PARK
A parcel of land under single ownership which has been planned and improved for the placement of mobile homes on a rental basis for nontransient use.

MOBILE HOME SUBDIVISION
A mobile home park except that the mobile home lots are subdivided, surveyed, recorded, and sold in accordance with Public Act No. 288 of 1967 (MCL 560.101 et seq.).

MOTEL
A commercial establishment consisting of a building or group of buildings on the same lot, whether detached or in connected rows, which offers lodging accommodations and sleeping rooms to transient guests in return for payment. Access to the lodging facilities is generally from the outside.

MOTOR VEHICLE
Every vehicle that is self-propelled.

NET BUILDABLE ACREAGE
The area in acres in any PUD that is determined according to the requirements of Section 38-367 (2).

NONCOMMERCIAL ORGANIZATION
An organization which does not produce an income for any person; a nonprofit

Park Township Zoning Ordinance

Effective September 5, 2003

Definition for "Motel"

SECTION 3.13 DWELLING.

Any building or portion of a building that is occupied in whole or in part as a home or residence, either permanently or temporarily, by one or more families, but not including motels, hotels, resorts, tourist rooms or cabins. Subject to compliance with the requirements of Section 4.29, a mobile home shall be considered to be a dwelling.

(a) Dwelling, Single-Family - A building designed for use and occupancy by one (1) family only.

(b) Dwelling, Two-Family - A building designed for use and occupancy by two (2) families only.

(c) Dwelling, Multi-Family - A building designed for use and occupancy by three (3) or more families.

Section 4. Deletion of Section 3.14. Section 3.14 of the Park Township Zoning Ordinance, Dwelling Unit, shall be deleted and Section 3.14 shall be reserved for future use.

Section 5. Addition of Section 3.18A. Section 3.18A, Hotel, shall be added to the Park Township Zoning Ordinance, to be located after Section 3.18, and shall state in its entirety as follows:

SECTION 3.18A HOTEL.

A commercial establishment that offers lodging accommodations and additional services, such as restaurants, meeting rooms, entertainment, or recreational facilities, to transient guests in return for payment. Access to the lodging facilities is generally from indoor corridors.

Section 6. Amendment to and Restatement of Section 3.27. Section 3.27 of the Park Township Zoning Ordinance, Motel, shall be amended and restated in its entirety as follows:

SECTION 3.27 MOTEL.

A commercial establishment consisting of a building or group of buildings on the same lot, whether detached or in connected rows, which offers lodging accommodations and sleeping rooms to transient guests in return for payment. Access to the lodging facilities is generally from the outside.

Section 7. Addition of Section 3.35A. Section 3.35A, Resort, shall be added to the Park Township Zoning Ordinance, to be located after Section 3.35, and shall state in its entirety as follows:

Park Township Zoning Ordinance

Effective February 7, 1974

Definition for "Motel"

SECTION 3.19 JUNKYARD. A place where junk, waste, or discarded or salvaged materials are bought, sold, exchanged, stored, baled, packed, disassembled, or handled, including wrecked vehicles, used building materials, structural steel materials and equipment and other manufactured goods that are worn, deteriorated, or obsolete.

SECTION 3.20 KENNEL. Any land, building or structure where five (5) or more cats and/or dogs are boarded, housed, or bred.

SECTION 3.21 LOT AND LOT WIDTH. A piece or parcel of land occupied or intended to be occupied by a principal building or a group of such buildings and accessory structures, or utilized for a principal use and accessory uses, together with such open spaces as are required by this Ordinance. Lot width shall be measured at the front building line.

SECTION 3.22 MOBILE HOME. A movable or portable dwelling constructed to be towed on its own chasis, connected to utilities and designed without a permanent foundation for year-round living as a single family dwelling. A mobile home may contain parts that may be combined, folded, collapsed, or telescoped when being towed and expanded later to provide additional cubic capacity.

(a) Single Wide--A mobile home with a longitudinal width of no greater than fourteen (14) feet for its full length.

(b) Double Wide--A combination of two (2) mobile homes designed and constructed to be connected along the longitudinal axis, thus providing double the living space of a conventional single wide unit without duplicating any of the service facilities such as kitchen equipment or furnace.

SECTION 3.23 MOBILE HOME LOT. A measured parcel of land within a mobile home park which is delineated by lot lines on a final development plan and which is intended for the placement of a mobile home and the exclusive use of the occupants of such mobile home.

SECTION 3.24 MOBILE HOME PAD. That portion of a mobile home lot reserved for the placement of a mobile home, appurtenent structures or additions.

SECTION 3.25 MOBILE HOME PARK. A parcel of land under single ownership which has been planned and improved for the placement of mobile homes on a rental basis for non-transient use.

SECTION 3.26 MOBILE HOME SUBDIVISION. A mobile home park except that the mobile home lots are subdivided, surveyed, recorded, and sold in accordance with Michigan Act 288 of 1967, as amended.

SECTION 3.27 MOTEL. A building or group of buildings on the same lot, whether detached or in connected rows, containing sleeping or dwelling units which may or may not be independently accessible from the outside with garage or parking space located on the lot and designed for, or occupied by automobile travelers. The term shall include any building or building groups designated as motor lodges, transient cabins, or by any other title intended to identify them as providing lodging, with or without meals, for compensation on a transient basis.

SECTION 3.28 MOTOR VEHICLE. Every vehicle which is self-propelled.

SECTION 3.29 NON-COMMERCIAL ORGANIZATION. An organization which does not produce an income for any person; a non-profit organization which raises funds for itself and which has fifteen (15) or more stockholders or members shall be considered a non-commercial organization.

SECTION 3.30 OUTDOOR POND. Any outdoor body of standing water accumulated in a natural or artificially constructed basin or depression in the earth, either above or below or partly above or partly below grade, capable of holding water to a depth of greater than two (2) feet when filled to capacity.

SECTION 3.31 PARKING AREA, SPACE OR LOT. An off-street open area, the principal use of which is for the parking of automobiles, whether for compensation or not, or as an accomodation to clients, customers, visitors, or employees. Parking area shall include access drives within the actual parking area.

Park Township Zoning Ordinance (2018-03)

Effective August 26, 2018

Definition for "Tourist Home"

private road, intended for parking motor vehicles.

PIER
Concrete posts embedded in the ground to a depth below the frost line at regular intervals along the longitudinal distance of a mobile home and intended to serve as a base for supporting the frame of the mobile home.

PRINCIPAL OR MAIN USE
The primary or predominant use of a lot.

RESORT
A commercial establishment, generally used as a vacation facility by the general public, which offers lodging accommodations, restaurants or meals, recreation and entertainment to transient guests in return for payment, and which provides onsite activities such as golfing, horseback riding, skiing, swimming, snow-mobiling, hiking, biking, tennis, other court sports or other similar activities.

ROADSIDE MARKET STAND
A temporary building or structure designed or used for the display and/or sale of agricultural products produced on the premises upon which the stand is located.

SATELLITE DISH ANTENNA
A parabolic or spherical reflective type of antenna used for communications with a satellite based system located in planetary orbit.

STREET
A publicly or privately owned and maintained right-of-way which affords traffic circulation and principal means of access to abutting property, including any avenue, place, way, drive, lane, boulevard, highway, road or other thoroughfare, except an alley. The Street right-of-way shall include all land deeded or dedicated for Street purposes or, in the absence of a deed or dedication for Street purposes, the Street right-of-way shall be considered to be 66 feet in width.

STRUCTURE
Anything except a building, constructed or erected, the use of which requires permanent location on the ground or lake, river or stream bottom or attachment to something having a permanent location on the ground or lake, river or stream bottom.

SWIMMING POOL
A structure either above or below or partly above and partly below grade, located either in part or wholly outside of a permanently enclosed and roofed building, designed to hold water to a depth of greater than two feet when filled, and intended to be used for swimming purposes.

TOURIST HOME
A building, other than a hotel, boardinghouse, lodginghouse, or motel, where

lodging is provided by a resident family in its home for compensation, mainly for transients.

TRAVEL TRAILER
A transportable unit intended for occasional or shortterm occupancy as a dwelling unit during travel, recreational, or vacation use.

UNDIVIDED PERMANENT OPEN SPACE
Property that is contiguous (i.e., undivided by any road, street, etc.) and in common ownership that will perpetually remain as undeveloped open space via a conservation easement, plat dedication, restrictive covenant, or other legal means that run with the land.

USABLE FLOOR AREA
The floor area of a dwelling exclusive of garages, porches, basement or utility area.

VEHICLE
Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices propelled by human power or used exclusively upon stationary rails or tracks.

WATERFRONT LOT
A lot abutting or having frontage on either Lake Michigan or Lake Macatawa.

YARD
An open space other than a court unoccupied and unobstructed by any building or structure; provided, however, that fences, walls, poles, posts and other customary yard accessories, ornaments and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility. "Yards" or "minimum yards" as required in other provisions of this zoning ordinance shall be considered as "required yards" and allowable building projections shall be the same as defined in this section for building setbacks.

YARD, FRONT
A yard extending across the full width of the lot, the depth of which is the distance between the street right-of-way (or private road easement) line and the main wall of the building or structure. In the case of waterfront lots, the yard fronting on the street (or private road) shall be considered the front yard.

YARD, REAR
A yard, unoccupied except for accessory buildings, extending across the full width of the lot, the depth of which is the distance between the rear lot line and the rear wall of the main building.

YARD, SIDE
A yard between a main building and the side lot line, extending from the front

Park Township Zoning Ordinance (2018-02)

Effective July 27, 2018

Definition for "Tourist Home"

SATELLITE DISH ANTENNA
A parabolic or spherical reflective type of antenna used for communications with a satellite based system located in planetary orbit.

STREET
A publicly or privately owned and maintained right-of-way which affords traffic circulation and principal means of access to abutting property, including any avenue, place, way, drive, lane, boulevard, highway, road or other thoroughfare, except an alley. The Street right-of-way shall include all land deeded or dedicated for Street purposes or, in the absence of a deed or dedication for Street purposes, the Street right-of-way shall be considered to be 66 feet in width.

STRUCTURE
Anything except a building, constructed or erected, the use of which requires permanent location on the ground or lake, river or stream bottom or attachment to something having a permanent location on the ground or lake, river or stream bottom.

SWIMMING POOL
A structure either above or below or partly above and partly below grade, located either in part or wholly outside of a permanently enclosed and roofed building, designed to hold water to a depth of greater than two feet when filled, and intended to be used for swimming purposes.

TOURIST HOME
A building, other than a hotel, boardinghouse, lodginghouse, or motel, where lodging is provided by a resident family in its home for compensation, mainly for transients.

TRAVEL TRAILER
A transportable unit intended for occasional or shortterm occupancy as a dwelling unit during travel, recreational, or vacation use.

UNDIVIDED PERMANENT OPEN SPACE
Property that is contiguous (i.e., undivided by any road, street, etc.) and in common ownership that will perpetually remain as undeveloped open space via a conservation easement, plat dedication, restrictive covenant, or other legal means that run with the land.

USABLE FLOOR AREA
The floor area of a dwelling exclusive of garages, porches, basement or utility area.

VEHICLE
Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices propelled by human

Park Township Zoning Ordinance

Effective February 7, 1974

Definition for "Tourist Home"

SECTION 3.32 PARKING BAY. A hard surface area adjacent and connected to, but distinct from a street, intended for parking motor vehicles.

SECTION 3.33 PIER. Concrete posts embedded in the ground to a depth below the frost line at regular intervals along the longitudinal distance of a mobile home and intended to serve as a base for supporting the frame of the mobile home.

SECTION 3.34 PLANNING COMMISSION. The Park Township Planning Commission.

SECTION 3.35 PRINCIPAL OR MAIN USE. The primary or predominant use of a lot.

SECTION 3.36 ROADSIDE MARKET STAND. A temporary building or structure designed or used for the display and/or sale of agricultural products produced on the premises upon which the stand is located.

SECTION 3.37 STREET. A publicly owned and maintained right-of-way which affords traffic circulation and principal means of access to abutting property, including any avenue, place, way, drive, lane, boulevard, highway, road, or other thoroughfare, except an alley.

SECTION 3.38 STRUCTURE. Anything except a building, constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground.

SECTION 3.39 SWIMMING POOL. A structure either above or below or partly above and partly below grade, located either in part or wholly outside of a permanently enclosed and roofed building, designed to hold water to a depth of greater than two (2) feet when filled, and intended to be used for swimming purposes.

SECTION 3.40 TOURIST HOME. A building, other than a hotel, boarding house, lodging house, or motel, where lodging is provided by a resident family in its home for compensation, mainly for transients.

SECTION 3.41 TOWNSHIP BOARD. The Park Township Board.

SECTION 3.42 TOWNSHIP. Park Township, Ottawa County, Michigan.

SECTION 3.43 TRAILER COACH PARK ACT. Michigan Act 243 of 1959, as amended.

SECTION 3.44 TRAVEL TRAILER. A transportable unit intended for occasional or short-term occupancy as a dwelling unit during travel, recreational, or vacation use.

SECTION 3.45 USABLE FLOOR AREA. The floor area of a dwelling exclusive of garages, porches, basement or utility area.

SECTION 3.46 VEHICLE. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices propelled by human power or used exclusively upon stationary rails or tracks.

SECTION 3.47 YARD. A required open space other than a court unoccupied and unobstructed by any building or structure or portion thereof from 30 inches above the general ground level of the lot upward; provided, however, that fences, walls, poles, posts, and other customary yard accessories, ornaments and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility.

SECTION 3.48 YARD--FRONT. A yard extending across the full width of the lot, the depth of which is the distance between the street right-of-way line and the main wall of the building or structure. In the case of waterfront lots, the yard fronting on the street shall be considered the front yard.

SECTION 3.49 YARD--REAR. A yard, unoccupied except for accessory buildings, extending across the full width of the lot, the depth of which is the distance between the rear lot line and the rear wall of the main building.

SECTION 3.50 YARD--SIDE. A yard between a main building and the side lot line, extending from the front yard to the rear yard. The width of the required side yard shall be measured from the nearest point of the side lot line to the nearest part of the main building.

Park Township Zoning Ordinance (2018-03)

Effective August 26, 2018

Definition for "Dwelling"

CORNER LOT
A lot located at the intersection of two or more public streets, private roads, or combination of public streets and private roads, where the corner interior angle formed by the intersection of the streets, and/or roads, is 135° or less or a lot abutting upon a curved street, and/or road, if tangents to the curve, at the two points where the lot lines meet the curve, form an interior angle of 135° or less.

DOCK
Any structure, whether permanent or removable, that extends from the shoreline into a lake, river or stream and to which one or more boats or other watercraft may be docked or moored.

DWELLING
Any building or portion of a building that is occupied in whole or in part as a home or residence, either permanently or temporarily, by one or more families, but not including motels, hotels, resorts, tourist rooms or cabins. Subject to compliance with the requirements of Section 38-507, a mobile home shall be considered to be a dwelling.

MULTIFAMILY — A building designed for use and occupancy by three or more families.

SINGLE-FAMILY — A building designed for use and occupancy by one family only.

TWO-FAMILY — A building designed for use and occupancy by two families only.

DWELLING UNIT
A building, or a portion of a building, with one or more rooms, including bathroom, kitchen, and sleeping facilities, connected together in a manner designed and maintained as a self-contained unit for residential occupancy by one or more people living as a single housekeeping unit.

FAMILY
One or more persons occupying a single dwelling unit and using common cooking facilities; provided, however, that unless members are related by blood, marriage or adoption, no such family shall contain more than five persons.

FLOOR AREA
The gross floor area of all floors of a building or an addition to an existing building. For all office buildings and for any other building, except dwelling units, where the principal use thereof shall include the basement, the basement floor area shall be included except that part thereof which contains heating and cooling equipment and other basic utilities.

Park Township Zoning Ordinance (2018-02)

Effective July 27, 2018

Definition for "Dwelling"

may be docked or moored.

DWELLING

Any building or portion of a building that is occupied in whole or in part as a home or residence, either permanently or temporarily, by one or more families, but not including motels, hotels, resorts, tourist rooms or cabins. Subject to compliance with the requirements of Section **38-507**, a mobile home shall be considered to be a dwelling.

MULTIFAMILY — A building designed for use and occupancy by three or more families.

SINGLE-FAMILY — A building designed for use and occupancy by one family only.

TWO-FAMILY — A building designed for use and occupancy by two families only.

DWELLING UNIT

A building, or a portion of a building, with one or more rooms, including bathroom, kitchen, and sleeping facilities, connected together in a manner designed and maintained as a self-contained unit for residential occupancy by one or more people living as a single housekeeping unit.

FAMILY

One or more persons occupying a single dwelling unit and using common cooking facilities; provided, however, that unless members are related by blood, marriage or adoption, no such family shall contain more than five persons.

FLOOR AREA

The gross floor area of all floors of a building or an addition to an existing building. For all office buildings and for any other building, except dwelling units, where the principal use thereof shall include the basement, the basement floor area shall be included except that part thereof which contains heating and cooling equipment and other basic utilities.

GREENBELT

An undeveloped or natural area, which may only be improved with landscaping and/or nature trails.

GROSS SITE ACREAGE

The total area in acres in any PUD that is determined according to the requirements of Section 38-367 (2) a. and that may include road right-of-way if the legal description for the land includes the road right-of-way.

GROSS USABLE ACRE

Park Township Zoning Ordinance

Effective September 5, 2003

Definition for "Dwelling"

SECTION 3.13 DWELLING.

Any building or portion of a building that is occupied in whole or in part as a home or residence, either permanently or temporarily, by one or more families, but not including motels, hotels, resorts, tourist rooms or cabins. Subject to compliance with the requirements of Section 4.29, a mobile home shall be considered to be a dwelling.

(a) Dwelling, Single-Family - A building designed for use and occupancy by one (1) family only.

(b) Dwelling, Two-Family - A building designed for use and occupancy by two (2) families only.

(c) Dwelling, Multi-Family - A building designed for use and occupancy by three (3) or more families.

Section 4. Deletion of Section 3.14. Section 3.14 of the Park Township Zoning Ordinance, Dwelling Unit, shall be deleted and Section 3.14 shall be reserved for future use.

Section 5. Addition of Section 3.18A. Section 3.18A, Hotel, shall be added to the Park Township Zoning Ordinance, to be located after Section 3.18, and shall state in its entirety as follows:

SECTION 3.18A HOTEL.

A commercial establishment that offers lodging accommodations and additional services, such as restaurants, meeting rooms, entertainment, or recreational facilities, to transient guests in return for payment. Access to the lodging facilities is generally from indoor corridors.

Section 6. Amendment to and Restatement of Section 3.27. Section 3.27 of the Park Township Zoning Ordinance, Motel, shall be amended and restated in its entirety as follows:

SECTION 3.27 MOTEL.

A commercial establishment consisting of a building or group of buildings on the same lot, whether detached or in connected rows, which offers lodging accommodations and sleeping rooms to transient guests in return for payment. Access to the lodging facilities is generally from the outside.

Section 7. Addition of Section 3.35A. Section 3.35A, Resort, shall be added to the Park Township Zoning Ordinance, to be located after Section 3.35, and shall state in its entirety as follows:

Park Township Zoning Ordinance

Effective February 7, 1974

Definition for "Dwelling"

(e) Name Plate--A structure affixed flat against the wall of a building which serves solely to designate the name or the name and profession or business occupation of a person or persons occupying the building.

SECTION 3.08 BUILDING. Anything which is constructed or erected, including a mobile home, having a roof supported by columns, walls, or other supports, which is used for the purpose of housing or storing of persons, animals, or personal property or carrying on business activities or other similar uses.

SECTION 3.09 BUILDING HEIGHT. The vertical distance measured from the top of the main or ground level foundation wall, whichever is lowest, to the highest point of the roof surface of flat roofs, to the deck of mansard roofs, and to the mean height level between eaves and ridge of gable, hip and gambrel roofs.

SECTION 3.10 BUILDING SETBACK. The measurement from the property line to the nearest point of the main wall of the building or structure. Steps may be located within the building setback. Porches are considered as part of the building or structure and may not be located within the building setback.

SECTION 3.11 CORNER LOT. A lot located at the intersection of two (2) or more streets where the corner interior angle formed by the intersection of the streets is one hundred thirty-five (135°) degrees or less or a lot abutting upon a curved street or streets if tangents to the curve, at the two (2) points where the lot lines meet the curve, form an interior angle of one hundred thirty-five (135°) degrees or less.

SECTION 3.12 COMMON OPEN SPACE. Any area or space other than required yard areas which is unobstructed and unoccupied by buildings, structures, roads, or other man-made objects and is readily accessible to all those for whom it is required.

SECTION 3.13 DWELLING. Any building or portion thereof which is occupied in whole or in part as a home, residence, or sleeping place, either permanently or temporarily, by one or more families, but not including motels, hotels, tourist rooms or cabins, or mobile homes.

(a) Dwelling, Single-Family--A building designed for use and occupancy by one (1) family only.

(b) Dwelling, Two-Family--A building designed for use and occupancy by two (2) families only.

(c) Dwelling, Multi-Family--A building designed for use and occupancy by three (3) or more families.

SECTION 3.14 DWELLING UNIT. One (1) room or suite or two (2) or more rooms designed for use or occupancy by one (1) family for living and sleeping purpose with housekeeping facilities.

SECTION 3.15 FAMILY. One (1) or more persons occupying a single dwelling unit and using common cooking facilities; provided, however, that unless all members are related by blood or marriage, no such family shall contain more than five (5) persons.

SECTION 3.16 FLOOR AREA. The gross floor area of all floors of a building or an addition to an existing building. For all office buildings and for any other building, except dwelling units, where the principal use thereof shall include the basement, the basement floor area shall be included except that part thereof which contains heating and cooling equipment and other basis utilities.

SECTION 3.17 GROSS USABLE ACRE. The total area per acre in any PUD District which is suitable for development (i.e., excluding areas of swamps, steep slopes, or other natural or man-made limitations which preclude or limit development).

SECTION 3.18 HOME OCCUPATION. A gainful occupation traditionally or customarily carried on in the home as a use incidental to the use of the home as a dwelling place. Home occupations may include any profession, vocation, or trade, but shall not include beauty shops, barber shops, nursery schools caring for more than three (3) children, photographic studios, restaurants, retail sales, or vehicle repairs.

Park Township Zoning Ordinance (2018-03)

Effective August 26, 2018

Definition for "Dwelling Unit"

CORNER LOT
A lot located at the intersection of two or more public streets, private roads, or combination of public streets and private roads, where the corner interior angle formed by the intersection of the streets, and/or roads, is 135° or less or a lot abutting upon a curved street, and/or road, if tangents to the curve, at the two points where the lot lines meet the curve, form an interior angle of 135° or less.

DOCK
Any structure, whether permanent or removable, that extends from the shoreline into a lake, river or stream and to which one or more boats or other watercraft may be docked or moored.

DWELLING
Any building or portion of a building that is occupied in whole or in part as a home or residence, either permanently or temporarily, by one or more families, but not including motels, hotels, resorts, tourist rooms or cabins. Subject to compliance with the requirements of Section 38-507, a mobile home shall be considered to be a dwelling.

MULTIFAMILY — A building designed for use and occupancy by three or more families.

SINGLE-FAMILY — A building designed for use and occupancy by one family only.

TWO-FAMILY — A building designed for use and occupancy by two families only.

DWELLING UNIT
A building, or a portion of a building, with one or more rooms, including bathroom, kitchen, and sleeping facilities, connected together in a manner designed and maintained as a self-contained unit for residential occupancy by one or more people living as a single housekeeping unit.

FAMILY
One or more persons occupying a single dwelling unit and using common cooking facilities; provided, however, that unless members are related by blood, marriage or adoption, no such family shall contain more than five persons.

FLOOR AREA
The gross floor area of all floors of a building or an addition to an existing building. For all office buildings and for any other building, except dwelling units, where the principal use thereof shall include the basement, the basement floor area shall be included except that part thereof which contains heating and cooling equipment and other basic utilities.

Park Township Zoning Ordinance (2018-02)

Effective July 27, 2018

Definition for "Dwelling Unit"

may be docked or moored.

DWELLING
Any building or portion of a building that is occupied in whole or in part as a home or residence, either permanently or temporarily, by one or more families, but not including motels, hotels, resorts, tourist rooms or cabins. Subject to compliance with the requirements of Section **38-507**, a mobile home shall be considered to be a dwelling.

MULTIFAMILY — A building designed for use and occupancy by three or more families.

SINGLE-FAMILY — A building designed for use and occupancy by one family only.

TWO-FAMILY — A building designed for use and occupancy by two families only.

DWELLING UNIT
A building, or a portion of a building, with one or more rooms, including bathroom, kitchen, and sleeping facilities, connected together in a manner designed and maintained as a self-contained unit for residential occupancy by one or more people living as a single housekeeping unit.

FAMILY
One or more persons occupying a single dwelling unit and using common cooking facilities; provided, however, that unless members are related by blood, marriage or adoption, no such family shall contain more than five persons.

FLOOR AREA
The gross floor area of all floors of a building or an addition to an existing building. For all office buildings and for any other building, except dwelling units, where the principal use thereof shall include the basement, the basement floor area shall be included except that part thereof which contains heating and cooling equipment and other basic utilities.

GREENBELT
An undeveloped or natural area, which may only be improved with landscaping and/or nature trails.

GROSS SITE ACREAGE
The total area in acres in any PUD that is determined according to the requirements of Section 38-367 (2) a. and that may include road right-of-way if the legal description for the land includes the road right-of-way.

GROSS USABLE ACRE

Park Township Zoning Ordinance

Effective May 8th, 2017

Definition for "Dwelling Unit"

SECTION 5. Amendment to Section 38-6. Section 38-6 of the Park Township Code of Ordinances, being certain definitions, shall be amended by amending the definition of "Gross Usable Acre/Gross Site Acreage" and by adding a new definition of "Net Buildable Acreage" to be placed alphabetically within Section 38-6 and to read respectively as follows.

ABUT

To physically touch or border upon, or to share a common property line. A property is considered to abut another property when the two properties share all or a portion of a common property line or the property lines touch, such as at a corner.

ADJACENT

To be near but not necessarily abut, adjoin, or be contiguous. A property is considered to be adjacent to another property when the two properties are nearby, but do not share a common property line.

ADJOIN

To physically touch or border upon, or share all or part of a common property line with another lot or parcel of land. A property is considered to adjoin another property when the two properties share all or part of a common property line.

CONTIGUOUS

To abut or adjoin another property by sharing all or portion of a boundary line or property line. A property is considered to be contiguous to another property when the two properties share all or a portion of a common property line.

DWELLING UNIT

A building, or a portion of a building, with one or more rooms, including bathroom, kitchen, and sleeping facilities, connected together in a manner designed and maintained as a self-contained unit for residential occupancy by one or more people living as a single housekeeping unit.

GROSS SITE ACREAGE

The total area in acres in any PUD that is determined according to the requirements of Section 38-367 (2) a. and that may include road right-of-way if the legal description for the land includes the road right-of-way.

NET BUILDABLE ACREAGE

The area in acres in any PUD that is determined according to the requirements of Section 38-367 (2).

OWNERSHIP INTEREST

A proprietary interest in land which confers certain rights and responsibilities, held by any individual, firm, association, syndicate, partnership, or corporation.

Park Township Zoning Ordinance

Effective February 7, 1974

Definition for "Dwelling Unit"

(e) Name Plate--A structure affixed flat against the wall of a building which serves solely to designate the name or the name and profession or business occupation of a person or persons occupying the building.

SECTION 3.08 BUILDING. Anything which is constructed or erected, including a mobile home, having a roof supported by columns, walls, or other supports, which is used for the purpose of housing or storing of persons, animals, or personal property or carrying on business activities or other similar uses.

SECTION 3.09 BUILDING HEIGHT. The vertical distance measured from the top of the main or ground level foundation wall, whichever is lowest, to the highest point of the roof surface of flat roofs, to the deck of mansard roofs, and to the mean height level between eaves and ridge of gable, hip and gambrel roofs.

SECTION 3.10 BUILDING SETBACK. The measurement from the property line to the nearest point of the main wall of the building or structure. Steps may be located within the building setback. Porches are considered as part of the building or structure and may not be located within the building setback.

SECTION 3.11 CORNER LOT. A lot located at the intersection of two (2) or more streets where the corner interior angle formed by the intersection of the streets is one hundred thirty-five (135°) degrees or less or a lot abutting upon a curved street or streets if tangents to the curve, at the two (2) points where the lot lines meet the curve, form an interior angle of one hundred thirty-five (135°) degrees or less.

SECTION 3.12 COMMON OPEN SPACE. Any area or space other than required yard areas which is unobstructed and unoccupied by buildings, structures, roads, or other man-made objects and is readily accessible to all those for whom it is required.

SECTION 3.13 DWELLING. Any building or portion thereof which is occupied in whole or in part as a home, residence, or sleeping place, either permanently or temporarily, by one or more families, but not including motels, hotels, tourist rooms or cabins, or mobile homes.

(a) Dwelling, Single-Family--A building designed for use and occupancy by one (1) family only.

(b) Dwelling, Two-Family--A building designed for use and occupancy by two (2) families only.

(c) Dwelling, Multi-Family--A building designed for use and occupancy by three (3) or more families.

SECTION 3.14 DWELLING UNIT. One (1) room or suite or two (2) or more rooms designed for use or occupancy by one (1) family for living and sleeping purpose with housekeeping facilities.

SECTION 3.15 FAMILY. One (1) or more persons occupying a single dwelling unit and using common cooking facilities; provided, however, that unless all members are related by blood or marriage, no such family shall contain more than five (5) persons.

SECTION 3.16 FLOOR AREA. The gross floor area of all floors of a building or an addition to an existing building. For all office buildings and for any other building, except dwelling units, where the principal use thereof shall include the basement, the basement floor area shall be included except that part thereof which contains heating and cooling equipment and other basis utilities.

SECTION 3.17 GROSS USABLE ACRE. The total area per acre in any PUD District which is suitable for development (i.e., excluding areas of swamps, steep slopes, or other natural or man-made limitations which preclude or limit development).

SECTION 3.18 HOME OCCUPATION. A gainful occupation traditionally or customarily carried on in the home as a use incidental to the use of the home as a dwelling place. Home occupations may include any profession, vocation, or trade, but shall not include beauty shops, barber shops, nursery schools caring for more than three (3) children, photographic studios, restaurants, retail sales, or vehicle repairs.

EXHIBIT 12

Park Township Zoning Ordinance

Use Regulation Amendments Effective May 10, 2006

The substance of this subsection shall appear on the application for the special use permit and be signed by the applicant property owner.

Section 24. Amendment to Subsection 6.02(g). Subsection 6.02(g), Use Regulations in the AG - Agricultural and Permanent Open Space District, shall be amended to state in its entirety as follows.

(g) Home occupations when authorized in accordance with Section 4.28 of this Zoning Ordinance.

Section 25. Amendment to Subsection 7.02(e). Subsection 7.02(e), Use Regulations in the R-1 Rural Estate District, shall be amended to state in its entirety as follows.

(e) Home occupations when authorized in accordance with Section 4.28 of this Zoning Ordinance.

Section 26. Addition of Subsection 8.02(h). Subsection 8.02(h), Use Regulations in the R-2 Lakeshore Residence District, shall be added to state in its entirety as follows.

(h) Home occupations when authorized in accordance with Section 4.28 of this Zoning Ordinance.

Section 27. Addition of Subsection 9.02(g). Subsection 9.02(g), Use Regulations in the R-3 Low Density One-Family Residence District, shall be added to state in its entirety as follows.

(h) Home occupations when authorized in accordance with Section 4.28 of this Zoning Ordinance.

Section 28. Amendment to Subsection 10.02(c). Subsection 10.02(c), Use Regulations in the R-4 Medium Density One and Two-Family Residence District, shall be amended to state in its entirety as follows.

(c) Home occupations when authorized in accordance with Section 4.28 of this Zoning Ordinance.

Section 29. Amendment to Subsection 11.02(c). Subsection 11.02(c), Use Regulations in the R-5 Low Density Multi-Family Residence District, shall be amended to state in its entirety as follows.

(c) Home occupations when authorized in accordance with Section 4.28 of this Zoning Ordinance.

Section 30. Amendment to Section 13.04. Section 13.04, Preliminary Site Plan - Submission and Content, shall be amended to state in its entirety as follows.

Park Township Zoning Ordinance

Use Regulation Amendments Effective July 17, 1989

(1) acre and a maximum lot area of no greater than three (3) acres, has a minimum width of one hundred (100) feet, and the lot or parcel remaining after the split has an area of no less than ten (10) acres. The minimum lot area and width for a non-residential building or structure shall be ten (10) acres and one hundred (100) feet respectively."

Section 3. Amendment of Section 7.02(n). That subsection (n) of Section 7.02 of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"(n) Bed and breakfast operations when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

(1) the number of bed and breakfast sleeping rooms,

(2) the effect of the proposed operation on the adjoining properties and the surrounding neighborhood,

(3) potential traffic which will be generated by the proposed bed and breakfast operation,

(4) available parking, and

(5) the ability of the proposed bed and breakfast operation to comply with all requirements of the Township Bed and Breakfast Licensing Ordinance, as amended.

All bed and breakfast operations shall comply at all times with all requirements and other provisions of the Township Bed and Breakfast Licensing Ordinance, as amended."

Section 4. Amendment of Section 7.04(d). That subsection (d) of Section 7.04 of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"(d) Lot Area - The minimum lot area and width for all uses shall be two (2) acres and one hundred (100) feet respectively; provided, however, that any lot which is platted or otherwise of record as of the effective date of this Ordinance may be used for one (1) single family dwelling if it complies with all the R-3 Zoning District requirements for side yards."

Section 5. Amendment of Section 8.02(g). That subsection (g) of Section 8.02 of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"(g) Bed and breakfast operations when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

(1) the number of bed and breakfast sleeping rooms,

(2) the effect of the proposed operation on the adjoining properties and the surrounding neighborhood,

(3) potential traffic which will be generated by the proposed bed and breakfast operation,

(4) available parking, and

(5) the ability of the proposed bed and breakfast operation to comply with all requirements of the Township Bed and Breakfast Licensing Ordinance, as amended.

All bed and breakfast operations shall comply at all times with all requirements and other provisions of the Township Bed and Breakfast Licensing Ordinance, as amended."

Section 6. Amendment of Section 9.02(f). That subsection (f) of Section 9.02 of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"(f) Bed and breakfast operations when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

(1) the number of bed and breakfast sleeping rooms,

(2) the effect of the proposed operation on the adjoining properties and the surrounding neighborhood,

(3) potential traffic which will be generated by the proposed bed and breakfast operation,

(4) available parking, and

(5) the ability of the proposed bed and breakfast operation to comply with all requirements of the Township Bed and Breakfast Licensing Ordinance, as amended.

All bed and breakfast operations shall comply at all times with all requirements and other provisions of the Township Bed and Breakfast Licensing Ordinance, as amended."

Section 7. Amendment of Section 10.02(d). That subsection (d) of Sec-

tion 10.02 of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"(d) Bed and breakfast operations when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

(1) the number of bed and breakfast sleeping rooms,

(2) the effect of the proposed operation on the adjoining properties and the surrounding neighborhood,

(3) potential traffic which will be generated by the proposed bed and breakfast operation,

(4) available parking, and

(5) the ability of the proposed bed and breakfast operation to comply with all requirements of the Township Bed and Breakfast Licensing Ordinance, as amended.

All bed and breakfast operations shall comply at all times with all requirements and other provisions of the Township Bed and Breakfast Licensing Ordinance, as amended."

Section 8. Amendment of Section 11.02(d). That subsection (d) of Section 11.02 of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"(d) Bed and breakfast operations when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

(1) the number of bed and breakfast sleeping rooms,

(2) the effect of the proposed operation on the adjoining properties and the surrounding neighborhood,

(3) potential traffic which will be generated by the proposed bed and breakfast operation,

(4) available parking, and

(5) the ability of the proposed bed and breakfast operation to comply with all requirements of the Township Bed and Breakfast Licensing Ordinance, as amended.

All bed and breakfast operations shall comply at all times with all requirements and other provisions of the Township Bed and Breakfast Licensing Ordinance, as amended."

Park Township Zoning Ordinance

Use Regulation Amendments Effective April 19, 1982

Section 25. Section 5.01 (h) of the Park Township Zoning Ordinance shall be repealed in its entirety without replacement.

Section 26. Section 6.02 (c) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 6.02 USE REGULATIONS.

(c) Riding stables, where horses are boarded and/or rented, if (1) there is a minimum lot area of twenty (20) acres and (2) a site plan which is in accordance with the requirements of Chapter XX-A of this Ordinance is approved by the Planning Commission."

Section 27. Section 6.02 (g) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 6.02 USE REGULATIONS.

(g) Home occupations when authorized by the Zoning Inspector as a special use. The Zoning Inspector may, in his discretion, decline to decide such matter and refer decision thereon to the Planning Commission. In considering such authorization, the following standards shall be considered:

(1) the nature of the home occupation,

(2) the effect of the home occupation on the surrounding neighborhood,

(3) the environmental effects of the home occupation,

(4) the nature of the surrounding neighborhood,

(5) potential traffic congestion as a result of the home occupation, and

(6) provision for parking for traffic or clientele which may result from the operation of the home occupation."

Section 28. Section 6.02 (h) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 6.02 USE REGULATIONS.

(h) Removal and processing of top soil, sand, gravel, or other such minerals when authorized by the Board of Appeals as a matter for Board of Appeals decision pursuant to Section 20 of the Zoning Act in accordance with Section 4.27 of this Ordinance."

Section 29. Section 6.02 (i) of the Park Township Zoning Ordinance shall be amended as to provide in its entirety as follows:

"SECTION 6.02 USE REGULATIONS.

(i) Kennels when authorized as a special use by the Planning Commission. In considering such authorization, the Planning Commission shall consider the following standards:

(1) the size, nature and character of the kennel,

(2) the proximity of the kennel to adjoining properties,

(3) the possibility of noise or other disturbance for adjoining properties and the surrounding neighborhood on account of the operation of the kennel,

(4) potential traffic congestion on account of the kennel, and

(5) the nature and character of the buildings and structures to be utilized for the kennel operation."

Section 30. Section 6.02 (j) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 6.02 USE REGULATIONS.

(j) Roadside stands when authorized by the Zoning Inspector. The Zoning Inspector may, in his discretion, decline to decide such matter and refer decision thereon to the Planning Commission. In considering such authorization, the following standards shall be considered:

(1) the proposed location of the roadside stand,

(2) the size, nature and character of the building and/or structure to be utilized for the roadside stand,

(3) the type and kind of produce and goods to be sold at the roadside stand,

(4) the proximity of the roadside stand to adjoining properties,

(5) the time or season during which the roadside stand will operate,

(6) the parking facilities provided for the roadside stand,

(7) any traffic congestion or hazards which would result from the roadside stand, and

(8) the effect of the roadside stand on adjoining properties and the surrounding neighborhood."

Section 31. A subsection (k) shall be added to Section 6.02 of the Park Township Zoning Ordinance to provide in its entirety as follows:

"SECTION 6.02 USE REGULATIONS.

(k) Adult foster care homes to the extent the Zoning Act provides that such homes are not subject to Township zoning jurisdiction. Adult foster care homes which are subject to Township zoning jurisdiction and nursing homes are permitted if authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

(1) the number of residents who are to occupy the proposed facility,

(2) the effect of the proposed facility on the immediate surrounding neighborhood,

(3) potential traffic which will be generated by the proposed facility,

(4) available parking for employees, visitors and others,

(5) the adequacy of the recreational areas and the open space areas provided for the proposed facility, and

(6) the proximity of the proposed facility to any other adult foster care home or nursing home."

Section 32. Section 6.04(d) of the Park Township Zoning Ordinance shall be amended to read in its entirety as follows:

"SECTION 6.04 AREA REGULATIONS.

(d) Lot Area - The minimum lot area and width for residential uses shall be twenty (20) acres and six hundred sixty (660) feet respectively; provided, however, (1) that any lot which is platted or otherwise of record as of February 7, 1974, may be used for one (1) single family dwelling provided that lots not served with public sewer shall have a minimum lot area and width of fifteen thousand (15,000) square feet and one hundred (100) feet respectively, and (2) that one (1) lot may be created by division or splitting of any lot platted or otherwise of record as of February 7, 1974 if a single family dwelling was located on the lot to be created by the splitting as of February 7, 1974 and if such lot created by the splitting is used for one (1) single family dwelling, has a minimum lot area of no less than one (1) acre and a maximum lot area of no greater than three (3) acres, has a minimum width of one hundred (100) feet, and the lot or parcel remaining after the split has an area of no less than twenty (20) acres. The minimum lot area and width for a non-residential building or structure shall be ten (10) acres and one hundred (100) feet respectively. The minimum lot area for a lot on which no building or structure is to be constructed shall be one (1) acre."

Section 33. Section 7.02 (c) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 7.02 USE REGULATIONS.

(c) Riding stables, where horses are boarded and/or rented, if (1) there is a minimum lot area of twenty (20) acres and (2) a site plan which is in accordance with the requirements of Chapter XX-A of this Ordinance is approved by the Planning Commission."

Section 34. Section 7.02 (e) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 7.02 USE REGULATIONS.

(e) Home Occupations when authorized as a special use by the Zoning Inspector. The Zoning Inspector may, in his discretion, decline to decide such matter and refer decision thereon to the Planning Commission. such instance, the same standards as are provided in Section 6.02 (g) shall be considered."

Section 35. Section 7.02 (f) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 7.02 USE REGULATIONS.

(f) Removal and processing of top soil, sand, gravel, or other such minerals when authorized by the Board of Appeals as a matter for Board of Appeals decision pursuant to Section 20 of the Zoning Act, in accordance with Section 4.27 of this Ordinance."

Section 36. Section 7.02 (g) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 7.02 USE REGULATIONS.

(g) Roadside stands when authorized as a special use by the Zoning Inspector. The Zoning Inspector may, in his discretion, decline to decide such matter and refer decision thereon to the Planning Commission. The same standards as are provided in Section 6.02 (j) shall be considered."

Section 37. Section 7.02 (j) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 7.02 USE REGULATIONS.

(j) Private and public schools, libraries, museums, art galleries and similar uses, when owned and operated by a governmental agency or non-profit organization and when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

(1) the size, nature and character of the proposed use,

(2) the proximity of the proposed use to adjoining properties,

(3) the parking facilities provided for the proposed use,

(4) any traffic congestion or hazards which will be occasioned by the proposed use,

(5) how well the proposed use harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood, and

(6) the effect of the proposed use on adjoining properties and the surrounding neighborhood."

Section 38. Section 7.02 (k) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 7.02 USE REGULATIONS.

(k) Churches when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

(1) the size, character and nature of the church building,

(2) the proximity of the church to adjoining properties,

(3) the off-street parking which is to be provided for the church,

(4) the potential traffic congestion and hazards which will be caused by the church use,

(5) the degree with which the church harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood, and

(6) the effect of the church on adjoing properties and the surrounding neighborhood."

Section 39. Section 7.02 (1) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 7.02 USE REGULATIONS.

(1) Recreational or church camps with no travel trailers, when owned and operated by a governmental agency or by a non-profit organization which has been determined by the United States Internal Revenue Service to be an organization tax exempt under Section 501(c) (3) of the Internal Revenue Code of 1954, as amended, or similar successor statute. A site plan for the recreational or church camp or any expansion or extension thereof, which is in accordance with the requirements of Chapter XX-A of this Ordinance, shall be approved by the Planning Commission before a building permit is issued."

Section 40. A Subsection (m) shall be added to Section 7.02 of the Park Township Zoning Ordinance to provide in its entirety as follows:

"SECTION 7.02 USE REGULATIONS.

(m) Adult foster care homes to the extent the Zoning Act provides that such homes are not subject to Township zoning jurisdiction. Adult foster care homes which are subject to Township zoning jurisdiction and nursing homes are permitted if authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

(1) the number of residents who are to occupy the proposed facility,

(2) the effect of the proposed facility on the immediate surrounding neighborhood,

(3) potential traffic which will be generated by the proposed facility,

(4) available parking for employees, visitors and others,

(5) the adequacy of the recreational areas and the open space areas provided for the proposed facility, and

(6) the proximity of the proposed facility to any other adult foster care home or nursing home."

Section 41. Section 8.02 (b) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 8.02 USE REGULATIONS.

(b) Parks, playgrounds, community centers, governmental, administration, or service buildings which are owned and operated by a governmental agency or a non-commercial organization when authorized as a special use by the Planning Commission. In considering such authorization, the Planning Commission shall consider the following standards:

(1) the necessity for such use for the surrounding neighborhood,

(2) the proximity of the intended use to adjoining properties specifically including proximity to occupied dwellings,

(3) the size, nature and character of the proposed use,

(4) potential traffic congestion which might be occasioned by the intended use,

(5) parking facilities to be provided for the proposed use, and

(6) the effection of the proposed use on adjoining properties and the surrounding neighborhood."

Section 42. Section 8.02 (c) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 8.02 USE REGULATIONS.

(c) Private and public schools, libraries, museums, art galleries and similar uses, when owned and operated by a governmental agency or non-profit organization and when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

(1) the size, nature and character of the proposed use,

(2) the proximity of the proposed use to adjoining properties,

(3) the parking facilities provided for the proposed use,

(4) any traffic congestion or hazards which will be occasioned by the proposed use,

(5) how well the proposed use harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood, and

(6) the effect of the proposed use on adjoining properties and the surrounding neighborhood."

Section 43. Section 8.02 (d) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 8.02 USE REGULATIONS.

(d) Churches when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

(1) the size, character and nature of the church building,

(2) the proximity of the church to adjoining properties,

(3) the off-street parking which is to be provided for the church,

(4) the potential traffic congestion and hazards which will be caused by the church use,

(5) the degree with which the church harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood, and

(6) the effect of the church on adjoining properties and the surrounding neighborhood."

Section 44. Section 8.02 (e) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 8.02 USE REGULATIONS.

(e) Recreational or church camps with no travel trailers, when owned and operated by a governmental agency or by a non-profit organization which has been determined by the United States Internal Revenue Service to be an organization tax exempt under Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended, or similar successor statute. A site plan for the recreational or church camp or any expansion or extension thereof, which is in accordance with the requirements of Chapter XX-A of this Ordinance, shall be approved by the Planning Commission before a building permit is issued."

Section 45. A subsection (f) shall be added to Section 8.02 of the Park Township Zoning Ordinance to provide in its entirety as follows:

"SECTION 8.02 USE REGULATIONS.

(f) Adult foster care homes to the extent the Zoning Act provides that such homes are not subject to Township zoning jurisdiction. Adult foster care homes which are subject to Township zoning jurisdiction and nursing homes are permitted if authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

(1) the number of residents who are to occupy the proposed facility,

(2) the effect of the proposed facility on the immediate surrounding neighborhood,

(3) potential traffic which will be generated by the proposed facility,

(4) available parking for employees, visitors and others,

(5) the adequacy of the recreational areas and the open space areas provided for the proposed facility, and

(6) the proximity of the proposed facility to any other adult foster care home or nursing home."

Section 46. Section 9.02 (b) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 9.02 USE REGULATIONS.

(b) Private and public schools, libraries, museums, art galleries and similar uses, when owned and operated by a governmental agency or non-profit organization and when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

(1) the size, nature and character of the proposed use,

(2) the proximity of the proposed use to adjoining properties,

(3) the parking facilities provided for the proposed use,

(4) any traffic congestion or hazards which will be occasioned by the proposed use,

(5) how well the proposed use harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood, and

(6) the effect of the proposed use on adjoining properties and the surrounding neighborhood."

Section 47. Section 9.02 (c) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 9.02 USE REGULATIONS.

(c) Parks, playgrounds, community centers, governmental, administration, or service buildings which are owned and operated by a governmental agency or a non-commercial organization when authorized as a special use by the Planning Commission utilizing the same standards as are provided in Section 8.02 (b) of this Ordinance."

Section 48. Section 9.02 (d) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 9.02 USE REGUALTIONS.

(d) Churches when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

(1) the size, character and nature of the church building,

(2) the proximity of the church to adjoining properties,

(3) the off-street parking which is to be provided for the church,

(4) the potential traffic congestion and hazards which will be caused by the church use,

(5) the degree with which the church harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood, and

(6) the effect of the church on adjoining properties and the surrounding neighborhood."

Section 49. A subsection (e) shall be added to Section 9.02 of the Park Township Zoning Ordinance to provide in its entirety as follows:

"SECTION 9.02 USE REGULATIONS.

(e) Adult foster care homes to the extent the Zoning Act provides that such homes are not subject to Township zoning jurisdiction. Adult foster care homes which are subject to Township zoning jurisdiction and nursing homes are permitted if authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

(1) the number of residents who are to occupy the proposed facility,

(2) the effect of the proposed facility on the immediate surrounding neighborhood,

(3) potential traffic which will be generated by the proposed facility,

(4) available parking for employees, visitors and others,

(5) the adequacy of the recreational areas and the open space areas provided for the proposed facility, and

(6) the proximity of the proposed facility to any other adult foster care home or nursing home."

Section 50. Section 10.02 (c) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 10.02 USE REGULATIONS.

(c) Home occupations in a single-family dwelling when authorized as a special use by the Zoning Inspector. The Zoning Inspector may, in his discretion, decline to decide such matter and refer decision thereon to the Planning Commission. The same standards as are provided in Section 6.02 (g) shall be considered by the Planning Commission."

Section 51. A Section 10.06 shall be added to the Park Township Zoning Ordinance to provide in its entirety as follows:

"SECTION 10.06 SITE PLAN APPROVAL. A site plan for any two-family dwelling to be erected in this zoning district, which is in accordance with the requirements of Chapter XX-A of this Ordinance, shall be approved by the Planning Commission before a building permit is issued."

Section 52. Section 11.02 (c) of the Park Township Zoning Ordinance shall be amended to provide in its entirety as follows:

"SECTION 11.02 USE REGULATIONS.

(c) Home occupations in single-family dwellings when authorized as a special use by the Zoning Inspector. The Zoning Inspector may, in his discretion, decline to decide such matter and refer decision thereon to the Planning Commission. The same standards as are provided in Section 6.02 (g) shall be considered by the Planning Commission."

Section 53. A Section 11.06 shall be added to the Park Township Zoning Ordinance to provide in its entirety as follows:

Park Township Zoning Ordinance

Zone Districts - Effective February 7, 1974

SECTION 5.02 ZONING MAP. The locations and boundaries of the zoning districts are hereby established as shown on a map, as the same may be amended from time to time, entitled "The Zoning Map of Park Township, Ottawa County, Michigan," which accompanies and is hereby made a part of this Ordinance. Where uncertainty exists as to the boundaries of zoning districts as shown on the zoning map, the following rules of construction and interpretation shall apply.

(a) Boundaries indicated as approximately following the centerlines of streets, highways, or alleys shall be construed to follow such centerlines.

(b) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

(c) Boundaries indicated as approximately following township boundaries shall be construed as following township boundaries.

(d) Boundaries indicated as approximately following shorelines or lake or stream beds shall be construed as following such shorelines or lake or stream beds, and in the event of change in the location of shorelines or lake or stream beds, shall be construed as moving with the shoreline and lake or stream bed.

(e) Lines parallel to streets without indication of the depth from the street line shall be construed as having a depth of two hundred (200) feet from the front lot line.

(f) Boundaries indicated as approximately following property lines, section lines or other lines of a government survey shall be construed as following such property lines, section lines or other lines of a government survey as they exist as of the effective date of this Ordinance or applicable amendment thereto.

SECTION 5.03 AREAS NOT INCLUDED WITHIN A DISTRICT. In every case where land has not been included within a district on the zoning map, such land shall be in the AG Zoning District.

CHAPTER VI

AG AGRICULTURAL AND PERMANENT OPEN SPACE DISTRICT

SECTION 6.01 DESCRIPTION AND PURPOSE. This Zoning District is intended for large tracts of land used for farming, animal husbandry, dairying, horticultural, or other agricultural activities.

SECTION 6.02 USE REGULATIONS. Land, buildings and structures in this Zoning District may be used for the following purposes only:

(a) Farms for both general and specialized farming, together with farm dwellings and buildings and other installations necessary to such farms including temporary housing for migratory workers provided such housing and its sanitary facilities are in conformance with all requirements of the Ottawa County Health Department and/or any other federal, state and/or local regulating agency having jurisdiction.

(b) Greenhouses, nurseries, orchards, vineyards, apiaries, chicken hatcheries, blueberry and poultry farms.

(c) Riding stables, where horses are boarded and/or rented, if (1) there is a minimum lot area of twenty (20) acres and (2) the site plan is reviewed by the Planning Commission.

(d) Single-family dwellings.

(e) Publicly owned athletic grounds and parks.

(f) Business signs.

(g) Home occupations when authorized as a special use by the Board of Appeals. In considering such authorization, the Board of Appeals shall consider the following standards: (1) the nature of the home occupation, (2) the effect of the home occupation on the surrounding neighborhood, (3) the environmental effects of the home occupation, (4) the nature of surrounding neighborhood, (5) potential traffic congestion as a result of the home occupation, and (6) provision for parking for traffic or clientele which may result from the operation of the home occupation.

(h) Removal and processing of top soil, sand, gravel, or other such minerals when authorized as a special use by the Board of Appeals in accordance with Section 4.27.

(i) Kennels when authorized as a special use by the Board of Appeals. In considering such authorization, the Board of Appeals shall consider the following standards: (1) the size, nature and character of the kennel, (2) the proximity of the kennel to adjoining properties, (3) the possibility of noise or other disturbance for adjoining properties and the surrounding neighborhood on account of the operation of the kennel, (4) potential traffic congestion on account of the kennel, and (5) the nature and character of the buildings and structures to be utilized for the kennel operation.

(j) Roadside stands when authorized as a special use by the Board of Appeals. In considering such authorization, the Board of Appeals shall consider the following standards: (1) the proposed location of the roadside stand, (2) the size, nature and character of the building and/or structure to be utilized for the roadside stand, (3) the type and kind of produce and goods to be sold at the roadside stand, (4) the proximity of the roadside stand to adjoining properties, (5) the time or season during which the roadside stand will operate, (6) the parking facilities provided for the roadside stand, (7) any traffic congestion or hazards which would result from the roadside stand, and (8) the effect of the roadside stand on adjoining properties and the surrounding neighborhood.

SECTION 6.03 HEIGHT REGULATIONS. No residential building or structure shall exceed thirty-five (35) feet in height. All other buildings and structures shall not exceed their usual and customary heights.

SECTION 6.04 AREA REGULATIONS. No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area, and building coverage requirements:

(a) Front Yard - There shall be a front yard of not less than forty (40) feet, provided, however, that there shall be a front yard of not less than one hundred fifty (150) feet for all farm buildings and structures.

(b) Side Yard - For residential buildings and structures, there shall be total side yards of not less than fifty (50) feet; provided, however, that no side yard shall be less than twenty (20) feet. For all other buildings, there shall be two (2) side yards of not less than sixty (60) feet each.

(c) Rear Yard - There shall be a rear yard of not less than fifty (50) feet.

(d) Lot Area - The minimum lot area and width for residential uses shall be twenty (20) acres and six hundred sixty (660) feet respectively; provided, however, that any lot which is platted or otherwise of record as of the effective date of this Ordinance may be used for one (1) single family dwelling provided that lots not served with public sewer shall have a minimum lot area and width of fifteen thousand (15,000) square feet and one hundred (100) feet respectively. The minimum lot area and width for a non-residential building or structure shall be ten (10) acres and one hundred (100) feet respectively. The minimum lot area for a lot on which no building or structure is to be constructed shall be one (1) acre.

SECTION 6.05 MINIMUM FLOOR AREA. Each dwelling unit shall have a minimum of one thousand (1000) square feet of usable floor area, provided, however, that all single family dwellings with more than one (1) floor level shall meet the following requirements: eleven hundred (1100) square feet of usable floor area for a one and one-half (1½) story dwelling, one thousand (1000) square feet of usable floor area in the main and upper level floors of a tri-level dwelling, and fourteen hundred (1400) square feet of usable floor area for a two (2) story dwelling.

CHAPTER VII

R-1 RURAL ESTATE DISTRICT

SECTION 7.01 DESCRIPTION AND PURPOSES. This Zoning District is intended for large rural residential estates and farming.

SECTION 7.02 USE REGULATIONS. Land, buildings or structures in this Zoning District may be used for the following purposes only:

(a) Farms for both general and specialized farming, except livestock, feed lots and poultry farms, together with farm dwellings and buildings and other installations necessary to such farms. Temporary housing for migratory workers is prohibited.

(b) Greenhouses, nurseries, orchards, vineyards, or blueberry farms.

(c) Riding stables, where horses are boarded and/or rented, if there is a minimum lot area of twenty (20) acres and (2) the site plan is reviewed by the Planning Commission.

(d) Single-family dwellings.

(e) Home occupations when authorized as a special use by the Board of Appeals utilizing the same standards as are provided in Section 7.02(g).

(f) Removal and processing of top soil, sand, gravel, or other such minerals when authorized as a special use by the Board of Appeals in accordance with Section 4.27.

(g) Roadside stands when authorized as a special use by the Board of Appeals utilizing the same standards as are provided in Section 6.02 (g).

(h) Publically owned athletic grounds and parks.

(i) Business signs.

SECTION 7.03 HEIGHT REGULATIONS. No residential building or structure shall exceed thirty-five (35) feet in height. All other buildings and structures shall not exceed their usual and customary heights.

SECTION 7.04 AREA REGULATIONS. No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area, and building coverage requirements:

(a) Front Yard - There shall be a front yard of not less than forty (40) feet, provided, however, that there shall be a front yard of not less than one hundred fifty (150) feet for all farm buildings and structures.

(b) Side Yard - For residential buildings and structures, there shall be total side yard of not less than fifty (50) feet; provided, however, that no side yard shall be less than twenty (20) feet. For all other buildings, there shall be two (2) side yards of not less than sixty (60) feet each.

(c) Rear Yard - There shall be a rear yard of not less than fifty (50) feet.

(d) Lot Area - The minimum lot area and width for all uses shall be ten (10) acres and three hundred thirty (330) feet respectively; provided, however, (1) that any lot which is platted or otherwise of record as of the effective date of this Ordinance may be used for one (1) single family dwelling if it complies with all of the R-3 Zoning District requirements for side yards and (2) that any lot created by the division or splitting of any lot platted or otherwise of record as of the effective date of this Ordinance may be used for one (1) single family dwelling if it complies with all of the R-3 Zoning District requirements for side yards and if such division or splitting is accomplished in such a manner as to create not more than three (3) acres, such lots are as nearly equal in area and in dimensions as practicable, and the water and sewer facilities of such lots which are not served by public water and/or sewer are approved by the Ottawa County Health Department.

SECTION 7.05 MINIMUM FLOOR AREA. Each dwelling unit shall have a minimum of one thousand (1,000) square feet of usable floor area, provided, however, that all single family dwellings with more than one (1) floor level shall meet the following requirements: eleven hundred (1100) square feet of usable floor area for a one and one-half (1½) story dwelling, one thousand (1000) square feet of usable floor area in the main and upper level floors of a tri-level dwelling, and fourteen hundred (1400) square feet of usable floor area for a two (2) story dwelling.

CHAPTER VIII

R-2 LAKESHORE RESIDENCE DISTRICT

SECTION 8.01 DESCRIPTION AND PURPOSE. This Zoning District is intended for low density single family residential uses and other seasonal residential uses along the Lake Michigan shoreline area in the Township.

SECTION 8.02 USE REGULATIONS. Land, buildings or structures in this Zoning District may be used for the following purposes only:

(a) Single family dwellings.

(b) Parks, playgrounds, community centers, governmental, administration, or service buildings which are owned and operated by a governmental agency or a non-commercial organization when authorized as a special use by the Board of Appeals. In considering such authorization, the Board of Appeals shall consider the following standards: (1) the necessity for such use for the surrounding neighborhood, (2) the proximity of the intended use to adjoining properties specifically including proximity to occupied dwellings, (3) the size, nature and character of the proposed use, (4) potential traffic congestion which might be occasioned by the intended use, (5) parking facilities to be provided for the proposed use; (6) the effect of proposed use on adjoining properties and the surrounding neighborhood.

SECTION 8.03 HEIGHT REGULATIONS. No building or structure shall exceed thirty-five (35) feet in height or two and one-half (2½) stories in height.

SECTION 8.04 AREA REGULATIONS. No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area and building coverage requirements.

(a) Front Yard - There shall be a front yard of not less than forty (40) feet.

(b) Side Yard - For residential buildings, no side yard shall be less than ten (10) feet. For all other buildings, no side yard shall be less than fifty (50) feet.

(c) Rear Yard - There shall be a rear yard of not less than fifty (50) feet; provided, however, that no buildings shall be located closer than fifty (50) feet from the water's edge of Lake Michigan as determined at the highest proviously recorded lake level after the year 1900.

(d) Lot Area and Width - The minimum lot area and width for residential uses shall be forty-three thousand, five hundred and sixty (43,560) square feet and one hundred (100) feet respectively. The minimum lot area and width for all other uses shall be three (3) acres and two hundred (200) feet respectively.

SECTION 8.05 MINIMUM FLOOR AREA. Each dwelling unit shall have a minimum of one thousand (1,000) square feet of usable floor area, provided, however, that all single family dwellings with more than one (1) floor level shall meet the following requirements: eleven hundred (1100) square feet of usable floor area for a one and one-half (1½) story dwelling, one thousand (1000) square feet of useable floor area in the main and upper level floors of a tri-level dwelling, and fourteen hundred (1400) square feet of usable floor area for a two (2) story dwelling.

CHAPTER IX

R-3 LOW DENSITY ONE-FAMILY RESIDENCE DISTRICT

SECTION 9.01 DESCRIPTION AND PURPOSE. This Zoning District is intended for low density single family residential uses together with required recreational, religious and educational facilities.

SECTION 9.02 USE REGULATIONS. Land, buildings or structures in this Zoning District may be used for the following purposes only:

(a) Single family dwellings.

(b) Private and public schools, libraries, museums, art galleries and similar uses, when owned and operated by a governmental agency or non-profit organization and when authorized by the Board of Appeals as a special use. In considering such authorization, the Board of Appeals shall consider the following standards: (1) the size, nature and character of the proposed use, (2) the proximity of the proposed use to adjoining properties, (3) the parking facilities provided for the proposed use, (4) any traffic congestion or hazards which will be occasioned by the proposed use, (5) how well the proposed use harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood, and (6) the effect of the proposed use on adjoining properties and the surrounding neighborhood.

(c) Parks, playgrounds, community centers, governmental, administration, or service buildings which are owned and operated by a governmental agency or a non-commercial organization when authorized as a special use by the Board of Appeals utilizing the same standards as are provided in Section 8.02 (b).

(d) Churches when authorized by the Board of Appeals as a special use. In considering such authorization, the Board of Appeals shall consider the following standards: (1) the size, character and nature of the church building, (2) the proximity of the church to adjoining properties, (3) the off-street parking which is to be provided for the church, (4) the potential traffic congestion and hazards which will be caused by the church use, (5) the degree with which the church harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood, and (6) the effect of the church on adjoining properties and the surrounding neighborhood.

SECTION 9.03 HEIGHT REGULATIONS. No building or structure shall exceed thirty-five (35) feet in height or two and one-half (2½) stories.

SECTION 9.04 AREA REGULATIONS. No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area and building coverage requirements:

(a) Front Yard - There shall be a front yard of not less than forty (40) feet.

(b) Side Yard - No side yard shall be less than ten (10) feet.

(c) Rear Yard - There shall be a rear yard of not less than fifty (50) feet.

(d) Lot Area and Width - The minimum lot area and width for residential uses shall be fifteen thousand (15,000) square feet and ninety (90) feet respectively. The minimum lot area for all other permitted uses shall be fifteen thousand (15,000) square feet.

SECTION 9.05 MINIMUM FLOOR AREA. Each dwelling unit shall have a minimum of one thousand (1,000) square feet of usable floor area, provided, however, that all single family dwellings with more than one (1) floor level shall meet the following requirements: eleven hundred (1100) square feet of usable floor area for a one and one-half (1½) story dwelling, one thousand (1000) square feet of usable floor area in the main and upper level floors of a tri-level dwelling, and fourteen hundred (1400) square feet of usable floor area for a two (2) story dwelling.

CHAPTER X

R-4 MEDIUM DENSITY ONE AND TWO-FAMILY RESIDENCE DISTRICT

SECTION 10.01 DESCRIPTION AND PURPOSE. This Zoning District is intended for medium density single and two-family uses.

SECTION 10.02 USE REGULATIONS. Land, buildings or structures in this Zoning District may be used for the following purposes only:

(a) Any use permitted in the R-3 Zoning District, subject, except as specifically provided otherwise in this Chapter, to the same conditions, restrictions and requirements as are provided in said R-3 Zoning District.

(b) Two-family dwelling.

(c) Home occupations in a single family dwelling when authorized as a special use by the Board of Appeals utilizing the same standards as are provided in Section 7.03 (g).

SECTION 10.03 HEIGHT REGULATIONS. No building or structure shall exceed thirty-five (35) feet in height or two and one-half (2½) stories in height.

SECTION 10.04 AREA REGULATIONS. No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area and building coverage requirements.

(a) Front Yard - There shall be a front yard of not less than forty (40) feet.

(b) Side Yard - There shall be a total side yard of not less than twenty (20) feet; provided, however, that no yard shall be less than seven (7) feet.

(c) Rear Yard - There shall be a rear yard of not less than twenty-five (25) feet; provided, however, that in the case of lakefront lots, the rear yard shall be not less than fifty (50) feet.

(d) Lot Area and Width (Single Family) - The minimum lot area and width for a single family dwelling shall be eight thousand five hundred (8,500) square feet and eighty-five (85) feet respectively; provided, however, (1) that the minimum lot area and width for lots not served with public water and sewer shall be fifteen thousand (15,000) square feet and ninety (90) feet respectively and (2) that the minimum lot area for lots served with public water but not served with public sewer shall be ten thousand (10,000) square feet.

(e) Lot Area and Width (Two-Family) - The minimum lot area and width for a two-family dwelling shall be fifteen thousand (15,000) square feet and one hundred (100) feet respectively; provided, however, (1) that the minimum lot area and width for lots not served with public water and sewer shall be thirty thousand (30,000) square feet and one hundred (100) feet respectively, and (2) that the minimum lot area for lots served with public water but not served with public sewer shall be twenty thousand (20,000) square feet.

SECTION 10.05 MINIMUM FLOOR AREA. Each dwelling unit shall have a minimum of one thousand (1,000) square feet of usable floor area, provided, however, that all single family dwellings with more than one (1) floor level shall meet the following requirements: eleven hundred (1100) square feet of usable floor area for a one and one-half (1½) story dwelling, one thousand (1000) square feet of usable floor area in the main and upper level floors of a tri-level dwelling, and fourteen hundred (1400) square feet of usable floor area for a two (2) story dwelling.

CHAPTER XI

R-5 LOW DENSITY MULTI-FAMILY RESIDENCE DISTRICT

SECTION 11.01 DESCRIPTION AND PURPOSE. This Zoning District is intended for low density residential and group housing.

SECTION 11.02 USE REGULATIONS. Land, buildings or structures in this Zoning District may be used for the following purposes only:

(a) Any use permitted in the R-4 Zoning District, subject, except as specifically provided otherwise in this Chapter, to the same conditions, restrictions and requirements as are provided in the R-4 Zoning District.

(b) Multi-family dwellings provided they are served by public water.

(c) Home occupations in single-family dwellings when authorized as a special use by the Board of Appeals utilizing the same standards as are provided in Section 6.02 (g).

SECTION 11.03 HEIGHT REGULATIONS. No building or structure shall exceed thirty-five (35) feet in height or two and one-half (2½) stories in height.

SECTION 11.04 AREA REGULATIONS. No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area and building coverage requirements.

(a) Front Yard - There shall be a front yard of not less than forty (40) feet.

(b) Side Yard - There shall be total side yards as follows:

(1) For single and two-family dwellings, the total side yards shall be not less than twenty (20) feet; provided, however, that no side yard shall be less than seven (7) feet.

(2) For multi-family dwellings and all other permitted uses, each side yard shall be not less than twenty (20) feet.

(c) Rear Yard - There shall be a rear yard of not less than twenty-five (25) feet; provided, however, that in the case of lake front lots, the rear yard shall be not less than fifty (50) feet.

(d) Lot Area and Width (Single Family) - The minimum lot area and width for a single family dwelling shall be eight thousand, five hundred (8,500) square feet and eighty-five (85) feet respectively; provided, however, (1) that the minimum lot area and width for lots not served with public water and sewer shall be fifteen thousand (15,000) square feet and ninety (90) feet respectively, and (2) that the minimum lot area for lots served with public water but not served with public sewer shall be ten thousand (10,000) square feet.

(e) Lot Area and Width (Two-Family) - The minimum lot area and width for a two-family dwelling shall be fifteen thousand (15,000) square feet and one hundred (100) feet respectively; provided, however, (1) that the minimum lot area and width for lots not served with public water and sewer shall be thirty thousand (30,000) square feet and one hundred (100) feet respectively, and (2) that the minimum lot area for lots served with public water but not served with public sewer shall be twenty thousand (20,000) square feet.

(f) Lot Area and Width (other than One and Two-Family) - The minimum lot width shall be one hundred (100) feet. The minimum lot area for multi-family dwellings shall be four thousand five hundred (4,500) square feet per dwelling unit; provided, however, that the minimum lot area for multi-family dwellings not served with public sewer shall be ten thousand (10,000) square feet per dwelling unit. The minimum lot area for all other permitted uses shall be fifteen thousand (15,000) square feet.

SECTION 11.05 MINIMUM FLOOR AREA. Each single-family and two-family dwelling shall have minimum usable floor area as is required by 10.05. Each multi-family dwelling shall have minimum usable floor area as follows: One bedroom unit, six hundred fifty (650) square feet per unit; two bedroom unit, seven hundred fifty (750) square feet per unit; three bedroom unit, nine hundred (900) square feet per unit; additional bedrooms shall require an additional one hundred (100) square feet of usable floor area for each additional bedroom.

CHAPTER XII

R-6 MEDIUM DENSITY MULTI-FAMILY RESIDENCE DISTRICT

SECTION 12.01 DESCRIPTION AND PURPOSE. This Zoning District is intended to serve as a buffer or transitional zone between low density residential and non-residential zones and is intended for medium density residential and group housing.

SECTION 12.02 USE REGULATIONS. Land, building or structures in this Zoning District may be used for the following purposes only.

(a) Any use permitted in the R-4 Zoning District (except single family dwellings), subject, except as specifically provided otherwise in this Chapter, to the same conditions, restrictions and requirements as are provided in said R-4 Zoning District.

(b) Multi-family dwellings if the development is five (5) acres or less and is served by public water.

SECTION 12.03 HEIGHT REGULATIONS. No building or structure shall exceed thirty-five (35) feet or two and one-half (2½) stories in height.

SECTION 12.04 AREA REGULATIONS. No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area and building coverage requirements.

(a) Front Yard - There shall be a front setback of not less than forty (40) feet.

(b) Side Yard - There shall be total side yard as follows:

(1) For two-family dwellings, the total side yards shall be not less than twenty (20) feet; provided, however, that no side yard shall be less than seven (7) feet.

(2) For multi-family dwellings and all other permitted uses, each side yard shall be not less than twenty (20) feet.

(c) Rear Yard - There shall be a rear yard of not less than twenty-five (25) feet; provided, however, that in the case of lake front lots, the rear yard shall be not less than fifty (50) feet.

(d) Lot Area and Width (Two-Family) - The minimum lot area and width for a two-family dwelling shall be fifteen thousand (15,000) square feet and one hundred (100) feet respectively; provided, however, (1) that the minimum lot area and width for lots not served with public water and public sewer shall be thirty thousand (30,000) square feet and one hundred (100) feet respectively, and (2) that the minimum lot area for lots served with public water but not with public sewer shall be twenty thousand (20,000) square feet.

(e) Lot Area and Width (Multi-Family Dwellings) - The minimum lot area for multi-family dwellings provided with both public water and sewer shall be three thousand six hundred thirty (3,630) square feet per dwelling unit; provided, however, that there shall be a minimum lot area of fifteen thousand (15,000) square feet regardless of the number of dwelling units. If public water only is provided, the minimum lot area for multi-family dwellings shall be ten thousand (10,000) square feet per dwelling unit. The minimum width of a lot in any event shall be one hundred (100) feet.

(f) Lot Area and Width (All Other Uses) - The minimum lot area and width for all other uses shall be fifteen thousand (15,000) square feet and one hundred (100) feet respectively.

SECTION 12.05 MINIMUM FLOOR AREA. Each dwelling unit shall have a minimum of one thousand (1,000) square feet of usable floor area, provided, however, that all single family dwellings with more than one (1) floor level shall meet the following requirements: eleven hundred (1100) square feet of usable floor area for a one and one-half (1½) story dwelling, one thousand (1000) square feet of usable floor area in the main and upper level floors of a tri-level dwelling, and fourteen hundred (1400) square feet of usable floor area for a two (2) story dwelling.

EXHIBIT 13

2024 WL 2499177

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

The TOWNES AT LIBERTY PARK CONDOMINIUM ASSOCIATION, Plaintiff-Appellant, v. ARABELLA VENTURES, INC., Defendant-Appellee, and Ramandeep Kaur Jattana, and Kulbir Singh Dhillon, Defendants.

No. 365956
May 23, 2024

Oakland Circuit Court, LC No. 2022-196160-CH

Before: Maldonado, P.J., and Patel and N. P. Hood, JJ.

Opinion

Per Curiam.

*1 In this action seeking to enjoin the use of a condominium unit as a short-term rental, plaintiff, The **Townes** at **Liberty** Park Condominium Association (the Association) appeals as of right the order granting summary disposition under MCR 2.116(C)(4) and MCR 2.116(C)(10) to defendant, Arabella Ventures, Inc. (Arabella). On appeal, the Association contends the trial court erred in granting summary disposition because: (1) the sale of the unit by Arabella did not moot the Association's claims; (2) the Association's action was "successful," under the Condominium Act, MCL 559.101 *et seq.*, and the condominium bylaws, which entitled the Association to attorney fees and costs; and (3) the trial court erred in releasing the Association's lis pendens regarding the unit. We affirm.

I. BACKGROUND

The Association is a condominium association made up of the co-owners of units at the **Townes** at **Liberty** Park Condominium (the **Townes**) in Novi. Arabella purchased a unit in the Townes in May 2021 and listed the unit for short-term rental on Airbnb.

In July 2022, the Association notified Arabella that it was in violation of various sections of the condominium bylaws by renting the unit with Airbnb. The Association requested Arabella to end this practice and remove any listing offering the unit for short-term rental. Arabella maintained that the bylaws did not restrict its use of the unit as an Airbnb rental and it did not remove the Airbnb listing for the unit.

Relevant to this appeal, the condominium bylaws state:

> ARTICLE XVIII REMEDIES FOR DEFAULT
>
> Any default by a Co-owner of its obligations under any of the Condominium Documents shall entitle the Association or another Co-owner or Co-owners to the following relief:
>
> Section 18.1 Legal Action. Failure to comply with any of the terms or provisions of the Condominium Documents shall be grounds for relief, which may include, without limitation, an action to recover damages, injunctive relief, foreclosure of lien (if there is a default in the payment of an assessment) or any combination thereof, and such relief may be sought by the Association or, if appropriate, by an aggrieved Co-owner or Co-owners.
>
> Section 18.2 Recovery of Costs. In any proceeding arising because of an alleged default by any Co-owner, the Association, if successful, shall be entitled to recover the costs of the proceeding, including its actual attorneys' fees (not limited to statutory fees), but in no event shall any Co-owner be entitled to recover such attorneys' fees.

The Association filed this breach of contract action in September 2022. The Association alleged that Arabella violated the condominium bylaws by renting the unit as a short-term lease. The Association requested relief under MCL 559.206 and the bylaws, including a permanent injunction ordering Arabella to "(i) immediately remove the Unit listing from Airbnb and any similar short-term rental service and (ii) permanently cease all further short term rentals of the Unit." Under the same authority, the Association sought to "recoup the costs and attorneys' fees sustained as a result of this action." In October 2022, the Association recorded a lis pendens on the unit, giving notice "a suit has been commenced and is pending in [the trial court], upon a Complaint filed by [the Association] against [Arabella], regarding violations of the Master Deed for the **Townes** at **Liberty** Park," affecting the unit.

[*2] In January 2023, soon after answering the Association's complaint, Arabella sold the unit to defendants, Ramandeep Kaur Jattana and Kulbir Singh Dhillon, individuals with no affiliation to Arabella. Arabella then moved for summary disposition under MCR 2.116(C)(4) and MCR 2.116(C)(10). In an attached affidavit, Arabella's officer and registered agent averred:

> 4. That monthly revenues from offering the Property on Airbnb were initially strong, but within the first year [Arabella] determined that the long term prospects for the Property were not as expected.
>
> 5. That [Arabella] began listing the Property for sale in Fall 2022 and was eventually removed from Airbnb by the end of the year.

Arabella argued because it no longer owned the property, a controversy no longer existed between the parties, the claim was moot, and the trial court lacked jurisdiction. Arabella also argued the Association's "suggestion" it was entitled to attorney fees and costs did not constitute an affirmative claim.

Before answering the dispositive motion, the Association moved to amend its complaint by adding Jattana and Dhillon as defendants, arguing that any judgment amount may be assessed against the unit and constitute a lien thereon. The trial court granted the motion.

The Association opposed Arabella's motion for summary disposition, arguing that the trial court had subject-matter jurisdiction until it rendered a final decision on the merits of all of the Association's claims. Specifically, the Association argued it was entitled to attorney fees and costs because it was "successful" in obtaining its goal: Arabella ceasing the short-term rental of the unit and removing any listing offering this rental. The Association maintained it was entitled to a permanent injunction and an award of costs, damages, interest, and attorney fees under the Condominium Act and the bylaws. Arabella asserted that the Association could not claim the "success" necessary for an entitlement to attorney fees because Arabella never conceded the bylaws disallowed short-term rentals, and sold the unit only because Arabella's practice of renting it was not profitable. The trial court granted Arabella's motion for summary disposition, and dismissed the action with prejudice, without fees and costs awarded to either party. The court ordered the Association to release the lis pendens. This appeal followed.

II. STANDARDS OF REVIEW

"We review de novo a trial court's decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). "The applicability of a legal doctrine, such as mootness, is a question of law which this Court reviews de novo." *TM v MZ*, 501 Mich 312, 315; 916 NW2d 473 (2018) (cleaned up). The interpretation of a contract is also a question of law that this Court reviews de novo. *DaimlerChrysler Corp v G Tech Prof Staffing, Inc*, 260 Mich App 183, 184; 678 NW2d 647 (2003). Likewise, we review de novo underlying issues of statutory interpretation. *Drob v SEK 15, Inc*, 334 Mich App 607, 617; 965 NW2d 683 (2020).

The trial court granted summary disposition under MCR 2.116(C)(4) and (C)(10). A motion for summary disposition under MCR 2.116(C)(4) is appropriate where the court lacks subject-matter jurisdiction. *Papas v Mich Gaming Control Bd*, 257 Mich

App 647, 657; 669 NW2d 326 (2003). A "circuit court is presumed to have subject-matter jurisdiction over a civil action unless Michigan's Constitution or a statute expressly prohibits it from exercising jurisdiction or gives to another court exclusive jurisdiction over the subject matter of the suit." *Teran v Rittley*, 313 Mich App 197, 206; 882 NW2d 181 (2015). "[O]nce a court acquires jurisdiction, unless the matter is properly removed or dismissed, that court is charged with the duty to render a final decision on the merits of the case, resolving the dispute, with the entry of an enforceable judgment." *Clohset v No Name Corp*, 302 Mich App 550, 562; 840 NW2d 375 (2013).

*3 Summary disposition under MCR 2.116(C)(10) is warranted when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). Summary disposition under MCR 2.116(C)(10) is proper when, after considering all evidence in the light most favorable to the non-moving party, the court determines there is no genuine issue of material fact. *El-Khalil*, 504 Mich at 160. "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *Id.* (cleaned up).

We review a trial court's decision whether to award attorney fees for an abuse of discretion. *Windemere Commons I Ass'n v O'Brien*, 269 Mich App 681, 682; 713 NW2d 814 (2006). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008).

III. ANALYSIS

The Association argues that the trial court erred by granting summary disposition in favor of Arabella because the Association sought an injunction against Arabella that included any future units it may purchase, and the Association was entitled to its costs and attorney's fees incurred in successfully obtaining its desired outcome in filing this action. We disagree.

"The question of mootness is a threshold issue that a court must address before it reaches the substantive issues of a case." *In re Tchakarova*, 328 Mich App 172, 178; 936 NW2d 863 (2019). "The courts will generally refrain from deciding issues that are moot, meaning it is impossible for the court to craft an order with any practical effect on the issue." *Moore v Genesee Co*, 337 Mich App 723, 726-727; 976 NW2d 921 (2021). "Where the facts of a case make clear that a litigated issue has become moot, a court is, of course, bound to take note of such fact and dismiss the suit, even if the parties do not present the issue of mootness." *City of Novi v Robert Adell Children's Funded Trust*, 473 Mich 242, 255 n 12; 701 NW2d 144 (2005). Although there are exceptions for matters of public significance that may recur yet evade review, *Moore*, 337 Mich App at 727, those exceptions are not applicable in this matter.

The Association filed this action requesting relief under MCL 559.206 and the bylaws, [1] in the form of both a permanent injunction and "recoup[ment of] the costs and attorneys' fees sustained as a result of this action." As part of the Condominium Act, MCL 559.206 states:

> A default by a co-owner shall entitle the association of co-owners to the following relief:
>
> (a) Failure to comply with any of the terms or provisions of the condominium documents, shall be grounds for relief, which may include without limitations, an action to recover sums due for damages, injunctive relief, foreclosure of lien if default in payment of assessment, or any combination thereof.
>
> (b) In a proceeding arising because of an alleged default by a co-owner, the association of co-owners or the co-owner, if successful, shall recover the costs of the proceeding and reasonable attorney fees, as determined by the court, to the extent the condominium documents expressly so provide.
>
> (c) Such other reasonable remedies the condominium documents may provide including but without limitation the levying of fines against co-owners after notice and hearing thereon and the imposition of late charges for nonpayment of assessments as provided in the condominium bylaws or rules and regulations of the condominium. [MCL 559.206.]

*4 Because the co-owner's "[f]ailure to comply with any of the terms or provisions of the condominium documents," is grounds for relief such as "an action to recover sums due for damages, [or] injunctive relief," MCL 559.206(a), there is no dispute the Association's original complaint presented a real controversy when it was filed. But Arabella sold the unit and no longer has an interest in the unit. Therefore, any injunction against Arabella for its potential purchase of a unit in the future would be based on a hypothetical situation, not existing facts. A "real" controversy cannot be "hypothetical." *City of Warren v City of Detroit*, 471 Mich 941, 942; 690 NW2d 94 (2004) (MARKMAN, J., concurring). A claim is moot if it presents only abstract questions of law that do not rest on existing facts or rights. *Ryan v Ryan*, 260 Mich App 315, 330; 677 NW2d 899 (2004). The Association's claim for an injunction was rendered moot with Arabella's sale of the unit. Accordingly, we find that the trial court did not err by granting summary disposition to Arabella.

We further conclude that the trial court did not err by declining to award attorney fees and costs to the Association. "As a general rule, attorney fees are not recoverable as an element of costs or damages absent an express legal exception." *Fleet Business Credit, LLC v Krapohl Ford Lincoln Mercury Co*, 274 Mich App 584, 589; 735 NW2d 644 (2007). A party may recover attorney fees if expressly authorized by statute, *Dessart v Burak*, 470 Mich 37, 42; 678 NW2d 615 (2004), or provided for by contract, *Fleet Business Credit*, 274 Mich App at 589. In this case, the Association

made a claim under MCL 559.206(b) and Section 18.2 of the bylaws for "costs and attorneys' fees sustained as a result of this action."

MCL 559.206(b) states:

> In a proceeding arising because of an alleged default by a co-owner, the association of co-owners or the co-owner, *if successful*, shall recover the costs of the proceeding and reasonable attorney fees, as determined by the court, to the extent the condominium documents expressly so provide. MCL 559.206(b). [emphasis added.]

Similarly, Section 18.2 of the bylaws states:

> In any proceeding arising because of an alleged default by any Co-owner, the Association, *if successful*, shall be entitled to recover the costs of the proceeding, including its actual attorneys' fees (not limited to statutory fees), but in no event shall any Co-owner be entitled to recover such attorneys' fees. [emphasis added.]

"The principal goal of statutory interpretation is to give effect to the Legislature's intent, and the most reliable evidence of that intent is the plain language of the statute." *South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality*, 502 Mich 349, 360-361; 917 NW2d 603 (2018). "We accord to every word or phrase of a statute its plain and ordinary meaning, unless a term has a special, technical meaning or is defined in the statute." *Guardian Environmental Servs, Inc v Bureau of Const Codes and Fire Safety*, 279 Mich App 1, 6; 755 NW2d 556 (2008). "Where the statutory language is unambiguous, the plain meaning reflects the Legislature's intent and the statute must be applied as written." *Honigman Miller Schwartz & Cohn LLP v City of Detroit,* 505 Mich 284, 294; 952 NW2d 358 (2020) (cleaned up). If a statutory term is undefined, it "must be accorded its plain and ordinary meaning[;]" but a legal term of art. "must be construed in accordance with its peculiar and appropriate legal meaning." *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008), citing MCL 8.3a.

"Condominium bylaws are interpreted according to the rules governing the interpretation of a contract." *Tuscany Grove Ass'n v Peraino*, 311 Mich App 389, 393; 875 NW2d 234 (2015). "In interpreting a contract, it is a court's obligation to determine the intent of the parties by examining the language of the contract according to its plain and ordinary meaning." *Phillips v Homer*, 480 Mich 19, 24; 745 NW2d 754 (2008) (cleaned up). "If the contractual language is unambiguous, courts must interpret and enforce the contract as written, because an unambiguous contract reflects the parties' intent as a matter of law." *Id.*

*5 Pursuant to the bylaws and MCL 559.206(b), the Association is entitled to recover the costs of this proceeding, including reasonable attorney fees, if this action is "successful." The term "successful" is not defined in the Condominium Act or the bylaws and thus we will construe the term in accordance with its plain and ordinary meaning. See *Brackett*, 482 Mich at 276; see also *Phillips*, 480 Mich at 24. The Association commenced this action alleging that Arabella violated the bylaws by renting the unit. The Association requested an injunction restraining and forever enjoining Arabella from violating the bylaws and renting the unit. That result was achieved when Arabella voluntarily sold the unit while this action was pending. Arabella claimed that it sold the unit because "the long term prospects for the [unit] were not as expected." But it does not matter why Arabella voluntarily sold the unit. The sale was not brought about by a court order, judgment, or settlement agreement. The United States Supreme Court has stated: "A defendant's voluntary change in conduct, although perhaps accomplishing what the plaintiff sought to achieve by the lawsuit, lacks the necessary judicial imprimatur on the change." *Buckhannon Bd and Care Home, Inc v West Virginia Dep't of Health and Human Resources*, 532 US 598, 598-599; 121 S Ct 1835; 149 L Ed 2d 855 (2001). Under both the statute and the bylaws, the "proceeding arising because of [the] alleged default," MCL 559.206(b), was not "successful;" the proceeding was dismissed as moot after Arabella voluntarily sold the unit and there was no longer a real controversy. Accordingly, we find that the trial court did not err by declining to award attorney fees and costs to the Association.

Finally, because the Association's claim for an injunction is moot, the trial court properly released the Association's lis pendens concerning the unit. The effect of the filing of a notice of lis pendens is to cause after-acquired interests in the property to be taken subject to the outcome of the litigation. *Provident Mut Life Ins Co of Philadelphia v Vinton Co*, 282 Mich 84, 85-87; 275 NW 776 (1937).

> Generally, a lis pendens is designed to warn persons who deal with property while it is in litigation that they are charged with notice of the rights of their vendor's antagonist and take subject to the judgment rendered in the litigation. A purchaser who acquires property after the commencement of a suit and the filing of a notice of lis pendens is bound by the proceedings because [o]ne may not purchase any portion of the subject matter of litigation and thereby defeat the object of suit. A lis pendens is effective from the time of filing and not before. [*Richards v Tibaldi*, 272 Mich App 522, 536; 726 NW2d 770 (2006) (cleaned up).]

The claim for an injunction against Arabella was rendered moot by the sale of the unit to Jattana and Dhillon. There is no claim regarding the property rights

possessed by the new owners of the unit. Accordingly, the trial court properly released the lis pendens when it dismissed the Association's claim for an injunction.

Affirmed.

All Citations

Not Reported in N.W. Rptr., 2024 WL 2499177

Footnotes

1 Section 6.1 of the bylaws states: "No Unit in the Condominium shall be used for other than single-family residential purposes ...." Our Supreme Court found:

> "Commercial" is commonly defined as "able or likely to yield a profit." *Random House Webster's College Dictionary* (1991). "Commercial use" is defined in legal parlance as "use in connection with or for furtherance of a profit-making enterprise." *Black's Law Dictionary* (6th ed.). "Commercial activity" is defined in legal parlance as "any type of business or activity which is carried on for a profit." [*Terrien v Zwit*, 467 Mich 56, 63-64; 648 NW2d 602 (2002).]

Considering these definitions, in *Aldrich v Sugar Springs Prop Owners Ass'n, Inc*, 345 Mich App 181, 192; 4 NW3d 751 (2023), this Court held, "the act of renting property to another for short-term use is a commercial use ...."

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EXHIBIT 14

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

JOHN HEINBECK and
CRISTIN HEINBECK,

Plaintiffs,

V

TUNNEL BREEZE HOMEOWNERS ASSOCIATION, et al,

Defendants,
_____/

OPINION and ORDER

Case No.: 12-03144-CZ

Hon. Jon Hulsing

Steven Vander Ark, (P32471)
Attorney for Plaintiffs
29 Pearl St. NW, Ste 145
Grand Rapids, MI 49503

Randall Schipper, (P40773)
Attorney for Defendants
PO box 1767
Holland, MI 49422

At a session of said Court, held in the Ottawa County Courthouse,
in the City of Grand Haven, Michigan,
On the 30th day of April, 2013.

Defendants' motion for summary disposition is GRANTED.

* * *

Factual Background

This is a dispute involving covenants, conditions and restrictions (hereinafter referred to as CCRs) for the Tunnel Breeze Plat recorded in June and July, 1995. The facts are not in dispute. The "introductory" paragraphs of the CCRs read in relevant part:

> "C. To maintain an appropriate standard of quality, it is necessary to impose certain covenants, conditions and restrictions upon the use of the property within the Development.
>
> D. To accomplish the foregoing, Developer desires to impose certain building and use restrictions, covenants and conditions, as herein contained, upon and for the benefit of said Lots and the Development as a whole.

E. Developer is willing to sell Lots, but all buyers and subsequent owners must accept such Lots subject to the declarations, covenants, restrictions and conditions set forth herein, insofar as they apply to an individual Lot."

Section 2.1 of the CCRs reads as follows:

"Each lot shall be used exclusively for the construction of one single-family residence . . , shall be limited in use to single-family residential purposes, and may be occupied by only one single family. Except to the extent prohibited by law, when used herein, the phrase 'single family' shall mean (i)(A) a man or a woman (or a man and woman living together as husband and wife), (B) the children of either and of both of them, and/or (C) the parents of either but not both of them, and (ii) no other persons. The term shall not include persons not so related, and no residences on the Lots shall be occupied by any group of persons who are not members of the same single family, as defined herein."

While the Tunnel Breeze Plat consists of fourteen lots, the membership of Defendant Tunnel Breeze Homeowners Association (Association) is required of, and limited to, the eight owners of lots seven through fourteen, inclusive. These eight members live on a cul-de-sac. The eight members of the Association are the only parties to this litigation.

Plaintiffs are employed by the United States as Foreign Service Officers serving under the Secretary of State. Significant long-term travel is required of them. In 2011, Plaintiffs began looking for a home in Western Michigan. Part of their plan was the ability to rent their home on a weekly or other basis during their absences. In January 2012, Plaintiffs purchased lot #8. On the advice of counsel, Plaintiffs then formed a limited liability company, Tunnel Properties, for the purpose of renting the home.[1] A second LLC, West Michigan Vacation Property Management, was formed to manage the rentals. During the summer of 2012, Plaintiffs rented their home for 91 days, with an average rental rate of $3,200 per week, or gross revenue of $41,600. Projected gross rental income for 2013 is approximately $50,000.

The Association objects to the short-term rental and claims that the short-term rental of Plaintiffs' home violates the CCRs. In 2012, the Association began the process of amending the CCRs. The CCRs may be amended pursuant to subsection 12.1, which states:

"(a) Except for the restriction set forth in Sections 13 [drain commission requirements] and 14, [sewage system requirements] these covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by 60% of the then-owners has been recorded, agreeing to change said covenants in whole or in part.

[1] According to Plaintiff, an attorney for the law firm of Cunningham Dalman assisted in the formation of this entity. Cunningham Dalman now represents Defendants in opposing the short-term rental of the property.

(b) Except for the restrictions set forth in Sections 13 and 14, these restrictions may be amended by the affirmative written action of the Developer and not less than 50% of the owners of Lots numbered 7 through 14, inclusive, not owned by the Developer. So long as the Developer owns any Lot, this instrument may not be amended at any time without the consent of the developer. Any amendments shall become effective ten days after notice of adoption of the amendment, together with a copy of the recorded amendment, is mailed to the owners of allots affected by the amendment. . . "

In January 2013, amended CCRs were recorded that define and preclude "transient" rental of any of the lots.[2] A new sentence that was added to section 2.1 states: "Transient or temporary occupancy, whether for vacations or otherwise, is not within 'single-family residential purposes' as used in this Section." A new subsection 7.19 was added to the Declaration and states:

"No Lot may be rented, leased, or otherwise made available for the lodging or occupancy of any person or persons not a Lot Owner for a period of less than six months. For purposes of this Declaration 'lodging' is defined as the transient use of a Lot on a daily or weekly basis and 'occupancy' is defined as using a Lot other than as a guest of the Lot Owner with such Lot Owner also simultaneously occupying the Lot, or as a child or parent, grandchild or grandparent, of a Lot Owner and such person's immediate family apply *(sic)* the definition of 'single-family' in Section 2.1 of the Declaration."

In late 2012, Plaintiffs filed a complaint asking this Court to declare that the CCRs do not restrict the short-term rental of the property and to declare that the 2012 amendments are unenforceable. Plaintiffs further request that this Court enjoin Defendants from amending the CCRs, the bylaws, or the articles of incorporation of the Association, or from taking further action which may impede Plaintiffs' rental of their home.[3]

Defendants answered and counterclaimed seeking a declaration that Plaintiffs' short-term rental of their property violates both the 1995 CCRs and the 2013 amendments.[4] Defendants seek to enjoin Plaintiffs from renting their home on a short-term basis. Both sides move for summary disposition under MCR 2.116(C)(10). Both sides admit that the relevant facts are fully developed and allow the Court to enter judgment.[5]

Analysis

Our Supreme Court has said:

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[2] The Association voted in favor of the proposed amendments by a vote of 6 to 2. Of course, Plaintiffs voted against the proposal.

[3] The Court has not listed each and every request for relief.

[4] Plaintiffs refer to the 2012 amendments, while Defendant refers to the 2013 amendments. These all arise out of the same amendment process which began in 2012. There were language changes made to the proposed amendments in both 2012 and 2013. For clarity, the Court will refer hereinafter to the final version as "the 2013 amendments."

[5] The dispute is not between the affidavits and exhibits submitted by each side. Rather, the dispute is the resulting legal consequence of the undisputed facts.

"Restrictions for residence purposes, if clearly established by proper instruments, are favored by definite public policy. The courts have long and vigorously enforced them by specific mandate. This court has expressly recognized that the right of privacy for homes is a valuable right."[6]

In *Carey,*[7] the Michigan Supreme Court stated:

"As a rule, we will uphold a restriction wherever it remains of any substantial benefit to the parties objecting to its violation, provided they are not estopped by their conduct from making such objection.' See *Swan v Mitshkun,* 207 Mich 70, 76; 173 NW 529, 531: it is the policy of the courts of this state to protect property owners who have not themselves violated restrictions in the enjoyment of their homes and holdings, free from inroads by those who attempt to invade restricted residential districts and exploit them under some specious claim that others have violated the restrictions, or business necessities nullified them."[8]

But the Court has also warned:

"Restrictive covenants in deeds are construed strictly against grantors and those claiming the right to enforce them, and all doubts are resolved in favor of the free use of property."[9]

A. 1995 CCRs

This Court must first determine if the 1995 CCRs clearly preclude Plaintiffs from renting their home on a short-term basis. The Court concludes that they do. The Court initially notes that there is no dispute that the 1995 CCRs were properly prepared and recorded. Plaintiffs admit that they had notice of these CCRs prior to their purchase of lot #8. In fact, Plaintiffs apparently solicited legal "advice" as to the meaning of the CCRs prior to purchasing their home.[10]

There is no "bright line" rule to be applied in cases such as this. Rather, "[e]ach case must be determined on its own facts.[11] In *Wood,* the relevant CCR limited construction to a single residence and "that the same shall be used for residence purposes only." The defendant had a flock of 40 pigeons which he raised and raced as a hobby. In determining that this use violated the CCR, the Court stated:

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[6] *Wood v Blancke,* 304 Mich 283, 288; 8 NW2d 67 (1943), quoting *Signaigo v Begun*, 234 Mich 246, 207 NW 799 (1926).
[7] *Carey v Lauhoff*, 301 Mich 168, 172; 3 NW2d 67 (1942).
[8] *Id.*, at 172.
[9] *Wood,* 304 Mich at 287, quoting *James v Irvine*, 141 Mich 376; 104 NW 631 (1905).
[10] The quality of that legal advice is not at issue before this Court. The mere fact that a party relies upon "legal advice" before taking action does not immunize that party from liability if that advice was improvidently given.
[11] *Id.*, at 289.

"If this is not a violation of the restriction of the use of the premises for residential purposes, neither would be the maintenance of a flock of several hundred or more."[12]

The *Wood* Court went on to give guidance regarding incidental use of a residence that would not affect the character of the neighborhood or annoy the neighbors:

"Instances are not lacking in which other courts have held or intimated that property restricted to use for residence purposes, so long as it is in good faith used for such, may be also used to a minor extent for the transaction of some classes of business or the following of some professional pursuits so long as the latter use is in fact casual, infrequent, or unobtrusive and results in neither appreciable damage to neighboring property nor inconvenience, annoyance, or discomfort to neighboring residents. This view, however, further requires such additional use to be so reasonably incidental to the prescribed use and such a nominal or inconsequential breach of the covenants as to be in substantial harmony with the purpose of the parties in the making of the covenants, and without material injury to the neighborhood."[13]

In *O'Connor*[14], the Michigan Supreme Court held that the sale of "time shares" or interval ownership in a home was not consistent with the "residential" purpose required by the CCRs. The Court determined that interval ownership lacked the permanency associated with the use of a house as a residence. The Court adopted the trial court's opinion:

"[R]esidential purposes for these uses is a little broader. . . It is a place where someone lives, and has a permanent presence, if you will, as a resident, whether they are physically there or not. Their belongings are there. They store their golf clubs, their ski equipment, the old radio, whatever they want. It is another residence for them, and it has a permanence to it, and a continuity of presence, if you will, that makes it a residence."[15]

The Court looked at the status of the 48 "owners" of the home and determined that *interval ownership* was inconsistent with the CCR limiting the use of each lot to "residential purposes." *O'Connor* did not determine if short-term *rental* of homes was a residential use. The Court simply stated that the occasional short-term rentals that occurred in this subdivision were different in character from interval ownership.[16] The Court added that those short-term rentals did not alter the character of the subdivision so as to defeat the original purpose of the CCRs. The CCRs did not define who could occupy the residence or what constituted a "family."

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[12] *Id.*, at 288.
[13] *Id.*, at 289.
[14] *O'Connor v Resort Custom Bldrs*, 459 Mich 335; 591 NW2d 216 (1999).
[15] *Id.*, at 345.
[16] It is unknown how "occasionally" this occurred in the large development known as Shanty Creek. But, it seems that short-term rentals may have been prevalent, in that Shanty Creek facilitated the daily and weekly rental of homes in this subdivision.

In *Beverly Island,*[17] the Court of Appeals determined that the operation of a small day care center in a home did not violate the CCR, which restricted use of a lot "except for residential purposes." The Court noted that MCL 722.111(f)(iii) defined a family day care home as "a private home in which 1 but less than 7 minor children are received for care and supervision for periods of less than 24 hours a day, unattended by a parent. . ."[18] The Court opined that this statutory definition resulted in a "public policy" favoring family day care homes. Thus, the small day care center was residential in nature.[19]

Terrien[20] took the day care issue raised in *Beverly Island* and viewed it from the perspective of a CCR that prohibited commercial uses. In this situation, while the day care operation was a residential use as allowed by *Beverly Island,* the day care center was also a commercial use. Thus, the day care center was violative of the CCR. *Terrian* rejected the notion that day care operations were favored over CCRs by "public policy."[21]

Terrian referred to both the common and legal meanings of the terms "commercial" and "business:"

> "Commercial" is commonly defined as "able or likely to yield a profit." *Random House Webster's College Dictionary* (1991). 'Commercial use' is defined in legal parlance as "use in connection with or for furtherance of a profit-making enterprise." Black's Law Dictionary (6th ed). 'Commercial activity' is defined in legal parlance as 'any type of business or activity which is carried on for a profit.' *Id.* 'Business' is commonly defined as "a person ... engaged in ... a service." *Random House Webster's College Dictionary* (1991). 'Business' is defined in legal parlance as an '[a]ctivity or enterprise for gain, benefit, advantage or livelihood.' Black's Law Dictionary (6th ed)."[22]

The upshot of *Terrian* is that while a small day care center *is* a residential use, it is also a commercial use. Thus, a small day care center established pursuant to MCL 722.111(f)9iii) is consistent with a CCR limiting a lot to residential uses because the day care is a residential use. However, that same day care center also constitutes a commercial use, which is precluded by a CCR prohibiting commercial or business uses of that same lot.

The Court went on to say:

> "It is of no moment that, as defendants assert, the 'family day care homes' cause no more disruption than would a large family or that harm to the neighbors may not be tangible. As we noted in *Austin v Van Horn*, 245 Mich 344, 347; 222 NW 721 (1929), 'the plaintiff's right to maintain the restrictions is not affected by

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[17] *Beverly Island Ass'n v Zinger,* 113 Mich App 322; 317 NW2d 611 (1982).
[18] *Id.,* at 324.
[19] This Court refers the reader to *Terrian, infra* 467 Mich at 62, in which the Michigan Supreme Court clarified that *Beverly Island* held that the CCR at issue prohibited nonresidential activities. Thus, by inference, the family day care center as defined by statute *is* a residential use.
[20] *Terrien v Zwit,* 467 Mich 56; 648 NW2d 602 (2002).
[21] *Id.,* at 68-69.
[22] *Id.,* at 64.

the extent of the damages he might suffer for their violation.' This all comes down to the well-understood proposition that a breach of a covenant, no matter how minor and no matter how de minimis the damages, can be the subject of enforcement."[23]

Like the case at bar, *Enchanted Forest*[24] addressed the issue of whether a CCR precluded the short-term rental of a residence. Unlike the case at bar, the CCR said, "No part of said premises shall be used for commercial or manufacturing purposes." It was not disputed that defendants rented out their home for approximately 30 days a year. The CCR included language stating that the structure is "a private residence for use by the owner or occupant." The court also reviewed the definition of "commercial" as discussed in *Terrien*. The court determined that the intent of the drafter was to preclude the short-term rental of the home because that constituted a commercial use which was prohibited by the CCRs.

Torch Lake[25] also has some similarities with, yet important differences from, the case at bar. The CCRs provided that the property "shall be used for private residence purposes only." The CCRs also precluded use of the lot for specified commercial purposes, such "as a hotel or tourist camp or public place of resort. . . " The court held: "As a whole, the language in the restriction expresses a clear and unambiguous intent to preclude frequent and regular short-term rentals as part of a 'business,' as that term is commonly understood."

This Court now turns to the case at bar. The CCR at issue reads, in pertinent part:

> "Each lot. . , shall be limited in use to single-family residential purposes, and may be occupied by only one single family. . . the phrase 'single family; shall mean (i)(A) a man or a woman (or a man and woman living together as husband and wife), (B) the children of either and of both of them, and/or (C) the parents of either but not both of them, and (ii) no other persons. The term shall not include persons not so related, and no residences on the Lots shall be occupied by any group of persons who are not members of the same single family, as defined herein."

Plaintiffs admit that even while they are not physically present in the home located on lot #8, they continuously occupy the structure.[26] Indeed, they admit that their personal possessions remain in the home and they remain in control of the property. "Occupy" means:

- "To take up residence in,
- To hold possession of; and,
- To reside in as owner or tenant."[27]

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[23] *Id.*, at 65.
[24] *Enchanted Forest Property Owners Ass'n v Schilling*, unpublished opinion per curiam of the Court of Appeals issued March 11, 2010 (Docket No. 287614).
[25] *Torch Lake Protection Alliance v Ackerman*, unpublished opinion per curiam of the Court of Appeals issued November 30, 2004 (Docket No. 246879).
[26] This was specifically admitted by Plaintiffs' counsel during oral argument on the motion.
[27] *Webster's Third New International Dictionary, Unabridged Edition* (1966).

In analyzing the CCRs, this Court must use the following rules of construction:

> "(1) In construing a deed of conveyance the first and fundamental inquiry must be the intent of the parties as expressed in the language thereof [citations omitted];
>
> (2) in arriving at the intent of the parties as expressed in the instrument, consideration must be given to the whole and to each and every part of it [citations omitted];
>
> (3) no language in the instrument may be needlessly rejected as meaningless, but, if possible, all the language of a deed must be harmonized and construed so as to make all of it meaningful [citations omitted]."[28]

By admission and by definition, Plaintiffs "occupy" the residence located on lot #8. While they occupy the residence, they rent out that residence to large groups of individuals who are unrelated to Plaintiffs. During these rentals, the home is occupied by more than one single family. The CCR expressly prohibits this arrangement. Such prohibition is clear and unambiguous. Merely because a party claims an ambiguity in a written instrument or can twist otherwise plain language to create an ambiguity does not mean that an instrument is ambiguous. As the Michigan Supreme Court has said:

> "We do not hold that there is no possibility of semantic ambiguity in the [deed in question]. There is, and the unhappy fact is that the possibility of such an ambiguity lurks in almost every written instrument devised by man; it is indeed one of the dilemmas of language; . . "[29]

It cannot be said that the weekly turnover of 20 or more paying tenants is incidental to the residential use of this lot. This usage of the property is different in character than a property owner having relatives or guests spending leisure time at his property while under his supervision. If a hobby of raising 40 pigeons is not incidental to the residential use of property, then certainly the repeated weekly turnover of up to 20 paying, unrelated individuals is not in fact casual, infrequent, or unobtrusive as discussed in *Wood*. Such activity will result in "annoyance, or discomfort to neighboring residents." Such use exceeds the scope of the use allowed by the CCRs.

Plaintiffs claim that the definition of "single family" contained within the CCR is violative of public policy. Public policy favors certain "family" relationships. In addition to the "traditional" family, public policy promotes certain relationships as "family" relationships. For example, the placement of special needs individuals.[30] Similarly, children and foster parents constitute a "family." On the other hand, a boarding house[31] or a college fraternity house[32] does

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[28] *Purlo Corp v 3925 Woodward Ave,* 341 Mich 483; 67 NW2d 684 (1954).
[29] *Id.*
[30] See generally *Bellarmine Hills v Residential,* 84 Mich App 554; 269 NW2d 673 (1978).
[31] *Nerrerter v Little,* 258 Mich 462; 243 NW 25 (1932).

not merit special recognition by, or the protection of, public policy. If day care facilities are not favored by public policy per *Terrian*, then it cannot be rationally argued that the living arrangement in which Plaintiffs occupy a home with upwards of 20 unrelated paying guests warrants public policy protection. If such a use is allowed, then there would be nothing to preclude any resident from renting out his home as a fraternity or flop house on an hourly, daily or weekly basis.

Plaintiffs argue that in *Moore*,[33] the United States Supreme Court struck down an ordinance which essentially defined "family" as the traditional nuclear family. However, *Moore* involved governmental action. In the case at bar, the CCRs are private contracts. Hence, *Moore* is inapplicable. Further, *Moore* affirmed an earlier decision in *Village of Belle Terre*[34] in which the Court upheld an ordinance precluding *unrelated* individuals from living together.

If, on the other hand, Plaintiffs do not reside in or occupy the home during the period of the rental, then the home is not being used for any residential purpose. Any such short-term tenants would not have the permanency associated with a residence as discussed in *O'Connor*. Rather, the structure would be used solely for a commercial venture as an upscale hotel. The lease and oversight of the property is performed not by the owner, but a management company. Thus, the "rental" of the home would not be incidental to its use as a residence. Rather, the ONLY use of the property would be for a commercial use. This use would violate the language limiting use of the property to "single family residential purposes," along with violating the one "family" CCR.

That Plaintiffs "carefully screen" their tenants is irrelevant. It is the nature of the arrangement that is objectionable and prohibited, not the quality or character of the tenants. As *Terrian* stated, this Court does not look at the amount of damages, but must simply determine if there was a breach of the CCRs. It must be pointed out, however, that this screening process is subjective in nature. One can legitimately debate what constitutes "careful screening."

Plaintiffs point to several decisions from our sister states that they claim support their position. However, none of the CCRs in those cases included language limiting occupancy to, or defining, a "single family."

B. 2013 Amendments

While the above discussion resolves this case, the Court will, for completeness, address Plaintiffs' objections to the amendment of the CCRs. As discussed above, there are two ways to amend the CCRs. Plaintiffs contend that the CCRs may only be amended after 20 years and that such an amendment would not affect Plaintiffs who, they assert, relied upon the 1995 version of the CCRs. In short, Plaintiffs would be "grand-fathered" and would be permitted to continue short-term rentals until they sold their interest or specifically agreed to forego short-term rentals. Plaintiffs are mistaken on both issues.

Defendants relied upon section 12.1b as justification for their amendments to the CCRs.

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[32] *Seeley v Phi Sigma Delta House Corp*, 245 Mich 252; 222 NW 180 (1928).
[33] *Moore v East Cleveland*, 431 US 494; 52 L Ed 2d 531; 97 S Ct 1932 (1977).
[34] *Village of Belle Terre v Boraas*, 416 US 1; 39 L Ed 2d 797; 94 S Ct 1536 (1974).

That provision allows amendment prior to the expiration of 20 years if the developer [35] and 50% of the lot owners are in agreement. This process was followed and the CCRs were amended. Plaintiff complains that if 12.1b is valid, then there is no need for 12.1a. The Court disagrees. 12.1a allows amendment after 20 years if 60% of the lot owners agree. However, 12.1b appears to allow an indefinite "veto" of any amendment to the CCRs unless the developer consents to the amendment. Regardless, each provision addresses separate contingencies. 12.1a applies when the developer of Tunnel Breeze Plat no longer has a legal interest in any of the lots in the Plat and, after the specified number of years, the CCRs may be amended by a vote of 60% of the lot owners. On the other hand, 12.1b provides that the CCRs may be amended at any time- provided that the developer and 50% of the lot owners agree. While one can argue with the wisdom of these provisions, parties are free to contract as they wish, and the courts will enforce the parties' agreements.[36]

The developer and at least 50% of the lot owners agreed to amend the CCRs in 2013. Thus, the CCRs were appropriately and lawfully amended. Plaintiffs argue that because they relied upon the 1995 CCRs when they purchased their home, the 2013 amendments are only binding upon future lot owners. During oral arguments, Plaintiffs' counsel went so far as to argue that *all* lot owners must consent to any amendment to the CCRs *for there ever* to be an amendment that would have immediate effect.

The 1995 CCRs allowed amendments to the CCRs without a unanimous vote of the lot owners. Thus, Plaintiffs were on notice that if the proper procedure was followed, the CCRs could be amended. *Enchanted Forest* is in accord; in that case, the governing board of the association amended the association's bylaws to specifically preclude *any* rental of property. This amendment occurred well after the defendants had purchased their lot. Under the Michigan Non-Profit Corporation Act,[37] amendments can be made to by-laws. *Enchanted Forest* held that such changes were binding on the defendants.

Similarly, The Michigan Condominium Act[38] was amended in 2001 to allow condominium associations to change the rules that govern the manner in which a unit may be rented by a 2/3 vote of the owners. Previously, no change could be made absent unanimous agreement. Thus, any argument that "public policy" prohibits such changes is without merit.

Plaintiffs cite *Lake Isabella*[39] in support of their claim that a unanimous vote of the lot owners is required in order to amend the CCRs. In *Lake Isabella,* the CCRs allowed amendment of the CCRs by majority vote after twenty-five years. Defendants sought to modify the CCRs *before* the twenty-five years had run. The court correctly concluded that for this particular modification, a unanimous vote of the affected owners was required. In *Lake Isabella*, the court

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[35] The developer's rights are transferrable under the CCRs. They were sold to Mr. Fray and a second individual who no longer owns any lot. This transfer of rights was properly recorded. Plaintiff has no legal challenge to this transfer of rights. Rather, Plaintiff's objections were purely subjective and based on unsupported public policy grounds.

[36] *Schadewald v Brule,* 225 Mich App 26, 34; 570 NW2d 788 (1997)

[37] MCL 450.2101 *et seq.*

[38] MCL 559.190 *et seq.*

[39] *Lake Isabella v Lake Isabella Development, Inc.*, unpublished opinion per curiam of the Court of Appeals, issued December 11, 1998 (Docket No. 204954).

simply applied the CCRs. In the case at bar, the CCRs specifically allow amendment at any time with the consent of the developer and 50% of the lot owners. See Section 12.1b.

The fact that Defendants amended the CCRs to specifically preclude short-term rentals, along with a definition of such rentals, does not render the 1995 CCRs vague or ambiguous. Indeed, one can envision a scenario in which families in transition would rent a home for several weeks or months while they were seeking, building, repairing, or preparing for occupancy a permanent home. Thus, a family could legitimately occupy this home as a residence for a relatively short time. The amendments, as described by defense counsel, provide a "bright line rule" establishing that rentals or residences of less than six months are not allowed.

Plaintiffs also point to language in the CCRs and articles of incorporation that use the terms "rent" or "tenant." These words are entirely consistent with this Court's Opinion. One cannot pick and choose which CCRs to apply and which to ignore. This Court cannot fall prey to any "gotcha" words or phrases that run counter to the intent of the parties— which is evidenced by the entire document. As mentioned, the entire instrument must be analyzed and all the provisions thereof must be harmonized to give meaning to the entire document. Rental agreements are allowed by the CCRs. However, any such agreement must comport with the allowed use of the property. That is, the property must be used for single family residential purposes and occupied by only one family, as defined by the CCRs.

Conclusion

The CCRs limit the single family structures to single family uses. The CCRs define "family" narrowly to only include certain blood or affinity relationships. While Plaintiffs occupy the home, they seek to rent portions of their home to groups of non-family members on a weekly basis. Such use is requested over most, if not all, of the summer months and amounts to 25% of the year. Said use of allowing transient groups of paying individuals to occupy the home is contrary to the CCRs and not merely incidental to Plaintiffs' residential use of the property. Such use is precluded by the CCRs. To the extent that Plaintiffs do not occupy this lot during the rentals, then the lot is not used for any residential purposes. Rather, the sole use of the lot would be for commercial use and is likewise prohibited by the CCRs. The 2013 amendments are valid and immediately enforceable.

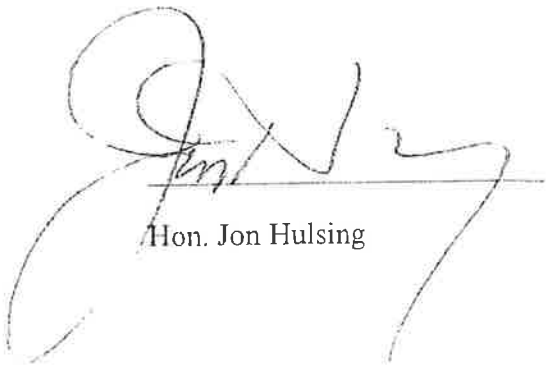
Summary disposition is granted in favor of Defendants under MCR 2.116(C)(10). Declaratory relief is likewise GRANTED in Defendants' favor:

- The CCRs preclude the rentals proposed by Plaintiffs.
- The 2013 amendments to the CCRs are valid and preclude the rentals proposed by Plaintiffs.

Injunctive relief is GRANTED:

- Plaintiffs are enjoined from renting their home to transient non-family members as they have proposed.
- This Order has immediate effect.

IT IS SO ORDERED



Hon. Jon Hulsing

EXHIBIT 15

ORDINANCE NO. 2022-02

AMENDMENT TO THE PARK TOWNSHIP CODE OF ORDINANCES

AN ORDINANCE to add new definitions to Section 38-6 of the Park Township Zoning Ordinance; add a new Section 38-519 Short-Term Rental Registration to Article IV Supplemental regulations of the Park Township Zoning Ordinance permitting short-term rentals requiring all short-term rentals to register with the Township; and to provide for the effective date of this ordinance.

THE TOWNSHIP OF PARK, IN THE COUNTY OF OTTAWA AND STATE OF MICHIGAN, ORDAINS:

Section 1. Definitions.

Add the following definitions to Section 38-6 of the Park Township Zoning Ordinance:

Short-Term Rental. The rental of a dwelling unit for compensation for a term of 27 nights or fewer. However, the following shall not be considered short-term rentals: health, nursing, and similar rehabilitation facilities; hotels, motels, resorts, or campgrounds as defined elsewhere in the Code of Ordinances; employee or client temporary housing; family occupancy; house-sitting; and dwelling sales.

Short-Term Rental Agent. The individual or entity responsible for managing the short-term rental on behalf of the owner of the rental dwelling unit.

Section 2. Registration Requirements.

Add Section 38-519 Short-Term Rental Registration to Article IV Supplemental regulations as follows:

Any short-term rental operating or advertising that they are operating in Park Township as of November 30, 2022 must register with Park Township by providing the following information to the Community Development Director. Short-term rentals are not a permitted use in Park Township and all short-term rental units operating contrary to Township regulations must end short-term rental use by October 1, 2023.

(a) Full street address of short-term rental, including unit number, if applicable.
(b) Name and full contact information of owner of short-term rental unit, including phone number, email address, and home address.
(c) Name and full contact information of short-term rental agent if different than owner, including phone number, email address, and business address.

Section 3. Violation.
Any person who shall violate a provision of this article or fail to comply with any of the requirements thereof shall be responsible for a municipal civil infraction.

Section 4. Severability.
The provisions of this ordinance are hereby declared to be severable. If any clause, sentence, word, section, or provision is hereafter declared void or unenforceable for any reason by a court of competent

jurisdiction, it shall not affect the remainder of such ordinance which shall continue in full force and effect.

Section 4. Effective Date.

This Ordinance was approved and adopted by the Township Board of Park Township, Ottawa County, Michigan, on December 8, 2022 and is ordered to take effect on January 15, 2023, which date is more than 7 days after publication of the notice of adoption in the *Holland Sentinel*, a newspaper having general circulation in the Township, as is required by Section 401 of Act 110 of 2006, as amended, provided that this effective date shall be extended as necessary to comply with the requirements of Section 402 of Act 110 of 2006, as amended.

Jim Gerard, Supervisor

E.O. Skip Keeter, Clerk

EXHIBIT 16

ORDINANCE NO. 2023-02

AMENDMENT TO THE PARK TOWNSHIP CODE OF ORDINANCES

AN ORDINANCE to add new definitions to Section 8-1 of the Park Township Code of Ordinances; add a new Section 8-15 Short-Term Rental Registration to Chapter 8 Bed and Breakfast Establishments of the Park Township Code of Ordinances requiring all short-term rentals to register with the Township by July 6, 2023; and to provide for the effective date of this ordinance.

THE TOWNSHIP OF PARK, IN THE COUNTY OF OTTAWA AND STATE OF MICHIGAN, ORDAINS:

Section 1. Definitions.

Add the following definitions to Section 8-1 of the Park Township Code of Ordinances:

Short-Term Rental. The rental of a dwelling unit for compensation for a term of 27 nights or fewer. However, the following shall not be considered short-term rentals: health, nursing, and similar rehabilitation facilities; hotels, motels, resorts, bed and breakfast establishments or campgrounds as defined elsewhere in the Code of Ordinances; employee or client temporary housing; family occupancy; house-sitting; and dwelling sales.

Short-Term Rental Agent. The individual or entity responsible for managing the short-term rental on behalf of the owner of the rental dwelling unit.

Section 2. Registration Requirements.

Add Section 8-15 Short-Term Rental Registration to Chapter 8 Bed and Breakfast Establishments as follows:

Any short-term rental operating or advertising that they are operating in Park Township as of November 30, 2022 must register with Park Township by providing the following information to the Community Development Director by July 6, 2023. Short-term rentals are not a permitted use in Park Township and all short-term rental units operating contrary to Township regulations must end short-term rental use by October 1, 2023.

(a) Full street address of short-term rental, including unit number, if applicable.
(b) Name and full contact information of owner of short-term rental unit, including phone number, email address, and home address.
(c) Name and full contact information of short-term rental agent if different than owner, including phone number, email address, and business address.
(d) Date when short-term rental operation began at above-stated address with above-stated owner.

Section 3. Severability.
The provisions of this ordinance are hereby declared to be severable. If any clause, sentence, word, section, or provision is hereafter declared void or unenforceable for any reason by a court of competent jurisdiction, it shall not affect the remainder of such ordinance which shall continue in full force and effect.

Section 4. Effective Date.

This Ordinance was approved and adopted by the Township Board of Park Township, Ottawa County, Michigan, on June 8, 2023 and is ordered to take effect on _____, 2023, which date is more than 30 days after publication of the notice of adoption in the *Holland Sentinel*, a newspaper having general circulation in the Township, pursuant to the provisions of Act 246 of the Public Acts of 1945, as amended.

Jim Gerard, Supervisor

R.O. Skip Keeter, Clerk

EXHIBIT 17

STATE OF MICHIGAN

IN THE 20th CIRCUIT COURT FOR THE COUNTY OF OTTAWA
414 Washington Avenue
Grand Haven, Michigan 49417
(616) 846-8320
* * * * *

SUSAN REAUME,
Appellant,

v

SPRING LAKE TOWNSHIP,
Appellee.
_____/

OPINION AND ORDER

File No. 17-4964-AA

Hon. Jon A. Van Allsburg

This is an appeal from a decision of the township board of the appellee, Spring Lake Township (Board), denying appellant Susan Reaume's application for a license under the Township's short-term rental regulations ordinance.[1] Appellant owns a home on the Spring Lake waterfront in an R-1 district in which she lived until 2014. The record reflects that she began renting the home on a short-term basis on June 9, 2015 and has advertised the home for that purpose with Capstone Property Management and on HomeAway.com.

Spring Lake Township adopted ordinance 255 on February 6, 2017 and ordinance 257 on April 8, 2017. Ordinance 255 provides, in pertinent part: "In the R-1 district, no Short Term Rentals are permitted.[2] Only Rental periods of 28 days or more are permitted." Ordinance 257 provides, in pertinent part: "Section 407.B of the [Spring Lake Township] Zoning Ordinance shall be amended to include the following permitted use . . . Limited Short-Term Rental."[3] Following the adoption of the ordinances, Ms. Reaume applied for a short-term rental license on March 2, 2017, and was denied April 4, 2017. The Board affirmed this denial at a hearing held April 10, 2017. A Claim of Appeal was filed on May 26, 2017. The court heard oral arguments

[1] Spring Lake Township Code of Ordinances, Chapter 6, Article V (ordinance No. 255).

[2] Ordinance 255 defines "Short-Term Rental" to mean " . . . the Rental . . . of any Dwelling for a term of 27 days or less . . . ."

[3] Ordinance 255 defines "Limited Short-Term Rental" to mean " . . . the Rental of any Dwelling for any one or two Rental periods of up to 14 days, not to exceed 14 days total in a calendar year."

from the parties on October 2, 2017. For the reasons stated below, the court affirms the denial of Appellant's application for short-term rental license.

Appellant asserts that the short-term rental of residential property was a lawful use of property in the R-1 district in which her property is located prior to the adoption of local ordinances 255 and 257, that she was engaged in the short-term rental of her property prior to the adoption of those ordinances, and that the continued use of her property for short-term rentals is a lawful and non-conforming use of her property, despite the township's denial of her application for a short-term rental license under the new ordinance. She further appeals the Board's denial of her application for a license as unauthorized by law, and not supported by competent, material and substantial evidence on the record.

The appellee township asserts that the Board's decision to deny her a rental license for a short-term rental was authorized by law and supported by competent, material and substantial evidence on the record. The township further disagrees that appellant's use of her property for short-term rental constitutes a valid, nonconforming use, as such use did not lawfully exist prior to the zoning ordinance. Finally, the township argues that any challenges to the validity of the township's Ordinance 255 are not properly before the court.

Appellate Jurisdiction

The threshold question is whether the circuit court has appellate jurisdiction to consider this appeal. The Michigan Constitution sets forth the appellate jurisdiction of the circuit court. Const 1963, Article 6, § 13 provides:

> "Sec. 13. The circuit court shall have original jurisdiction in all matters not prohibited by law; *appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law*; power to issue, hear and determine prerogative and remedial writs; supervisory and general control over inferior courts and tribunals within their respective jurisdictions in accordance with rules of the supreme court; and jurisdiction of other cases and matters as provided by rules of the supreme court." (emphasis added).

The statutory jurisdiction of the circuit court, found in MCL 600.601 provides, in pertinent part: "Circuit courts have the power and jurisdiction (1) possessed by courts of record at the common law, as altered by the constitution and laws of this state and the rules of the

supreme court . . . ." MCL 600.631 more narrowly describes the appellate jurisdiction of the court and provides, in pertinent part: "An appeal shall lie from any . . . decision . . . of any state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal . . . has not otherwise been provided for by law, to the circuit court of the county of which the appellant is a resident . . . ." However, by express provision this statute applies to *state* agencies, and impliedly excludes application of this section to *municipal* agencies. *Villa v Civil Service Commission*, 57 Mich App 754; 226 NW2d 718 (1975).

The legal basis for the circuit court's exercise of appellate jurisdiction in this matter is found in Const 1963, art 6, § 28. This section of our state constitution provides, in pertinent part:

> "All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law...."

The Michigan Supreme Court has adopted a court rule, MCR 7.103(A), describing the appellate jurisdiction of the circuit court, in relevant part, as follows:

> "(A) Appeal of Right. The circuit court has jurisdiction of an appeal of right filed by an aggrieved party from the following:
> (1) a final judgment or final order of a district or municipal court . . . ;
> (2) a final order of a probate court . . . ;
> (3) a final order or decision of an agency governed by the Administrative Procedures Act, MCL 24.201 *et seq*; and
> (4) a final order or decision of an agency from which an appeal of right to the circuit court is provided by law."

Art. 6, § 28 of the Michigan Constitution and MCR 7.103(A)(4) provide the basis for the court's appellate jurisdiction in this case. The Board's decision was a final decision which was quasi-judicial in nature and affected Appellant's private license and property rights.

Under Michigan law, a township is "a body corporate with powers and immunities provided by law." Const 1963, art 7, § 17. See also MCL 41.2 and *Sylvan Twp* v *City of Chelsea*, 313 Mich App 305, 329; 882 NW2d 545 (2015). A township is a municipal corporation and, as such, is an instrumentality of the state for purposes of local government. MCL 41.2; *City of*

Roosevelt Park v *Norton Twp*, 330 Mich 270, 273; 47 NW2d 605 (1951). Like other municipal corporations, townships are ". . . created by popular elections." *Metropolitan Police Board* v *Board of Auditors of Wayne County*, 68 Mich 576, 579; 36 NW2d 743 (1888). "Under our Constitution each township is a separate municipality, whose officers are elected by town residents, and who are themselves residents." *Drain Commissioner* v *Baxter*, 57 Mich 127, 129; 23 NW 711 (1885). The Michigan Constitution further states that "The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor." Const 1963, art 7, § 34.

The constitution states that townships are led by township boards. "In each organized township there shall be . . . a supervisor, a clerk, a treasurer, and not to exceed four trustees . . . ." Const 1963, art 7, § 18. "The supervisor, 2 trustees, the township treasurer, and the township clerk constitute the township board . . . ." MCL 41.70. A township board has legislative and administrative powers and duties as provided by law. Const 1963, art 7, § 18. A municipality's power to adopt ordinances related to municipal concerns is "subject to the constitution and law." Const. 1963, art. 7, § 22.

In *Rental Property Owners Ass'n of Kent County v City of Grand Rapids*, 455 Mich 246; 566 NW2d 514 (1997), the Michigan Supreme Court stated:

> "Municipal government in Michigan typically has not been divided among three branches of government.... This Court has recognized that the legislative bodies of local governments may also exercise executive powers. *Wayne Co Jail Inmates v Wayne Co Sheriff*, 391 Mich 359, 216 NW2d 910 (1974). Further, this Court has recognized that the legislative bodies of municipalities can operate as administrative tribunals. *Bundo v Walled Lake*, 395 Mich 679, 696-697, 238 NW2d 154 (1976)." *Id.* at 267-268 (footnote omitted).[4]

The term "quasi-judicial" is not defined in the constitution, and has been broadly interpreted. In *Midland Cogeneration Venture Limited Partnership* v *Naftaly*, 489 Mich 83; 803 NW2d 674 (2011), the Michigan Supreme Court stated:

[4] The footnote referenced a treatise on municipal law in Michigan stating, in pertinent part: "The neat concept of separation of powers among the three branches of government is often found wanting when one analyzes Michigan municipalities.... Thus the day-to-day functioning of municipal governing bodies defies the traditional rule of separation of powers; one observes such bodies regularly mixing legislative policy-making with executive or administrative functions."

> "This Court has employed the term "quasi-judicial" broadly: 'When the power is conferred by statute ... to ascertain facts and make orders founded thereon, they are at times referred to as *quasi*-judicial bodies....' The Court of Appeals has referred to Black's Law Dictionary to define 'quasi-judicial':
> 'A term applied to the action, discretion, etc., of public administrative officers, who are required to investigate facts, or ascertain the existence of facts, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature.'" *Id.* at 91-92 (footnotes omitted).

In the present appeal, section 6-109(c) of ordinance 255 provides, in pertinent part: "If the township board affirms the decision of the Community Development Director denying an application [for a short-term rental license] . . . the Owner [of the property for which the license is sought] shall have the right to appeal the township board decision to the circuit court." The ordinance properly acknowledges the constitutional authority of the circuit court to review its decisions. The parties have not disputed whether the decision of the Board was a quasi-judicial act which affected Appellant's private rights or licenses, and the court finds that it was just such an act, and that it did affect Appellant's rights.

Standard of Review

In *Carleton Sportsman's Club v Exeter Twp*, 217 Mich App 195, 203; 550 NW2d 867 (1996), the Michigan Supreme Court held that "the circuit court was required to review the record and decision of the township board for competent, material, and substantial evidence in support of the decision and to determine if it was authorized by law." In *Rental Property Owners*, 455 Mich at 269, the Supreme Court stated that Art. 6, § 28 "... provides the *minimum* standard of review for appeals from quasi-judicial final decisions, findings, rulings, and orders that affect private rights." (emphasis in original) [citing *Carleton* and *Lorland Civic Ass'n v DiMatteo*, 10 Mich App 129, 135-136, 157 NW2d 1 (1968)].

Analysis

I. The decision of the Township Board to deny Appellant's short-term rental license under ordinance 255 was authorized by law and was supported by competent, material, and substantial evidence on the record.

The Board's decision was authorized by law, specifically, by ordinance 255. There were no procedural or substantive irregularities in the manner in which the Board adopted ordinance

255. Ordinance 255 clearly and expressly prohibits the short-term rental of dwellings located in an R-1 zone. There is no dispute that Appellant's property is located in an R-1 zone. Appellant's application for a short-term rental license was lawfully denied by the Board

The Board's decision was supported by competent, material, and substantial evidence on the record.[5] Exhibit A to the minutes of the Board's meeting of April 10, 2017, adopted by the Board by resolution dated May 8, 2017, provides ample evidentiary support for the Board's decision to deny Appellant a short-term rental license.

II. Appellant's use of her property as a short-term rental lawfully did not exist prior to the adoption of ordinance 255 and is not a valid nonconforming use.

Section 407B of the Spring Lake Township Zoning Ordinance lists the "Permitted Uses" and the "Special Land Uses" that are allowed in an R-1 district. Conspicuously absent from either list is the term "short-term rental." Oral or written representations by Township officials to the Appellant to the contrary are unavailing. Such officials have no power to alter or amend the express provisions of the Spring Lake Township Zoning Ordinance. Moreover, legal advice offered by public officials to citizens who are potential litigants is not binding on the public body that employs said officials. *Wigfall* v *City of Detroit*, ___ Mich App ___; ___ NW2d ___ (Docket No. 333448, Oct. 10, 2017) (2017 WL 4518705). The fact that such legal advice is incorrect, inapplicable, or misinterpreted is irrelevant. *Id.*

Conclusion

The decision of Appellee Spring Lake Township Board denying Appellant Susan Reaume a short-term rental license is AFFIRMED.

IT IS SO ORDERED.

Dated: November 30, 2017

Hon. Jon A. Van Allsburg, Circuit Judge

[5] "Competent" evidence is admissible evidence, "material" evidence is relevant evidence, and substantial evidence is evidence, "more than a mere scintilla but less than a preponderance of the evidence," "which a reasonable mind would accept as adequate to support a decision." *McBride v Pontiac Sch Dist*, 218 Mich App 113, 123; 553 NW2d 646 (1996). Whether the court agrees with the decision is not relevant; the record is adequate to support it.

STATE OF MICHIGAN

IN THE 20TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OTTAWA

SUSAN REAUME,

Plaintiff,

v

File No. 17-004964-AA

SPRING LAKE TOWNSHIP,

Defendant.
_____/

ORAL ARGUMENT ON APPEAL

BEFORE THE HONORABLE JON A. VAN ALLSBURG, CIRCUIT COURT JUDGE

Grand Haven, Michigan - Monday, October 9, 2017

APPEARANCES:

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RECORDED BY: The Honorable Jon A. Van Allsburg

TRANSCRIBED BY: Lori L. Berens, CER 7259
Certified Electronic Recorder
(269) 751-5730

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Grand Haven, Michigan

Monday, October 9, 2017 - at 2:03 p.m.

THE COURT: All right. We are on the record in the matter of Susan Reaume versus Spring Lake Township, file 17-4964-AA. This is an appeal from the decision of the Township Board. The Court has received the record and a supplement to the record, as well as briefs from both of the parties, and we're here for oral argument today. Are we ready to go?

MR. GRAFTON: Yes.

THE COURT: All right. Mr. Grafton, are you making the argument?

MR. GRAFTON: Good afternoon, your Honor. I'm Edward Grafton; I'm here on behalf of the Appellant Susan Reaume who's also here in the courtroom. This appeal arises from the failure of Spring Lake Township to issue a short-term rental license to Susan Reaume. Mrs. Reaume offered and allowed short-term rental use of her property for several years and therefore she qualifies for a grandfathered license under Section 208(1) of the Michigan Zoning Enabling Act and Section 335 of the Spring Lake Township Zoning Ordinance.

The facts of the appeal are undisputed. The Court is only deciding issues of law de novo. The legislation of conform -- non-conforming uses is clear. Section 335 of the

Spring Lake Township Zoning Ordinance reads, in pertinent part: Non-conforming uses which do not conform to one or more of the provisions or requirements of the ordinance or any subsequent amendments thereto, but which were lawfully established prior to the adoption of the ordinance or subsequent amendment may be continued. That's more or less -- parrots what is also in the Michigan Zoning Enabling Act.

The Reaume property's in an R-1 District. It contains a single large house that may be used as a permanent or a temporary sleeping place. The house is not a duplex but is designed for single family use. Earlier this year, Spring Lake Township adopted Ordinance 255 to prohibit short-term rental uses in an R-1 District. Prior to the adoption of Ordinance 255, short-term rental in an R-1 District was a lawful use, a lawful use. That fact was admitted in a 2016 internal communication between the Spring Lake Township Supervisor, the Zoning Administrator who's also referred to as a community development director, and the Administrator's designee.

Ordinance 255 has a substantive zoning component because it allows or prohibits short-term rentals based solely on the zoning district in which the property is located. So it operates as an amendment to the Spring Lake Township Zoning Ordinance. And as pointed out in our brief, the key case on this one, your Honor, is *Square Lake Hills*

Condo Association versus Bloomfield Township at 437 Mich. 310, which is a case that cites as authority Section 25.53 of Volume 8 of McQuillin on Muni Corps.

The Township's denial of Reaume's permit was a two-step process triggered when Mrs. Reaume applied for a license. In her application she explained that her property was entitled to grandfathered status for short-term rental use. In spite of that fact, the initial decision by administrative personnel was a denial. As required by the ordinance, by Ordinance 255, Mrs. Reaume appealed the initial denial to the entire township board. Again, she explained her right to a grandfathered use under the Michigan Zoning Enabling Act and the Spring Lake Township Zoning Ordinance. The Board ignored her grandfathered status and upheld the denial.

Mrs. Reaume does not contest the Township's authority to regulate short-term rentals for public health and safety purposes. She will comply with the same health and safety rules that are applicable to short-term rentals in the approved zoning districts. Although no issue of money damages for an improper taking of property rights is before us today, it is noteworthy that the denial of a short-term rental license for 2017 probably costs Mrs. Reaume more than $50,000.

It is also worth mentioning that House Bill 4503

has been introduced in Lansing to make short-term rental a permitted use statewide in all residential zones. Passage of that bill would make this appeal moot, but we cannot predict when the bill will come out of committee, so here we are.

To summarize, Spring Lake Township has wrongfully denied a short-term rental license to Susan Reaume. To right that wrong, Mrs. Reaume requests that this Court declare her property a grandfathered location for short-term rental use and order that a short-term rental license issue in her favor.

Does the Court have any questions for me?

THE COURT: I do. It seems the basic dispute between the parties is not one of fact but one of law. The Township is arguing that this is a change in the law that is regulatory in nature rather than a zoning ordinance and therefore is not subject to any argument about nonconforming pre-existing uses.

MR. GRAFTON: Yes. And that is an argument that's been made unsuccessfully in other cases in this state. It's a form over substance argument, where the Township tries to hide a zoning ordinance in a regulatory forum. The Township I think hopes that the Court will bite on that form over substance argument and not treat Ordinance 225 as a zoning ordinance. This is because the Township is trying to avoid

the zoning theory of vested rights. And I don't expect the Court will bite; instead, what the Court should do and this solves this regulatory versus zoning question, is apply the -- the doctrine of substance over form. Now that doctrine was applied by the United States Supreme Court in *Gregory versus Helvering* 293 U.S. 465. In that case, running through a unanimous court, Justice Sutherland explained that when interpreting legislation, which would include this ordinance, the court must determine the thing that the statute intended. And in this case, the thing that Ordinance 255 intended was to allow or ban short-term use based solely on the zoning district in which the property is located. That fact makes that ordinance a zoning ordinance. It's not merely a regulatory police power ordinance.

In the -- it might have been the -- the *Bloomfield Township* case, the Michigan Supreme Court made this analogy: A zoning rule would be whether or not you can have a parking lot and park cars in a certain zoned district, where a regulatory rule would be, "Can we park cars on the street in front of our house between, you know, 2 in the morning and 5 in the morning during snow plow season?" So, the Township's just trying to shoehorn into regulation so they don't have to deal with the grandfathering argument.

THE COURT: So would you argue that in order for this to be a proper regulatory ordinance it has to apply

township-wide in all zoning districts?

MR. GRAFTON: No. I think you can have, for example, use the -- the snow -- park in the street snowplowing example. You could, like they do in Grand Haven, apply that to the downtown and not necessarily the hinterlands in the city. So I don't think that's what's determinative, no.

THE COURT: So how does the Court then distinguish a regulatory ordinance from a zoning ordinance?

MR. GRAFTON: Well, you have to decide is it a zoning ordinance? If it is, then it's not a regulatory ordinance. And how do you decide if it's a zoning ordinance? You have to decide is its intended purpose to ban uses based solely on zoning districts as it is in this case? And if you decide it is, it's a zoning ordinance, and that brings into play the idea of grandfatheredness for vested property rights.

THE COURT: Would you agree that a zoning ordinance and a regulatory ordinance can overlap?

MR. GRAFTON: Yes.

THE COURT: So is it up to the Court then to determine which is the primary purpose of the ordinance?

MR. GRAFTON: Yes. That's what Justice Sutherland told us all many years ago.

THE COURT: Thank you.

MR. GRAFTON: Thank you.

THE COURT: Good afternoon.

MS. ZDARSKY: Good afternoon, your Honor. Amanda Zdarsky on behalf of Spring Lake Township.

Obviously, as your Honor recognized, this claim of appeal is not about the wisdom of the Township's short-term rental ordinance, it's not about the House bill that may be stuck in committee, it's not about whether short-term rentals should or should not be allowed within the state; it's a claim of appeal. And as your Honor has already recognized, it presents a narrow question considering only the decision by the Township Board of whether or not to grant Ms. Reaume a short-term rental license under Ordinance 255. This is not a declaratory action, as Counsel mentioned. And your Honor's question regarding the regulatory nature brings up a critical point. Again, it's a consideration of the Township Board's decision under Ordinance 255. And under that ordinance, the Township Board was given specific criteria.

Now the intended -- the thing that the ordinance intended, as Counsel mentioned, was not to regulate zoning. It discussed permitting requirements and -- and several requirements for short-term rentals generally. But the fact that it referred to zoning provisions and referenced the township zoning ordinance does not make it a zoning

ordinance in and of itself. As your Honor could see from the record, there was a separate zoning ordinance, but in fact there was already a zoning ordinance that existed, and simply enacting this regulatory ordinance or clarifying the zoning provisions does not mean that short-term rentals were ever a permitted use or that this intended to make any changes or reverse a position that the township already held.

The Township's substantive arguments are obviously set forth in its brief; however, there are a couple of mischaracterizations in Appellant's reply brief that must first be addressed, as we obviously have not had the opportunity to do so. The first is that courts, including the Michigan Supreme Court in the *Laketon Township* case and the Court of Appeals in *Enchanted Forest,* have determined that short-term rentals are in fact commercial uses incompatible with single family dwellings in residential districts. Appellant's argument and reply demonstrates a fundamental misunderstanding of *Laketon Township* and for that reason I'd like to break it down a bit further.

In *Laketon Township*, it is true that the rental of two cottages was a permitted, lawful nonconforming use. What's important is the reason why it was a legal nonconforming use. So those two rental -- those cottages were being rented as early as 1948. At that time, the

property was zoned as commercial. It was not until the zoning ordinance was first amended in 1979 that it became a residential property therefore the two cottages that were originally rented were lawful, nonconforming uses.

After the 1979 amendment, the property owner then -- the subsequent property owner began renting the main house. At that time, the property was zoned as residential. Now the appellate court says, "Well, the 1979 amendment," which changed it to residential, "did not prohibit short-term rentals because dwelling," it went under the broad definition of dwelling, which included things like temporary uses akin to hotels or bed and breakfasts, and therefore it found that the main house could also be a lawful nonconforming use after the Laketon Township then enacted an ordinance banning short-term rentals. The Michigan Supreme Court said, "No. You considered the wrong definition." So instead of considering the broad definition of dwelling, the relevant question was, "Is this compatible with single family dwelling in a residential district?" And the court said, "No." And so while the first two cottages were considered lawful nonconforming uses all the way back to their being zoned as commercial, this use of the main house as a short-term rental was not, because it was a -- it was an expansion of that prior nonconforming use status; it was not permitted, however, under that residential change in the

ordinance.

So both *Laketon Township* and *Enchanted Forest* say that hotel-like rentals, such as that which is proposed by Miss Reaume, are not compatible with the more narrow definition of -- at issue of single family dwellings in residential districts. And indeed this Court can obviously -- is obviously aware that townships or municipalities like this never could have anticipated, when they were originally enacting their zoning ordinances, the influx of these Internet-based air B & B style rentals, these rentals to transient guests in a hotel-like atmosphere. But what this Court can easily see is that a rental like a hotel, which certainly is temporary in nature, is -- is distinct from a temporary lease, for example, of a residential property where the new residents make this their residence.

The zoning ordinance itself makes that distinction, showing the intention of the Township when it had initially enacted its zoning ordinance, to distinguish between rental to transient guests and temporary leases for residential purposes by distinguishing bed and breakfast, saying that while they may be used in single family dwellings, it is an activity that is not permitted as of right. It does not fall within the single family dwelling residential purpose. And that is really what Miss Reaume is proposing, is a bed and breakfast type activity.

The second point that we'd like to make is that Appellant in the reply provides no legal or factual support for a contention that the community development director is tasked with rendering final interpretations of the zoning ordinance. The zoning ordinance and the Michigan Zoning Enabling Act give the Z.B.A., the Zoning Board of Appeals, the power to interpret a zoning ordinance. The zoning ordinance gives the zoning administrator, in this case known as the Community Development Director, the power to administer and enforce that zoning ordinance. Nowhere does it say that the zoning administrator is tasked with rendering a final interpretation of the ordinance. And while situations may arise where a zoning administrator or a community development director may need to interpret an ordinance, both the zoning ordinance and the Michigan Zoning Enabling Act provide a mechanism for the Zoning Board of Appeals to then render a final interpretative decision. That is why a decision of the Zoning Administrator or a challenge to that interpretation is in fact not final and would not be able to be brought before this Court. In fact, --

THE COURT: Counsel, a question for you.

MS. ZDARSKY: Certainly.

THE COURT: If the -- if the Zoning Board of Appeals had never been asked to interpret that particular

provision of the ordinance, then shouldn't the Court simply rely upon the application of the ordinance by the Zoning Administrator?

MS. ZDARSKY: No, your Honor. There is a longstanding general rule that a municipality cannot be estopped from enforcing its ordinance by the ultra vires act of its zoning officials, and that's *Fast versus Highland Park of Michigan* Supreme Court case of 1949.

THE COURT: But what about the act of the zoning administrators here or staff is ultra vires?

MS. ZDARSKY: Because the -- the zoning administrator here is not tasked with interpretation. But also it's important to clarify or in fact correct the statement that the -- the Zoning Administrator indicated at all that this was a permitted use under the zoning ordinance. What was indicated was that they were not enforcing or they had not taken enforcement action against Miss Reaume.

There are a couple issues at play here. First, ignoring complaints or delaying enforcement does not create a vested right to use property in violation of zoning regulations; that is *Lyon Charter Township versus Petty*, a 2016 Michigan Court of Appeals decision. So regardless of whether there was some delay in enforcement, the fact that the township doesn't immediately solve all the world's

problems or enforce its ordinance every single time right away does not amend the text of the ordinance.

THE COURT: What about Miss Reaume's use of the property prior to the adoption of Ordinance 255 and 257 was in violation of the zoning ordinance?

MS. ZDARSKY: The fact that she was using it as a commercial use in renting in a hotel-like atmosphere to transient guests violates the use of the property as a single family dwelling in a residential district. As courts --

THE COURT: But didn't the zoning ordinance define a single family dwelling as a place occupied in whole or in part as a home, residence or sleeping place, either permanently or temporarily, by one or more families?

MS. ZDARSKY: Actually, your Honor, that's the definition of dwelling, and that's where *Laketon Township* really comes into play. The dwelling may be the more expansive definition, but at issue here in the R-1 residential district is single family dwelling, and *Laketon Township* makes clear that this Court is to consider only the single family dwelling definition in a residential district versus, as the Michigan Court of Appeals did in *Laketon Township*, the more expansive dwelling for temporary sleeping place for one or more families.

Ultimately, it is the Board of Appeals -- the

Zoning Board of Appeals that has the jurisdiction and the power to act upon questions of interpretation. And certainly that brings up the critical question here and this being a claim of appeal. Miss Reaume could have brought this before -- could have brought an interpretative question before the Zoning Board of Appeals; that would have then been appealed. The Zoning Board of Appeals would have the ability to interpret, and that would have gone through this process. This, however, is not what's before this Court. This is a question of whether Miss Reaume should have been issued a permit under Ordinance 255 with the -- a regulatory ordinance. And under that ordinance the Township Board had no discretion to change the ordinance or to render a different interpretation. It's guided by the text of that ordinance. And Appellant has provided no basis, other than this grandfathering argument, that Ordinance 255 should have arrived at a different result.

I don't have anything further. Thank you.

THE COURT: Any rebuttal?

MR. GRAFTON: Just briefly. Firstly, for clarity of the record, my client has not and does not intend to operate a bed and breakfast, a hotel, or a place for the flop-house of transients. There's nothing in the record that would indicate she does.

In the *Square Lake* case, 437 Mich. 410, I also

refer to that sometimes as Bloomfield Township, the Supreme Court clearly says: A zoning ordinance is defined as an ordinance which regulates the use of land and buildings according to district areas or locations. The Township knows it's taking its lumps there. It knows it has passed a zoning ordinance. It knows that 255 is only -- only discriminates with regard to short-term rental use based on the type of zoning district that's in -- that's involved. So its fallback position is to argue there's no grandfathering because the earlier pre-255 use by Mrs. Reaume was not a legal use. They try to argue that it was a commercial use. And they suggest that both the *Laketon Township* case, which was brought by my old friend and one time partner Dave Bostenbrook, and the -- excuse me, *Enchanted Forest* case, somehow it informed the court what commercial use means when it comes to single family dwellings. Well, neither one does.

First of all, *Laketon Township* -- that was an expanded use case. It was a grandfathered use that was expanded and that's why the applicant lost, not because of a definition of what is and is not commercial. *Enchanted Forest*, first of all, it's unpublished, it's not even precedent. And reliance on that is even weaker, because that's not even a zoning case, that's a restrictive covenant case where the court is being asked to interpret private

our eyes open about that.

In the meantime, the Court will take this under advisement and issue a decision in writing. The Court of Appeals prefers it that way, and I'm less likely to misstate anything if I put it down on paper and proofread it before I sign it.

Any questions?

MR. GRAFTON: No.

THE COURT: Then we'll take this under advisement, and you'll get an opinion from me within a few weeks.

Thank you, folks. We are adjourned.

(At 2:30 p.m., the proceedings concluded)

STATE OF MICHIGAN)
)
COUNTY OF OTTAWA)

I certify that this transcript consisting of 20 pages is a complete, accurate and correct transcript of the proceedings and testimony taken in this case on October 9, 2017.

DATED: December 27, 2017

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a Michigan nonprofit corporation,

Plaintiff,

v

PARK TOWNSHIP, a Michigan municipal corporation,

Defendant.
_____/

Hon. Jon H. Hulsing

Case No.: 2023-7474-CZ

NOTICE OF HEARING

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_____/

PLEASE TAKE NOTICE that a hearing on *Defendant, Park Township's Motion for Summary Disposition* will be held in the Circuit Court for Ottawa County, before the Honorable

Jon H. Hulsing, IN PERSON on Monday, October 21, 2024, at 2:00 p.m. or as soon as the Clerk calls the matter.

Dated: September 30, 2024

/s/ Daniel R. Martin

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