NO. _____

In the Supreme Court of the United States

OAKLAND TACTICAL SUPPLY, LLC, JASON RAINES, MATTHEW REMENAR, SCOTT FRESH, RONALD PENROD, EDWARD GEORGE DIMITROFF,

Petitioners,

v.

HOWELL TOWNSHIP, MI,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Second Amendment presumptively protects against restrictions burdening the right to train with firearms commonly possessed for lawful purposes.

PARTIES TO THE PROCEEDING

Petitioners Oakland Tactical Supply, LLC, Jason Raines, Matthew Remenar, Scott Fresh, Ronald Penrod, and Edward George Dimitroff were plaintiffs before the District Court and the plaintiffs-appellants in the Court of Appeals. Respondent Howell Township, MI was the defendant before the District Court and the defendant-appellee in the Court of Appeals.

CORPORATE DISCLOSURE STATEMENT

Oakland Tactical Supply, LLC, has no parent corporation, and there is no publicly held corporation that owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Oakland Tactical Supply, LLC v. Howell Township, Michigan*, No. 18-cv-13443 (E.D. Mich. Feb. 17, 2023)
- *Oakland Tactical Supply, LLC v. Howell Township, Michigan*, No. 21-1244 (6th Cir. Aug. 5, 2022)
- *Oakland Tactical Supply, LLC v. Howell Township, Michigan*, No. 23-1179 (6th Cir. July 8, 2024)

There are no other proceedings in state or federal court, or in this Court, directly related to this case under Supreme Court Rule 14.1(b)(iii).

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Just as the Freedom of the Press encompasses the concomitant right to purchase paper and ink, the Second Amendment right to keep and bear arms encompasses "closely related acts necessary to [its] exercise," *Luis v. United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring), including the right "to take a gun to a range in order to gain and maintain the skill necessary to use it responsibly," *New York State Rifle & Pistol Ass'n v. City of New York*, 590 U.S. 336, 365 (2020) (Alito, J., dissenting). Of the three federal courts of appeals to assess restrictions on that concomitant right, two—the Third and Seventh Circuits—have correctly provided it with robust protection, striking down zoning ordinances that "severely limit[ ]" the right to train, *Ezell v. City of Chicago (Ezell II)*, 846 F.3d 888, 890 (7th Cir. 2017), including by barring the operation of commercial firearm ranges "in areas where firearms practice was otherwise permitted," *Drummond v. Robinson Twp.*, 9 F.4th 217, 227 (3d Cir. 2021). But the Sixth Circuit, through the divided panel below, upheld Respondent Howell Township's materially indistinguishable zoning ordinance, concluding that it *did not even implicate* the Second Amendment. As Judge Kethledge explained in dissent, that decision cannot be squared with "the Second Amendment's text as interpreted by [this] Court," App.628a (Kethledge, J., dissenting), and the Court should grant review to resolve the conflict it creates between the circuits on this important constitutional issue.

Petitioner Oakland Tactical seeks to construct an outdoor firing range on its property located in the "agricultural residential" district of the Township—a

suitable location for that use, as evidenced by the fact that Respondent permits other similar commercial uses in the district (such as the rock quarry formerly operated on the property in question) and in fact *freely allows* target shooting on the property, so long as it is done privately rather than in a commercial setting. But Respondent's zoning rules forbid operation of a commercial shooting range on Oakland's property—and in much of the rest of its jurisdiction—with the result that no commercial range exists in the Township, severely burdening Petitioners' rights to train with firearms.

Because of the theoretical possibility that a commercial range could be constructed in another zoning district, however, the panel majority rejected Petitioners' challenge at *Bruen*'s threshold, plain-text stage. The panel refused to define Petitioners' "proposed course of conduct" as simply "training with firearms that are in common use." App.614a, 634a. Instead, the panel insisted that Petitioners could prevail only by demonstrating that the Second Amendment's text protects the right "to train at a commercial facility *anywhere* in the Township." App.621a (emphasis added). That line of reasoning is flatly contrary to the analysis of the Third and Seventh Circuits, which have correctly explained that zoning rules restricting the location of firearm ranges implicate the Second Amendment even if they fall short of "an outright prohibition of gun ranges," *Ezell II*, 846 F.3d at 894, because "the presence of ordinary restrictions" that allow the operation of ranges "in some places cannot excuse extraordinary restrictions" that effectively ban them "in others," *Drummond*, 9 F.4th at 228. It is also inconsistent with the Second Amendment's text itself, which

protects against laws that "infringe[ ]" the right to keep and bear arms, U.S. CONST. amend. II, not only laws that ban its exercise entirely.

The panel's other reason for rejecting Petitioners' Second Amendment claims—that the Amendment's textual scope does not encompass the right "to train to achieve proficiency in long-range shooting at distances up to 1,000 yards," App.623a—fares no better. As the Third and Seventh Circuits have held, four Justices of this Court have stated, and the panel majority itself conceded, App.627a–630a, the Second Amendment's text necessarily protects *some* right to train with firearms. It necessarily follows that any limitations on that right—such as where ranges may be located and how large they may be—must come *from history*, not from the Second Amendment's plain text, which quite obviously imposes no such limits whatsoever. The majority's rejection of Petitioners' challenge at the plain-text stage conflicts with the decisions of the Third and Seventh Circuits and represents a grievous misunderstanding of the Second Amendment's text and this Court's decisions in *Heller* and *Bruen*. Moreover, the conflict is a clean and straightforward one—over whether the plain text protects the right to train with firearms—that this Court can resolve without wading into any thorny factual or historical disputes.

The panel majority's reasoning, if allowed to stand, would have a deleterious effect not only on the right to train but also on other necessary incidents to the right to keep and bear arms, such as the right to acquire firearms and the right to store firearms in an accessible manner. What is more, the panel majority's reasoning necessarily imports interest-balancing back

into the Second Amendment analysis by forcing courts to make distinctions at the plain text level that are not present in the plain text. Indeed, the majority *openly acknowledged* that it adopted the approach to the Second Amendment's textual scope that it did because "no weighing is permitted at *Bruen*'s second step." App.615a. "Like some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried," the panel majority's opinion thus causes interest-balancing to "stalk[ ] [Second Amendment] jurisprudence once again." *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 398 (1993) (Scalia, J., concurring in the judgment). This Court should grant review to resolve the split between the circuits on this important constitutional issue and ensure continued compliance with a proper understanding of its Second Amendment precedent.

OPINIONS BELOW

The panel opinion of the Court of Appeals is reported at 103 F.4th 1186 and reproduced at App.601a. The order of the District Court granting Respondents' motion to dismiss is not reported in the Federal Supplement, but it is available at 2023 WL 2074298 and reproduced at App.637a. A previous opinion of the Court of Appeals vacating an earlier order of the District Court dismissing the case and remanding for reconsideration in light of this Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), is not reported in the Federal Reporter, but it is available at 2022 WL 3137711 and reproduced at App.1a. The prior order of the District Court granting dismissal is not reported in the Federal Supplement,

but it is available at 2020 WL 5440048 and reproduced at App.18a.

JURISDICTION

The Court of Appeals issued its judgment on May 31, 2024. App.601a. The Court of Appeals denied Petitioners' petition for en banc rehearing on July 8, 2024. App.28a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED

The relevant portions of Amendments II and XIV to the United States Constitution and the Howell Township Zoning Ordinances are reproduced in the Appendix at App.54a–600a.

STATEMENT

I. Howell Township's Zoning Ordinance Effectively Bans Outdoor Shooting Ranges.

Respondent Howell Township regulates approximately 20,000 acres of unincorporated land in Livingston County, Michigan, under the Howell Township Zoning Ordinance ("Ordinance"). The Ordinance divides the land under Respondent's jurisdiction into certain zoning districts and then specifies permitted uses in each district. In general, a use is permitted "only if specifically listed" in the Ordinances. App.117a.

At the time the operative complaint was filed, the Township did not permit outdoor ranges in any district. The Ordinance classifies "rifle ranges" as an "open air business use[ ]," but it does "not allow Open Air Business Uses, either by right or as a special use,

in any zone in Howell Township." App.42a. The Ordinance does permit certain recreational facilities in Regional Service Commercial Districts and Heavy Commercial Districts—but not outdoor recreational facilities of any kind, and thus not an outdoor firing range. App173a, 186–87a. The Ordinance also permits "recreation and sports areas . . . completely enclosed with fences, walls or berms," App.178a, but only in the Highway Service Commercial District, and only if, in the Township's judgment, such a use does not "interfere with or interrupt the pattern of development of" enumerated, highway-service-focused uses, App.178a, 282a. The Highway Service Commercial District is a highly developed district that consists of 7 parcels with a total area of less than 30 acres, only a few of which are undeveloped—significantly less space than required for a safe, long-distance rifle range. App.42a, 43a.

In short, the Ordinance in force at the time of the operative complaint effectively foreclosed the operation of an outdoor rifle range anywhere within the Township.

II. The Challenged Provisions of the Zoning Ordinance Prevent Petitioners from Operating or Training at a Shooting Range in the Township.

Petitioners Raines, Remenar, Fresh, Penrod, and Dimitroff are law-abiding citizens who wish to engage in firearms training in the Township for lawful purposes, including self-defense, long-range target shooting, shooting competitions, and hunting. App.32a–37a, 48a–49a. They cannot do so, however, because there is no public shooting range in the Township.

App.32a–37a. Petitioner Oakland Tactical has leased, with an option to purchase, 352 acres of former rock quarry land in the Township, where it planned to build an outdoor shooting range facility for both private and public use, including both a long distance (e.g., 1,000 yard) range for qualified shooters and shorter rifle, shotgun and handgun ranges. App.31a, 32a. These plans were stymied, however, when Respondent's zoning staff advised Oakland that it "could not apply for a permit for a rifle range located on the property because the Agricultural Residential District [in which the quarry property is located] does not allow open air business uses, shooting ranges, or rifle ranges." App.45a.

Respondent's staff recommended that Oakland apply for a text amendment to the Zoning Ordinance to allow shooting ranges in the district at issue. App.45a. But after receiving Oakland's application, the Township rejected the proposed amendment, maintaining the effective ban on outdoor shooting ranges. App.45a–47a.

While this case was ongoing, Respondent amended the Ordinance to "remove[ ] rifle ranges from the definition of 'open air business uses,' and explicitly define[ ] '[i]ndoor recreation facilities' and '[o]utdoor recreation facilities' to include 'sport shooting ranges,' " which are purportedly permitted in districts such as "a new 'Industrial Flex Zone.' " App.607a; *see* App.577a–78a. But the amended Ordinance continues to prohibit the operation of an outdoor range on Oakland's land and, on information and belief, as a practical matter likely anywhere else in the Township. That is so despite the fact that the operation of a shooting range is otherwise compatible with types of

uses allowed on land in Oakland's district, which include "agribusinesses," App.604a, such as the rock quarry that was formerly operated on Oakland's parcel, App.32a. Indeed, Respondent has at all times throughout the township *freely allowed* property owners to shoot on their own land as an "accessory use," even though it does not allow such firearms training in a commercial setting. App.618a.

III. The Proceedings Below.

1. Petitioners brought suit in the U.S. District Court for the Eastern District of Michigan on November 2, 2018, challenging Howell Township's de facto ban on outdoor rifle ranges as a violation of the Second Amendment right to train with commonly possessed firearms, which is applicable to the Township under the Fourteenth Amendment. The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1343. Respondent moved to dismiss the case, and Petitioners cross-moved for summary judgment.

On September 10, 2020, the district court granted the motion to dismiss. It found—without any evidence, and on a motion to dismiss—that Petitioners' allegation that Respondent "effectively ban[s] all firearm ranges within the township" had "no plausibility," because Oakland sought approval for its firearm range by way of a text amendment—the precise method Respondent's own staff advised—rather than through "seeking conditional rezoning" or "applying for a special use permit." App.25a (cleaned up). And the court concluded that there were "no cases that support the proposition" that "a municipality must permit a property owner (or a property lessee) to construct, and for interested gun owners to use, an

outdoor, open-air, 1,000-foot shooting range." App.23a–25a.

2. Petitioners appealed. While the appeal was pending before the Sixth Circuit, this Court published its decision in *Bruen*, holding that the Second Amendment protects the right to carry firearms in public and clarifying that Second Amendment claims must be assessed solely based on the provision's text and history. 597 U.S. at 24, 32–33. On August 5, 2022, the Sixth Circuit vacated the district court's judgment and remanded "to allow the district court to consider the plausibility of Oakland Tactical's Second Amendment claim in light of the Supreme Court's recent decision" in *Bruen*. App.2a.

3. The district court, after ordering additional briefing, reaffirmed its decision to grant Respondent's motion to dismiss. The court rejected Petitioners' argument that the "proposed course of conduct" for purposes of *Bruen*'s plain-text inquiry was simply "training with firearms," determining instead that "the proposed conduct is best summarized as construction and use of an outdoor, open-air, 1,000-[yard] shooting range." App.641a, 642a. And, the court held, "*that* conduct is clearly not covered by the plain text of the Second Amendment" because "the plain text of the Amendment says nothing about long-range firing or even, for that matter, training more broadly." App.646a. Because the court concluded that the plain text did not cover Petitioners' proposed conduct, it declined to consider the nation's historical tradition of firearm regulation.

4. Petitioners again appealed, and on May 31, 2024, a divided panel of the Sixth Circuit affirmed.

Like the district court, Judge White's lead opinion for the panel majority refused to define the "proposed course of conduct" as "training with firearms that are in common use." App.613a–614a. Instead, it concluded that "two proposed courses of conduct" were at issue: "(1) engaging in commercial firearms training in a particular part of the Township; and (2) engaging in long-distance firearms training within the Township." App.619a. This gerrymandered definition of the proposed conduct was appropriate, the majority reasoned in part, since "[p]ost-*Bruen*, . . . the proposed conduct must be . . . defined with greater attention and precision because . . . if the conduct is protected, no weighing is permitted at *Bruen*'s second step." App.615a.

The panel then concluded that neither proposed course of conduct was protected by the Second Amendment's text. Judge White's lead opinion granted that "at least some training is protected" by the Second Amendment "because it is a necessary corollary to the right defined in *Heller*." App.609a. And it further acknowledged that "constitutional protection for firearms training cannot be limited to non-commercial training. Otherwise, only those who own or have access to private land suitable for training would be entitled to exercise their Second Amendment rights effectively." App.620a n.7. But it held that the text of the Second Amendment does not "extend[ ] to training in a particular location or at the extremely long distances Oakland Tactical seeks to provide." App.620a.

Judge Cole concurred. He agreed with the lead opinion's definition of the conduct at issue and its conclusion that the Second Amendment's text does not protect it, but he declined to take a position on

"whether the Second Amendment protects the right to train" at all. App.626a.

5. Judge Kethledge dissented. He concluded that "as a matter of precedent and common sense, the Second Amendment's text covers a right to train with firearms," and that because Petitioners "seek to train with weapons in common usage—namely pistols, shotguns, rifles, or some combination thereof," "their conduct is presumptively protected under the Second Amendment." App.630a, 631a. The panel majority erred, Judge Kethledge explained, in deeming Petitioners' proposed conduct outside the Second Amendment's textual scope "on the ground that the plaintiffs seek to train 'at a particular location,' " since "[t]he Second Amendment's text makes no distinctions as to place" whatsoever—and thus "the circumstance of place is relevant to the second step of [*Bruen*'s] analysis, not the first." App.633a–34a.

Petitioners sought further review by the en banc Sixth Circuit, but on July 8, 2024, their petition for en banc rehearing was denied. App.29a.

REASONS FOR GRANTING THE WRIT

I. The Circuit Courts of Appeals Are in Conflict over Whether the Second Amendment Presumptively Protects Against Restrictions Burdening the Right to Train with Common Firearms.

The circuit courts have split 2-1 over the question presented: the Third and Seventh Circuits have correctly interpreted the Second Amendment to protect the right to train with firearms in common use, while the Sixth Circuit, in the decision below, adopted a contorted approach to *Bruen*'s plain-text inquiry

effectively establishing that restrictions on training with common firearms do not necessarily even implicate the Second Amendment. This Court should grant review to resolve the conflict among the circuits over this important aspect of the Second Amendment right.

A. The Third and Seventh Circuits Have Squarely Held that the Second Amendment Protects the Right to Train with Common Firearms.

Both of the other courts of appeals to have addressed the question presented have reached conclusions that are irreconcilable with the panel decision below—correctly interpreting the Second Amendment as necessarily protecting the right to train with common firearms and correctly invalidating restrictions on that right as unconstitutional.

In *Drummond*, just as in this case, a township zoning restriction precluded the plaintiff—a would-be shooting range operator—from operating a commercial shooting range on a particular parcel of land. 9 F.4th at 223–24. The township in *Drummond* imposed two zoning rules on the class of commercial districts where the plaintiff's parcel was located: a rule restricting the operation of shooting ranges to "nonprofit entit[ies]" and a rule restricting ranges to "rim-fire rifle practice," to the exclusion of "center-fire rifle practice." *Id.* at 224 (brackets omitted). But outside that particular class of commercial districts, the town "left intact . . . permissive rules governing gun ranges in [other] districts." *Id.*

The Third Circuit concluded that the zoning ordinance impinged upon conduct protected by the Second Amendment's text and history. The right to keep

and bear arms in common use, the court concluded, "implies a corresponding right to acquire and maintain proficiency with common weapons." *Id.* at 227 (cleaned up). And in a historical analysis that *Bruen* cited as exemplary of the type of analogical reasoning required under the Second Amendment, 597 U.S. at 30, the Third Circuit concluded that neither Founding- nor Reconstruction-Era history supported restrictions barring the "commercial operation of gun ranges" facilitating "training with common weapons in areas where firearms practice was otherwise permitted," *Drummond*, 9 F.4th at 227. While history supported some ability of governments to restrict firearm "purchase and practice to zoning districts compatible with those uses," "the presence of ordinary restrictions in some places cannot excuse extraordinary restrictions in others." *Id.* at 228.

Drummond closely followed the analysis of the other court of appeals to address restrictions on gun ranges, the Seventh Circuit's decisions in the *Ezell* case. In *Ezell v. City of Chicago (Ezell I)*, the court analyzed the text and history of the Second Amendment and concluded that both the plain text of the Amendment and the decision in *Heller* compelled the conclusion that "[t]he right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use." 651 F.3d 684, 704 (7th Cir. 2011). After all, the right to keep and bear arms "wouldn't mean much without the training and practice that make it effective." *Id.* The Seventh Circuit thus directed that Chicago's ban on any firearm ranges in city limits be preliminarily enjoined and remanded to the district court for further proceedings. *Id.* at 715.

"Chicago responded" to the Seventh Circuit's decision "by promulgating a host of new regulations governing firing ranges, including zoning restrictions, licensing and operating rules, construction standards, and environmental requirements." *Ezell II*, 846 F.3d at 891. Two of the newly enacted zoning regulations "allow[ed] gun ranges only as special uses in manufacturing districts" and "prohibit[ed] gun ranges within 100 feet of another range or within 500 feet of a residential district, school, place of worship, and multiple other uses"—with the combined effect that "only about 2.2% of the city's total acreage [was] even theoretically available to site a shooting range." *Id.* at 890, 894. The Seventh Circuit held those restrictions unconstitutional, too. Given evidence that "in other jurisdictions shooting ranges are treated as commercial uses," the court held that "banishing them to a tiny subset of the land zoned for manufacturing reduces their commercial viability" and thus "severely restrict[s] the right of Chicagoans to train in firearm use at a range." *Id.* at 894. Because the city failed to justify that severe restriction (under the second, means-ends scrutiny inquiry that courts mistakenly applied in Second Amendment cases before *Bruen*), the Seventh Circuit concluded that "[t]he manufacturing-district and distancing restrictions are unconstitutional." *Id.* at 896.

B. The Decision Below, By Contrast, Effectively Exempts Restrictions on Training from Second Amendment Challenge.

The reasoning and result of the panel majority in this case are irreconcilable with the decisions from the Third and Seventh Circuits. The decision below

conflicts with *Drummond* from the ground up, beginning with the two courts' framing of the Second Amendment conduct at issue. The panel majority here adopted a bizarro description of Petitioners' proposed conduct, narrowly defined in terms of the particular range Oakland sought to construct: "the commercial operation of a 1,000-yard range." App.622a. And it concluded that there was no textual or "historical evidence" that "the plain text of the Second Amendment covers [this] formulation of Plaintiffs' proposed course of conduct." App.623a. That analysis is flatly inconsistent with the Third Circuit's in *Drummond*. While one of the zoning rules in *Drummond* training with center-fire rifles in particular, the Third Circuit did not ask for textual evidence that the Second Amendment specifically protects the right to train with that particular sub-type of firearm. Rather, it framed the question as whether the Constitution protects "training with common weapons"—correctly explaining that because the Second Amendment's scope "include[s] arms in common use," it necessarily "implies a corresponding right to acquire and maintain proficiency with common weapons." 9 F.4th at 227 (cleaned up).

The Sixth and Third Circuits also conflict in their treatment of the theoretical availability of land elsewhere in the jurisdiction for the construction of a range. The majority below treated the rules purportedly allowing the construction of a range "in other districts" as effectively fatal to Petitioners' challenge, requiring Petitioners to show on this basis that the Second Amendment's text guarantees the right "to train commercially *anywhere within the Township*." App.622a (emphasis added). The *Drummond* court, by contrast, explained that "the presence of ordinary

restrictions in some places cannot excuse extraordinary restrictions in others," and accordingly held that the proper question is whether the Second Amendment protects against "regulations barring training with common weapons in areas where firearms practice [is] otherwise permitted." 9 F.4th at 227, 228. That description perfectly captures Petitioner's land in this case, given that the Township freely allows firearms practice *on that land* "as an accessory use," rather than as part of a commercially operated range. App.618a. The ultimate result is that the Third Circuit correctly held that the zoning restrictions there plainly regulated conduct protected by the Second Amendment—while if it had adopted the majority's approach here, it necessarily would have "immuniz[ed] the Township's atypical rules" from Second Amendment challenge altogether and thereby "relegate[d] the Second Amendment to a 'second-class right'—the precise outcome the Supreme Court has instructed us to avoid." *Drummond*, 9 F.4th at 229 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality)).

The panel majority scarcely acknowledged *Drummond* at all, suggesting only that its reasoning was emblematic of a looser analysis that might have been acceptable pre-*Bruen* when interest balancing would ultimately dispose of most cases anyway. App.615a. But while it is true that *Drummond* went on to apply a tiers of scrutiny analysis, *Bruen* in no way undermined *Drummond*'s analysis of text and history. To the contrary, *Bruen* explained that "[s]tep one of the [formerly] predominant framework"—the text-and-history step—was "broadly consistent with *Heller*," 597 U.S. at 19, and it cited *Drummond*

approvingly when explaining how to engage in "analogical reasoning under the Second Amendment," *id.* at 30. Nothing in *Bruen* mitigates the square split the panel majority has created with the Third Circuit.

Neither can the decision below be reconciled with the Seventh Circuit's decisions in *Ezell*. That court squarely held in *Ezell I*, based on "a textual and historical inquiry into original meaning," that the Second Amendment extends to the "right to acquire and maintain proficiency in the[ ] use" of firearms. 651 F.3d at 701, 704. And *Ezell II*, like *Drummond*, is contrary to the reasoning below in both of the aspects just noted. The Seventh Circuit framed the conduct at issue as the "right to acquire and maintain proficiency in firearm use through target practice at a range," not the right to engage in range shooting specifically within 100 feet of another range or 500 feet of a residential area, "school, day-care facility, place of worship, liquor retailer, children's activities facility, library, museum, or hospital." *Ezell II*, 846 F.3d at 891, 892. And the court declined to accord dispositive significance to the fact that shooting ranges were still permitted "in manufacturing districts," *id.* at 890—asking not whether the plaintiffs have a right "to train commercially *anywhere* within the [city]." App.622a. (emphasis added).

Had the Seventh Circuit applied the panel's "anywhere in the [city]" reading of Petitioners' claims, it presumably *would have upheld* Chicago's zoning ordinance. Yet the majority below did not defend, address, or *even acknowledge* the square conflict it was creating with the Seventh Circuit. This Court should grant the writ to resolve the 2-1 division in the Courts of Appeals created by the panel below.

C. This Case Is an Ideal Vehicle for Resolving the Circuit Conflict over the Question Presented.

This case provides the Court with the perfect opportunity to resolve this conflict between the circuits. Because the panel majority rejected Petitioners' challenge at the plain-text stage of the *Bruen* inquiry, this Court may resolve the split by deciding a clean and straightforward question of law—whether the plain text protects the right to train with firearms—without wading into the more granular inquiry whether the Township's particular use restrictions are "consistent with the Nation's historical tradition of firearm regulation," *Bruen*, 597 U.S. at 24, which may be left for the lower courts on remand. Moreover, because Petitioners' complaint includes a claim for damages, App.51a, there is no danger that the Court will grant review only to have the city alter its zoning rules in a way that moots the case and evades the Court's review.

II. The Panel Majority's Decision Conflicts with This Court's Decisions in *Heller* and *Bruen*.

In addition to creating a split with the Third and Seventh Circuits, the majority decision below is also in fundamental conflict with this Court's Second Amendment precedents in three independent ways.

A. First, the panel's decision conflicts with this Court's decisions plainly teaching that the Second Amendment protects the right to train with commonly possessed firearms.

The Second Amendment states: "A well regulated Militia, being necessary to the security of a free

State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II. In *District of Columbia v. Heller*, this Court explained that to "keep arms" means simply to "have weapon" and to "bear arms" means "carrying . . . weapon[s] . . . for the purpose of 'offensive or defensive action.' " 554 U.S. 570, 582–84 (2008). But *Heller* also signaled that the "plain text" of the Amendment protects more than just those activities it mentions explicitly; it also extends to protect activities that are implicit in its text. For example, the right " 'to bear arms implies something more than the mere keeping [of arms]; it implies learning to handle and use them in a way that makes them ready for their efficient use' "—in other words, to *train* with them. *Id.* at 617–18 (quoting THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS 271 (1868)).

Four Justices have since reaffirmed this point. In *Luis v. United States*, Justice Thomas's concurrence explained that because "[c]onstitutional rights . . . implicitly protect those closely related acts necessary to their exercise," the "right to keep and bear arms . . . implies a corresponding right . . . to acquire and maintain proficiency in their use"—a right without which "the Second Amendment would be toothless." 578 U.S. at 26–27 (Thomas, J., concurring) (cleaned up). And in his dissenting opinion in *New York State Rifle & Pistol Ass'n v. City of New York*, Justice Alito—joined by Justices Gorsuch and Thomas and joined in pertinent part by Justice Kavanaugh—similarly concluded that a "necessary concomitant" of "the right to keep a handgun in the home for self-defense" is the right "to take a gun to a range in order to gain and maintain the skill necessary to use it responsibly." 590 U.S. at 364–

65 (Alito, J., dissenting); *id.* at 340 (Kavanaugh, J., concurring).

To be sure, the Second Amendment does not contain the word "train"—just as it does not in terms protect the right to *acquire* a firearm, to keep and carry firearm *ammunition*, or to keep a firearm in a state that is "operable for the purpose of immediate self-defense." *Heller*, 554 U.S. at 635. Yet the plain text of the Amendment protects against restraints on all of these "necessary concomitant[s]" of the enumerated right, *New York Rifle & Pistol Association*, 590 U.S. at 364 (Alito, J., dissenting), because it guarantees that the right to keep and bear arms may not be "infringed," U.S. CONST. amend. II—that is, it may not be "hinder[ed]," *Infringe*, SAMUEL JOHNSON, A DICTIONARY OF THE ENGLISH LANGUAGE (1755), "curtailed, or broken in upon, in the smallest degree," *Nunn v. Georgia*, 1 Ga. 243, 251 (1846) (quoted approvingly by *Heller*, 554 U.S. at 612). And just as a restriction on acquiring paper and ink would "abridge" the right to "freedom of . . . the press," U.S. CONST. amend. I, a restriction on range training "infringe[s]" the "right of the people to keep and bear Arms," *id.* amend. II, by rendering it "toothless," *Luis*, 578 U.S. at 27 (Thomas, J., concurring). As Judge Kethledge explained in dissent below, "the word 'infringe'—as used in the Second Amendment and as generally understood by the founding generation—referred not only to the elimination of a right but also to restrictions that 'hinder' its exercise," and since "[t]raining with firearms is obviously necessary to using them effectively[,] restrictions on training can therefore hinder the right to bear arms." App.630a (Kethledge, J., dissenting).

Heller's interpretation of the Second Amendment's prefatory clause—which may be used to "resolve an ambiguity in the operative clause," *Heller*, 554 U.S. at 577—provides further confirmation that training is protected by the Amendment's plain text. *Heller* explained that "the militia was thought to be 'necessary to the security of a free State' " because "when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny." *Id.* at 597–98 (emphasis added). Additionally, "the adjective 'well-regulated' implies nothing more than the imposition of proper discipline and training." *Id.* at 597 (quoting Va. Declaration of Rights § 13 (1776), *in* 7 FEDERAL AND STATE CONSTITUTIONS COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE STATES, TERRITORIES, AND COLONIES NOW OR HERETOFORE FORMING THE UNITED STATES OF AMERICA 3812, 3814 (Francis Newton Thorpe ed., 1909) (referring to "a well-regulated militia, composed of the body of the people, trained to arms")). And these are not just historical concerns. In the run up to the enactment of the Gun Control Act of 1968, for example, a Congressional committee recognized that widespread firearm training was "a valuable national asset," because "preinduction firearms training produces more capable and effective soldiers." S. Rep. No. 89-1866, at 8–9 (1966).

This Court's precedents accordingly leave no room for doubt that the Second Amendment's plain text protects the right to train with arms in common use. Yet the decision below effectively guts this right, establishing that the government may infringe it in any way it pleases, short of a formal, absolute ban. For by construing Petitioner's proposed course of conduct as the "right . . . to train . . . anywhere in the

Township"—and, so construed, by rejecting that conduct as "not protected by the plain text of the Second Amendment," App.621a, 622a—the majority decision *exempts* restrictions on range training from constitutional challenge altogether, so long as the government theoretically allows ranges to be constructed on some minuscule parcel of land *somewhere*, no matter how inconvenient or commercially unviable. The Court would not countenance that approach in the context of any other enumerated constitutional right, and it should not allow the Sixth Circuit to once again demote the Second Amendment to "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *McDonald*, 561 U.S. at 780 (plurality).

B. The panel majority also conflicts with this Court's precedent in the way that it conducts the inquiry into the meaning and scope of the Second Amendment's text. As noted above, the panel adopted a description of Petitioners' proposed course of conduct that narrowed it into oblivion: "the right to commercially available sites to train to achieve proficiency in long-range shooting at distances up to 1,000 yards." App.623a. And it then concluded that this conduct was "not protected by the plain text of the Second Amendment" because there was no textual evidence that "the right extends to training in a particular location or at the extremely long distances Oakland Tactical seeks to provide." App.620a, 622a. It should be noted that the panel majority's analysis was contrary to the allegations in Petitioners' complaint, which made clear that Oakland wishes to construct, and the individual Petitioners wish to train at, a facility that includes *both* a long distance (e.g., 1,000 yard) range *and*

shorter rifle, shotgun, and handgun ranges. App.32a. But even leaving that point to the side, the panel majority's method of analysis cannot be squared with *Bruen*.

Bruen instructs that at the first stage of the Second Amendment inquiry, courts must ask whether "the Second Amendment's plain text covers an individual's conduct." 597 U.S. at 24. It does, for the reasons discussed above. And because the Amendment itself draws no textual limitations on that right, Petitioners' proposed conduct is presumptively protected, and the textual stage of the inquiry is at an end.

Put differently, the Second Amendment's text protects as "a necessary concomitant" the right "to take a gun to a range in order to gain and maintain the skill necessary to use it responsibly." *New York State Rifle & Pistol Association*, 590 U.S. at 364–65 (Alito, J., dissenting). And that general, presumptive right to take a gun to a range *necessarily includes* the more specific conduct of taking it to "commercially available sites to train to achieve proficiency in long-range shooting at distances up to 1,000 yards," App.623a—just as "the individual right to possess and carry weapons" necessarily included Heller's right to own his particular handgun at his own particular home address, 554 U.S. at 592, and just as the "right to 'bear' arms in public" necessarily included the rights of Koch and Nash to carry whatever particular firearms they owned on the particular streets, sidewalks, and other public places in New York City they wished to traverse, *Bruen*, 597 U.S. at 33. So long as an individual is part of "the people" and seeks to keep or carry "bearable arms," any limits that may exist on that *specific individual's exercise* of the general right

protected by the Second Amendment must come from history, not text. And thus any dispute over those limits "are unanswerable at step one precisely because our lodestar for that step—the Second Amendment's text—has nothing to say about them." App.635a (Kethledge, J., dissenting).

The panel majority asserted that it was in fact following *Bruen*, which, in its telling, offered a narrower reading of the petitioners' proposed conduct that "incorporated the purpose and location of the plaintiffs' desired action": " 'carrying handguns publicly for self-defense.' " App.616a (quoting *Bruen*, 597 U.S. at 32). But in fact, "*Bruen* refutes the majority's analysis rather than supports it." App.634a (Kethledge, J., dissenting). While *Bruen* defined the petitioners' proposed *conduct* as carrying firearms in public, the Court did not find that activity protected by the Second Amendment because the text of the Second Amendment specifically covers carrying firearms in public. To the contrary, *Bruen* found the plain text implicated because that text covers carrying firearms *generally*, and "[n]othing in the Second Amendment's text draws a home/public distinction." 597 U.S. at 32. Similarly in this case, once it is granted that the plain text covers training at all (as the panel majority in fact conceded), nothing in the plain text draws any distinctions as to where that training may take place or how extensive a range may be constructed. Again, any such distinctions must come from history, not text.

The panel majority's reasoning essentially imports interest-balancing back into the Second Amendment—a point the majority *all but acknowledges*. Without any text from which to draw distinctions, the panel's approach invites future courts to engage in the

very inquiry *Bruen* prohibited: asking how much individuals really *need* to train in a certain location or in a certain manner. The majority recognized *and embraced* that result. While hewing to a literal reading of the Second Amendment's text may have made sense when "the Second Amendment right could be balanced against an analysis of the rationale and effect of the regulation," the majority reasoned, after *Bruen* courts must define the Second Amendment's text "with greater attention and precision," because "no weighing is permitted at *Bruen*'s second step." App.615a. But as this Court has repeatedly insisted, "[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad." *Heller*, 554 U.S. at 635. A court's role is not to define the Second Amendment's text "more narrowly," with "greater attention and precision," App.614a, 615a, but rather to give the Amendment's terms their fair import as originally understood. The majority's contrary approach departed from this Court's clear instructions.

C. Finally, the panel's decision conflicts with this Court's precedent discussing the Second Amendment's historical scope. As discussed, the right to train with firearms is a "necessary concomitant" of the right of the people to keep and bear arms. *New York Rifle & Pistol Association*, 590 U.S. at 364 (Alito, J., dissenting). And it follows from this that the scope of the right to train with firearms must track the scope of the right to keep and bear them. Importantly here, that means that because the right to have arms in the home and carry arms in public extends to all "arms in common use at the time for lawful purposes," *Heller*, 554 U.S.

at 624 (cleaned up), the right to firearm training *must likewise* extend to training with those arms in the way they are designed to be used.

That provides the answer to a question that unnecessarily vexed the panel below: whether the right to engage in firearm training extends to "shooting at distances up to 1,000 yards." App.623a. Under the text and history of the Second Amendment, the appropriate length of available shooting ranges must be dictated not by the Amendment's text (which quite obviously does not speak to the issue at all) or by the distance achieved by marksmen at the Founding, *see id.*, but rather by the effective range *of the firearms that are commonly possessed by law-abiding Americans*. And since firearms in common use for lawful purposes have an effective range that extends to 1,000 yards, there is no basis for concluding that training at that distance is "extrem[e]," "[un]necessary," or "not protected by the plain text of the Second Amendment." App.622a–623a. Indeed, the long-existing Civilian Marksmanship Program, run by a congressionally chartered entity dedicated to promoting firearm marksmanship in civilians, includes long-distance Precision Rifle Shooting type events with distances of up to 1,000 yards. *See, e.g.*, CMP Highpower Rifle Competition Rules at 4, CIVILIAN MARKSMANSHIP PROGRAM (2024), https://bit.ly/46JgHqr.

The panel majority concluded otherwise only by seriously misunderstanding what this Court said in *Heller* about the scope of the Second Amendment. *Heller*, the majority thought, held not only that the right to keep and bear arms *extends* to armed self-defense, but also that the right *is limited* to the purpose of self-defense: that the Second Amendment solely protects,

in language the panel quoted over and over again like some mantra, the right to " 'possess and carry weapons *in case of confrontation*.' " App.626a (emphasis added) (quoting *Heller*, 554 U.S. at 592). Because the majority found it "difficult to imagine a situation where accurately firing from 1,000 yards would be necessary to defend oneself," it concluded that "the ability to train at such distances is [not] necessary to effectuate Plaintiffs' Second Amendment right to keep and bear arms 'in case of confrontation.' " App.622a–23a (quoting *Heller*, 554 U.S. at 592).

That analysis is fundamentally inconsistent with *Heller*. Yes, *Heller* rejected the District of Columbia's argument that the Second Amendment "protects *only* the right to possess and carry a firearm in connection with militia service," instead establishing that it *also* protects "the individual right to possess and carry weapons in case of confrontation." 554 U.S. at 577, 592 (emphasis added). But while *Heller* thus made clear that "self-defense" was "the *central component* of the right," *nothing* in that opinion, or in any of this Court's other Second Amendment precedents, supports the notion that the Second Amendment protects the right to keep and bear arms *only* if done for the purpose of self-defense. *Id.* at 599. To the contrary, *Heller* discusses two other (by no means exclusive) purposes: "hunting" and "prevent[ing] elimination of the militia"—the very "purpose for which the right was codified." *Id.* And critically, *Heller* repeatedly describes the Second Amendment as generally protecting the right to keep and bear arms for *all* "traditionally lawful purposes, *such as* self-defense." *Id.* at 577 (emphasis added); *see also id.* at 624 ("The traditional militia was formed from a pool of men bringing arms 'in

common use at the time' for lawful purposes like self-defense"); *id.* at 625 ("the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns. *That accords with the historical understanding of the scope of the right*." (citation omitted) (emphasis added)).

The panel majority's mistake is a grievous one, and it threatens not only to effectively obliterate the right to train with firearms but also to erode the right to keep and bear arms itself. For if these rights exist only "in case of confrontation," with confrontation construed as limited to personal self-defense, then courts must assess even a ban on keeping certain firearms in the home *not* by asking, as *Heller* instructed, whether the banned arms are "typically possessed by law-abiding citizens for lawful purposes," *id.*, but rather whether possession of those particular arms "is necessary for the effective exercise of the right to keep and bear arms for self-defense," App.623a. And similarly, courts would presumably need to assess restrictions on carrying arms in certain public places *not* by determining whether "this Nation's historical tradition of firearm regulation" supports the restriction, as *Bruen* directs, 597 U.S. at 17, but rather by determining whether going armed in that particular place "is necessary," in the court's own estimation, "to effectuate [the] Second Amendment right to keep and bear arms in case of confrontation," App.622a–23a (cleaned up). In this way, too, the decision below resurrects precisely the approach that *Bruen* repudiated: a " 'judge-empowering interest-balancing inquiry' " that subordinates the Second Amendment " 'to future judges'

assessments of its usefulness.' " 597 U.S. at 22, 23 (quoting *Heller*, 554 U.S. at 634).

III. The Question Presented Is Exceptionally Important.

The question presented in this case is one of fundamental import that should be decided by this Court. The Second Amendment right to keep and bear arms itself is a "true palladium of liberty," *Heller*, 554 U.S. at 606, "among those fundamental rights necessary to our system of ordered liberty," *McDonald*, 561 U.S. at 778. And this "right wouldn't mean much without the training and practice that make it effective." *Ezell I*, 651 F.3d at 704. Indeed, even the panel majority was forced to concede that "firearms training is necessary to the effective exercise of Second Amendment rights," App.610a—though the framework it adopted and applied to protect that right effectively empties it of any meaning. The enduring significance of the question presented would thus, standing alone, justify this Court's intervention.

But there is more: the decision below, and the conflict it creates over the judicial assessment of restrictions on the right to train, necessarily carries important implications for other "necessary concomitant[s]" of the right to keep and bear arms. *New York State Rifle & Pistol Association*, 590 U.S. at 364 (Alito, J., dissenting). That right is quite plainly "infringed," U.S. CONST. amend. II, not only by restrictions on firearm training but also by laws burdening other "action[s] intimately and unavoidably connected with [it]," such as the right to acquire firearms and the "right to obtain the bullets necessary to use them," *Luis*, 578 U.S. at 26 (Thomas, J., concurring) (cleaned

up). Without adequate "protection for these closely related rights, the Second Amendment would be toothless." *Id.* at 27. Yet the panel majority makes clear that its restrictive approach to assessing restrictions on the right to train with firearms *also* applies to other "implied corollary rights," App.618a, such that challengers seeking to vindicate other concomitant rights such as the right to purchase firearms are likely to see their Second Amendment claims rejected at the threshold wherever the majority's approach prevails.

Following *Heller*, for nearly fourteen years the courts of appeals resisted this Court's precedent and failed to adequately protect the "balance . . . struck by the traditions of the American people" when they codified the right to keep and bear arms in our highest law. *Bruen*, 597 U.S. at 26. If this Court does not grant review and correct the errors in the panel majority, history may well repeat itself.

CONCLUSION

For the reasons set forth above, the Court should grant the petition for writ of certiorari.

August 16, 2024

Respectfully submitted,

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED AUGUST 5, 2022

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 21-1244

OAKLAND TACTICAL SUPPLY, LLC;
JASON RAINES; MATTHEW REMENAR;
SCOTT FRESH; RONALD PERNOD;
EDWARD GEORGE DIMITROFF,

Plaintiffs-Appellants,

v.

HOWELL TOWNSHIP, MICHIGAN,

Defendant-Appellee.

Filed August 5, 2022

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

OPINION

Before: COLE, KETHLEDGE, and WHITE, Circuit Judges.

Appendix A

Plaintiffs-Appellants (collectively, Oakland Tactical) appeal the district court's grant of judgment on the pleadings to Defendant-Appellee, Howell Township (Township), and its denial of Oakland Tactical's motion for reconsideration, arguing that the Township's Zoning Ordinance (Ordinance) violates the Second Amendment by effectively banning Oakland Tactical from operating an outdoor, long-distance shooting range on its property. We VACATE and REMAND to allow the district court to consider the plausibility of Oakland Tactical's Second Amendment claim in light of the Supreme Court's recent decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

I.

Oakland Tactical seeks to operate an outdoor, 1,000-yard shooting range on its property in the Agricultural-Residential District (ARD) of the Township. Oakland Tactical filed this action in 2018 and the operative complaint in 2019, alleging that the Ordinance, facially and as applied, "effectively ban[s] the operation of rifle ranges and other shooting ranges, thereby prohibiting numerous traditional lawful uses of firearms that the Second Amendment protects." R. 44 PID 1103. In 2018 and 2019, the Ordinance listed "rifle ranges" as an "[o] pen air business use." R. 60-2 PID 1234. Although "rifle ranges" were not specifically mentioned elsewhere in the Ordinance, the Township stated at a planning commission meeting that commercial shooting ranges were allowed in some districts, but not the ARD.[1]

1. The Ordinance also permitted "service outlets for . . . indoor commercial recreation" in the Regional Service

Appendix A

In June 2020, the Township filed a motion for judgment on the pleadings. In September, the district court granted the Township's motion and dismissed the action, concluding that Oakland Tactical failed to plausibly plead that the Second Amendment requires the Township to "permit a property owner (or a property lessee) to construct, and for interested gun owners to use, an outdoor, open-air, 1,000-foot shooting range" within the ARD; or, that the Ordinance effectively bans all shooting ranges, given that it "appears on its face to allow shooting ranges in [other] districts" and Oakland Tactical could have sought conditional rezoning or a special-use permit to construct a shooting range on its property. R. 84 PID 2089-90. Oakland Tactical moved for reconsideration.

In January 2021, while Oakland Tactical's motion for reconsideration was still pending, the Township amended the Ordinance. The Ordinance no longer mentions "rifle ranges." Instead, it references "sport shooting ranges" and classifies them as either "indoor recreation facilities" or "outdoor recreation facilities," not open-air businesses. Howell Twp., Mich. Zoning Ordinance art. II (2021). The Ordinance permits indoor and outdoor recreational facilities in four districts—the Regional Service

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Commercial District; "[r]ecreation and sports buildings" and "[r]ecreation and sports areas, if areas are completely enclosed with fences, wall or berms with controlled entrances and exits" in the Highway Service Commercial District; and, "[r]ecreation and physical fitness facilities" in the Heavy Commercial District and the Industrial District, with "facility" appearing to encompass both indoor and outdoor spaces under the Ordinance. R. 60-2 PID 1244, 1247, 1252; R. 61-2 PID 1409.

Commercial District, the Highway Service Commercial District, the Industrial Flex Zone, and the Industrial District—and sets specific standards for sport shooting ranges. *Id.* art. XVI, § 16.18(A), (B)(10).

In February, the district court denied Oakland Tactical's motion for reconsideration after finding no "palpable defect" in its order of dismissal.[2] R. 91 PID 2184. Oakland Tactical timely appealed.

II.

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court recognized that the Second Amendment protects the individual right to keep and bear arms, specifically "the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense." *Bruen*, 142 S. Ct. at 2122; *see also McDonald v. Chicago*, 561 U.S. 742, 750 (2010) (holding that the right to keep and bear arms for the purpose of self-defense is applicable to the states). *Heller* also implied, rather obliquely, that the Second Amendment may protect other firearms-related conduct but not all such conduct. 554 U.S. at 626-28 & n.26, 635. This left lower courts "struggl[ing] to delineate the boundaries" of the Second Amendment. *Tyler v. Hillsdale*

2. The district court did not address the amendments to the Ordinance, which is understandable given that the parties seemingly failed to mention them. Even on appeal, the parties neglected to brief what effect, if any, the amendments have regarding Oakland Tactical's Second Amendment claim and, thus, we ordered supplemental briefing.

Cnty. Sheriff's Dep't, 837 F.3d 678, 681 (6th Cir. 2016) (en banc).

To help us resolve Second Amendment challenges, we previously employed a two-step test. *United States v. Greeno*, 679 F.3d 510, 518 (6th Cir. 2012), *abrogated by Bruen*, 142 S. Ct. at 2126-27 (rejecting the test). At step one, we required the government to put forward historical evidence to establish that the challenged law regulated activity outside the scope of the Second Amendment. *Id.* If the historical evidence was inconclusive or suggested that the regulated activity was not categorically unprotected, we moved to step two, where we ascertained the appropriate level of scrutiny and then examined the government's justification for restricting or regulating the exercise of the activity. *Id.* The Supreme Court recently clarified, however, that this is the wrong approach. Instead:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Bruen, 142 S. Ct. at 2129-30.

We are unable to apply this standard based on the record and arguments currently before us. The district court should decide, in the first instance, whether Oakland Tactical's proposed course of conduct is covered by the plain text of the Second Amendment.[3] *See*, *e.g.*, *id.* at 2134-35 (concluding that the Second Amendment plainly covers a right to bear arms in public for self-defense). If the district court concludes that Oakland Tactical's proposed course of conduct is covered by the plain text of the Second Amendment, it should then determine whether historical evidence—to be produced by the Township in the first instance—demonstrates that the Ordinance's shooting-range regulations are consistent with the nation's historical tradition of firearm regulation. *See*, *e.g.*, *id.* at 2138 (concluding that "the historical record compiled by respondents does not demonstrate a tradition of broadly prohibiting the public carry of commonly used firearms for self-defense" or "limiting public carry only to those law-abiding citizens who demonstrate a special need for self-defense").

* * *

3. We note that, although Oakland Tactical has alleged that the Second Amendment protects the right to train on "outdoor ranges appropriate for . . . common firearms," "shotgun and handgun ranges," and, more generally, "a shooting range," R. 86 PID 2113; R. 44 PID 1085-86, it most recently framed its proposed course of conduct as the right to train on "outdoor, long-distance shooting ranges," *see*, *e.g.*, Appellants Br. at 10.

For the foregoing reasons, we VACATE the district court's grant of judgment on the pleadings and its order denying reconsideration and REMAND for further proceedings consistent with this opinion.

/s/ Helene N. White
Helene N. White
United States Circuit Judge

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT, E.D., FOR THE DISTRICT OF MICHIGAN, SOUTHERN DIVISION, DATED FEBRUARY 9, 2021

2021 WL 940756
Civil Action No. 18-CV-13443

United States District Court, E.D.
Michigan, Southern Division

OAKLAND TACTICAL SUPPLY LLC, *et al.*,

Plaintiffs,

v.

HOWELL TOWNSHIP,

Defendant.

Signed 02/09/2021

OPINION AND ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION AND FOR LEAVE TO FILE A THIRD AMENDED COMPLAINT

BERNARD A. FRIEDMAN, SENIOR UNITED STATES DISTRICT JUDGE

This matter is presently before the Court on plaintiffs' motion for reconsideration and for leave to file a third amended complaint [docket entry 86]. Defendant has filed

a response in opposition and plaintiffs have filed a reply. Pursuant to E.D. Mich. LR 7.1(h)(2), the Court shall decide this motion without a hearing.

Plaintiffs seek reconsideration of the Court's order dismissing their second amended complaint. This Court's Local Rule 7.1(h)(3) requires plaintiffs seeking reconsideration to show a "palpable defect" in the Court's ruling and that "correcting the defect will result in a different disposition of the case." "A 'palpable defect' is a defect which is obvious, clear, unmistakable, manifest, or plain." *Mich. Dep't of Treasury v. Michalec*, 181 F. Supp. 2d 731, 734 (E.D. Mich. 2002). Plaintiffs' motion is also brought under Fed. R. Civ. P. 59(e). "A court may grant a Rule 59(e) motion to alter or amend if there is: (1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice." *Intera Corp. v. Henderson*, 428 F.3d 605, 620 (6th Cir. 2005).

Plaintiffs have not identified a palpable defect in the Court's order of dismissal. Nor have they shown that the Court committed a clear error of law or that the dismissal should be vacated due to newly discovered evidence or an intervening change in the law or to prevent manifest injustice. Rather, plaintiffs mistakenly assert that the Court misunderstood their complaint, failed to draw all reasonable inferences in the light most favorable to them, and improperly required them to allege that they had exhausted their administrative remedies (or that doing so would have been futile).

Plaintiffs are incorrect. Regarding the first two points, the Court fully understood the complaint to allege that plaintiffs seek to build an outdoor 1,000-yard shooting range and that defendant would not allow the construction of such a facility. *See* Op. & Order Granting Def.'s Mot. to Dismiss at 1-2. But plaintiffs also alleged that defendant "effectively bann[ed] all firearms ranges within the township," Second Am. Compl. ¶ 4, an allegation that could have raised Second Amendment concerns under the Seventh Circuit's *Ezell* cases, and the Court found this allegation to be implausible in light of defendant's zoning ordinances that allow for shooting ranges. *See* Op. & Order at 7. Regarding plaintiffs' third point, the Court did not dismiss the complaint because plaintiffs failed to allege that they had exhausted their administrative remedies. The Court merely noted the implausibility of plaintiffs' allegation that defendant would not allow the construction of the shooting range at issue given plaintiffs' failure to allege that they had taken any steps to present defendant with a request (e.g., by seeking conditional rezoning or a special use permit) that was limited to the particular parcel leased by plaintiff Oakland Tactical LLC.

The Court dismissed the complaint in this matter because plaintiffs based their claim on the outlandish proposition that Howell Township violated their Second Amendment rights by denying the application submitted by Oakland Tactical LLC's member, Mike Paige, to amend the township zoning ordinance so as to allow for shooting ranges *throughout the AR district.* Had the township approved Paige's application, the township would have been obligated to approve any application for

a shooting range on any parcel within this district so long as "dimensional regulations" (e.g., setback requirements) were met. As the Court further noted, two-thirds of all Howell Township land (13,500 acres) is zoned AR. No provision of the Constitution, including the Second Amendment, requires government entities to grant an amendment to their zoning ordinances to permit any particular activity, whether it be to build cement factories, graze cattle, or construct long-distance shooting ranges. If a person wishes to construct a building or engage in an activity that is not permitted under existing zoning rules, there are procedures available under Michigan law whereby the owner (or lessee) may seek an exception for his piece of property. Until now, plaintiffs have never alleged that these procedures are unavailable to them. Manifestly, the procedure is not to ask the zoning authority to amend the zoning ordinance to permit the activity in question everywhere that has the same zoning designation as the applicant's parcel.

In short, plaintiffs have shown no error in the Court's dismissal of their complaint. Their motion for reconsideration of, or to alter or amend, that ruling is therefore denied.

As noted, plaintiffs also seek leave to file a third amended complaint (i.e., the fourth version of their complaint in this case). Regarding such post-judgment motions, the Sixth Circuit has stated:

> Although Rule 15(a) "plainly embodies a liberal amendment policy," *Morse*, 290 F.3d at 800,

> there is a "heavier burden" when requests to amend are made after an adverse judgment, *Leisure Caviar*, 616 F.3d at 616.
>
> * * *
>
> In addition to the *Foman* factors of undue delay, bad faith, dilatory motive, undue prejudice, and the futility of the proposed amendment, post-judgment requests to amend require that the district court "also take into consideration the competing interest of protecting the finality of judgments and the expeditious termination of litigation." *Morse*, 290 F.3d at 800 (internal quotation marks omitted). This latter inquiry includes asking whether the claimant has made a "compelling explanation" for failing to seek leave to amend prior to the entry of judgment. *Leisure Caviar*, 616 F.3d at 617; *Morse*, 290 F.3d at 800. It is intended to keep plaintiffs from using the district court "as a sounding board to discover holes in their arguments," and from avoiding the narrow grounds for post-judgment relief under Rules 59 and 60. *Leisure Caviar*, 616 F.3d at 616.

Pond v. Haas, 674 F. App'x 466, 472-73 (6th Cir. 2016).

Plaintiffs indicate that their third amended complaint would clarify that they seek to construct and use a long-range outdoor facility. No such clarification is necessary, as the original complaint, the first amended complaint,

and the second amended complaint clearly made this allegation.

Plaintiffs also indicate that their third amended complaint would

> clarify ... that the parties had reached an impasse and that no further avenues of relief were available or likely to be fruitful, as the Township had foreclosed them. The parties' positions were final with respect to Plaintiff Oakland's ability to obtain approval of any kind to build an outdoor shooting range on the Property, and Plaintiffs seek leave to amend the Complaint to clarify this further and that they are not seeking a broad zone change, but were instructed by the Township that seeking such a broad zone change was their only potential avenue for being allowed to construct an outdoor range on the Property.

Pls.' Br. at 7-8. It appears that the relevant allegations in the proposed third amended complaint include the following:

> 38. Of the approximately 20,000 acres regulated by the Howell Township Zoning Ordinances, the only district providing for stand-alone recreational facilities (ones not connected to other permitted uses in the zone) is the Highway Service Commercial District ("HSC District") consisting of 7 parcels with a total area of less

than 30 acres. Recreational facilities in the HSC District are only allowed under a special use permit that requires the use not to interfere with the permitted principle uses, and thus, it would have been futile to apply for a special use permit within such zone (even if sufficient land were available for the proposed CMP-promoted long-distance types of rifle practice and competitions, which it is not), as such a permit application would have been rejected." [sic]

* * *

47. Howell Township zoning officials advised Oakland to apply for a text amendment to the Howell Township Zoning Ordinances as the only avenue available to allow shooting ranges in the AR Zoning District, stating that a conditional use permit, special permit, or a site-specific zone change was not available for a shooting range on Oakland's Property; for this reason, applying for such permits or a site-specific zone change would have been futile.

* * *

56. Oakland's managing member, Mr. Paige, was advised in meetings with Howell Township officials that the Zoning Ordinance as interpreted by the forecloses the use of the Property as an outdoor firearms training

range. The Township explicitly advised Plaintiff Oakland that the only way to permit an outdoor shooting range on the Property would be to amend the Zoning Ordinance through a text amendment, which was not Oakland's desired approach as it would affect many other areas in the Township and open up land in the area to competitors.

57. When considering whether to adopt the proposed text amendment, the Township Planning Commission was advised by Township personnel that it could take more time to consider making changes to the proposed text amendment, such as allowing outdoor firearms training ranges to be permitted by a conditional use permit, and the Commission rejected this opportunity by voting against taking additional time to consider zoning and permitting alternatives. The Township Planning Commission then voted to recommend to the Township to deny the text amendment. The Township accepted the recommendation of the Township Planning Commission and denied the text amendment. Based on the text of the Ordinance and its interpretation by the Township, any other action by Plaintiff Oakland to change the allowable uses of the Property to include an outdoor firearms training range, including by seeking conditional rezoning of that parcel or by applying for a special use or conditional use permit, would have been futile.

The additional allegations plaintiffs would make in their proposed third amended complaint are not simple clarifications, but extensive, new assertions that are plainly a reaction to the Court's explanation for dismissing the second amended complaint. Plaintiffs offer no explanation as to why these facts were not pled earlier, to say nothing of the "compelling explanation" they are required to present "for failing to seek leave to amend prior to the entry of judgment." *Pond*, 674 F. App'x at 473. As noted above, such a showing is required in order "to keep plaintiffs from using the district court as a sounding board to discover holes in their arguments, and from avoiding the narrow grounds for post-judgment relief under Rules 59 and 60." *Id.* (citations and internal quotation marks omitted). Plaintiffs have plainly used the Court in this fashion to determine how to draft their proposed third amended complaint. Sixth Circuit precedent counsels against permitting the requested amendment under these circumstances.

The *Foman* factors do as well. As the Supreme Court noted in that case, leave to amend may be denied where there is "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, [or] undue prejudice to the opposing party by virtue of allowance of the amendment...." *Foman v. Davis*, 371 U.S. 178, 182 (1962). Undue delay, dilatoriness, and repeated failure to cure the pleading deficiency are plainly apparent in the present case. The township board denied Paige's text amendment application in November 2017. Plaintiffs waited a year before brining suit in November 2018. They then filed

amended complaints in June and July 2019, never alleging that alternatives to applying for a "text amendment" would be futile. The prejudice to defendant can also be presumed, given its interest, and the public's interest, in "the finality of judgments and the expeditious termination of litigation." *Pond*, 674 F. App'x at 472 (quoting *Moore v. City of Paducah*, 790 F.2d 557, 559 (6th Cir. 1986)). Having considered the *Foman* factors, along with plaintiffs' failure to offer a "compelling explanation" for seeking leave to amend before judgment was entered against them, the Court concludes that the requested amendment should not be permitted.

For the reasons stated above,

IT IS ORDERED that plaintiffs' motion [docket entry 86] for reconsideration and for leave to file a third amended complaint is denied.

IT IS FURTHER ORDERED that defendant's motion [docket entry 87] for leave to respond to plaintiffs' motion for leave to amend is denied as moot.

APPENDIX C — ORDER THE UNITED STATES DISTRICT COURT, E.D., FOR THE DISTRICT OF MICHIGAN, SOUTHERN DIVISION, DATED SEPTEMBER 10, 2020

2020 WL 5440048
Civil Action No. 18-CV-13443

United States District Court, E.D. Michigan, Southern Division

OAKLAND TACTICAL SUPPLY LLC, *et al.*,

Plaintiffs,

v.

HOWELL TOWNSHIP,

Defendant.

Signed 09/10/2020

OPINION AND ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

BERNARD A. FRIEDMAN, SENIOR UNITED STATES DISTRICT JUDGE

This matter is presently before the Court on (1) defendant's motion to dismiss [docket entry 60] and (2) plaintiffs' motion for summary judgment [docket entry 61]. Both motions have been fully briefed. Pursuant to E.D.

Mich. LR 7.1(f)(2), the Court shall decide these motions without a hearing. For the reasons stated below, the Court shall grant defendant's motion and deny plaintiffs' motion as moot.

This case involves a zoning dispute that, plaintiffs claim, implicates their Second Amendment rights. Plaintiff Oakland Tactical Supply LLC ("Oakland Tactical"), a firearms retailer located in Howell, Michigan, alleges that it desires to construct "one or more outdoor shooting ranges to provide a safe location for residents in the area to practice target shooting for self-defense and other lawful purposes, including but not limited to a long distance (e.g. 1,000 yard) range for qualified shooters and public access rifle, shotgun and handgun ranges" on property it leases in Howell Township, Michigan. Second Am. Compl. ("SAC") ¶ 6. The five individual plaintiffs are gun owners who would use Oakland Tactical's proposed facility if it were to be constructed. *Id.* ¶¶ 7-15, 60-64. The Howell Township zoning ordinance allegedly "does not allow open air business uses, shooting ranges, or rifle ranges" on property zoned Agricultural Residential ("AR"), and the property in question is zoned AR. *Id.* ¶ 46. An application submitted by one of Oakland Tactical's members for a "text amendment" that would permit shooting ranges to be constructed in the AR district was denied by the Howell Township Board in November 2017. *Id.* ¶¶ 47-48, 54. Plaintiffs also allege that no public outdoor shooting ranges exist in Howell Township and that the closest such range, located at a state recreation area in Green Oak Township, is about a thirty-minute drive by car from Oakland Tactical's property. *Id.* ¶¶ 31-32. For various reasons, the individual plaintiffs find the Green

Oak Township location, and the other shooting ranges located elsewhere, to be inconvenient or inadequate for their purposes, and they would prefer the facility Oakland Tactical would like to construct in Howell Township.

Plaintiffs claim that defendant Howell Township has, by prohibiting Oakland Tactical from constructing a shooting range, denied them their rights under the Second Amendment. The individual plaintiffs claim that defendant has infringed on their Second Amendment rights because this amendment affords them "the right to operate and practice with firearms at a range, for purposes including learning about firearms, safely gaining proficiency with firearms, obtaining any training required as a condition of firearms ownership, recreation, hunting, and competition." *Id.* ¶ 68. Oakland Tactical claims that defendant has violated its Second Amendment right "to own, construct, and operate a range for these purposes." *Id.* ¶ 69. *See also id.* ¶ 4 ("Howell Township has infringed the rights of Oakland Tactical Supply, LLC ... to site, construct, and operate a shooting range within the borders of Howell Township, effectively banning all firearms ranges within the township, and the rights of the individual Plaintiffs to practice for lawful purposes with firearms."). For relief, plaintiffs seek a declaration that "Defendant's aforesaid actions have deprived and will continue to deprive Plaintiffs of rights under the Second Amendment"; damages; an injunction enjoining enforcement of ordinances "barring operation of shooting ranges open to the public" or of "any law against the ordinary operation and use of shooting ranges open to the public"; plus costs and attorney fees.

Appendix C

Defendant seeks dismissal of the complaint on a number of grounds, but the Court is persuaded that the complaint should be dismissed for failure to state a claim because defendant violated none of plaintiffs' Second Amendment rights by denying the requested zoning amendment at issue.

The starting point is the requested amendment itself, a copy of which is attached to plaintiffs' summary judgment motion as an exhibit. *See* PageID.1648-49.[1] The text amendment application was submitted by non-party Mike Paige, a member of Oakland Tactical. Paige's "application for amendment to zoning ordinance / map," dated August 29, 2017, requested the following change to the Howell Township zoning ordinance: "Allow for shooting range[ ]s in AG [sic: AR] District." The minutes of the Howell Township Board's November 13, 2017, meeting indicate that the board voted against the proposed amendment (6-0) "based on the information provided by the township planner, the recommendation of the planning commission and the input of the public." Def.'s Mot. to Dismiss, Ex. 3 at 4 (PageID. 1266).

1. Ordinarily the Court may not consider matters outside the pleadings in deciding a motion to dismiss for failure to state a claim or for judgment on the pleadings. *See* Fed. R. Civ. P. 12(d). However, the Court may consider the text amendment application in deciding defendant's motion because this document is referenced in the complaint and is central to plaintiffs' claims. *See Yeldo v. MusclePharm Corp.*, 290 F. Supp. 3d 702, 708 (E.D. Mich. 2017); *Simmons v. Wayne Cty. Cmty. Coll. Dist.*, No. 11-CV-14936, 2014 WL 764632, at n.1 (E.D. Mich. Feb. 25, 2014). The Court may also consider matters of public record. *See McLaughlin v. CNX Gas Co.*, LLC, 639 F. App'x 296, 298-99 (6th Cir. 2016); *Northville Downs v. Granholm*, 622 F.3d 579, 586 (6th Cir. 2010).

Appendix C

The minutes of the Howell Township Planning Commission's October 24, 2017, meeting, in turn, indicate that the commission voted 5-0 to recommend that the township board "deny the text amendment changes as presented." *Id.* Ex. 2 at 7 (PageID. 1261). Also according to these minutes, the township planner, Paul Montagno, provided the planning commission with the following information at that meeting:

> This is a proposed Text Amendment to the Township Zoning Ordinance by petitioner Mike Paige. He is requesting the Zoning Ordinance be amended to allow for shooting ranges in the Agricultural Residential "AR" District. The petitioner has indicated that he is interested in establishing a 1000' shooting range on a roughly 300 acre parcel of land on Fleming Road north or Warner Road in Section 17. Although the petitioner has interest in a particular parcel, the application for this Public Hearing is for the Text Amendment. Any permitted use change that is made to the "AR" District will be applied across all parcels with the "AR" Districts.... Within the Howell Township "AR" District there are approximately 13,500 acres.

Id. Ex. 2 at 2 (PageID. 1256). One of the commissioners noted that approximately 65% of the land within the township is zoned AR. *Id.* Ex. 2 at 7 (PageID. 1261).

In his written report to the planning commission, Montagno explained:

> [W]hile the applicant is interested in the ability to develop a specific piece of land and has specific plans for this land, the current petition is for an amendment to the permitted uses in the AR district. If a text amendment were approved, this would affect all land zoned AR. If the text amendment were approved as present [sic], shooting ranges would be a permitted use in the AR district. A site plan would be required for the development of any land, but if the proposed plans met the dimensional regulations of the Zoning Ordinance the plans must be approved. This would be true for any land within the [AR] district. There are approximately 13,500 acres of land within the Township within an AR zoning district.

Pls.' Summ. J. Br., Ex. 9B (PageID.1651-52).

Plaintiffs have cited no cases that support the proposition that a local government, such as Howell Township, is required by the Second Amendment to grant a request to change its zoning ordinance such that the construction and use of shooting ranges must be permitted anywhere within that governmental entity's boundaries with a particular zoning designation. In the present case, the requested amendment was so expansive that it would have applied not only to Oakland Tactical's 352-acre parcel but to *the entire AR district*, which comprises 13,500 acres (21 square miles) or 65% or more of the township's land.[2] Additionally, as the township's

2. If the AR district comprises 13,500 acres, and "approximately 20,000 acres [are] regulated by the Howell Township Zoning

zoning planner explained, if the zoning ordinance had been amended as requested, the township would have been obligated to permit any shooting range anywhere in the AR district, provided it met "dimensional regulations" (e.g., setback requirements), because the amendment would make shooting ranges a permitted use, as opposed to a conditional use, for all land zoned AR.

The cases on which plaintiffs rely do not come close to suggesting that the Second Amendment requires such a result. Plaintiffs cite cases for the proposition that the Second Amendment encompasses the right to posses firearms in the home for self-defense purposes. *See, e.g., McDonald v. City of Chicago*, 561 U.S. 742 (2010) (invalidating city ordinances banning the possession of all firearms); *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008) (invalidating ban on handguns in the home unless unloaded or trigger-locked). Plaintiffs also cite *Tyler v. Hillsdale Cty. Sheriff's Dep't*, 837 F.3d 678 (6th Cir. 2016), in which the court of appeals permitted a case to proceed that challenged a statute banning gun ownership for those with a history of mental illness. The only cases plaintiffs cite that concerned shooting ranges are the two *Ezell* cases from the Seventh Circuit, *Ezell v. City of Chicago*, 846 F.3d 888 (7th Cir. 2017), and *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011), which invalidated Chicago's ordinances banning, or severely restricting, all shooting ranges in the city while also requiring gun owners to train at a shooting range as a condition of obtaining a gun permit.

Ordinances," SAC ¶ 38, then Paige's requested zoning amendment actually would affect 67.5% of the township's land area.

The Seventh Circuit stated that Chicago's "firing-range ban ... is a serious encroachment on the right to maintain proficiency in firearm use, an important corollary to the meaningful exercise of the core right to possess firearms for self-defense." *Ezell*, 651 F.3d at 708. In the later decision, the Seventh Circuit similarly indicated that "[r]ange training ... lies close to the core of the individual right of armed defense." *Ezell*, 846 F.3d at 893.

None of the cases plaintiffs cite, and none of which the Court is aware, suggest that a municipality must permit a property owner (or a property lessee) to construct, and for interested gun owners to use, an outdoor, open-air, 1,000-foot shooting range, such as plaintiffs propose. Nor have plaintiffs cited a single case that suggests Howell Township must change its zoning ordinance to permit the construction and use of such a facility as a matter of right anywhere within the AR district, which in this case comprises fully two-thirds of the township's land. The claimed right simply is not encompassed by the Second Amendment.

In the wake of the *Ezell* cases, a ban on all shooting ranges might raise Second Amendment concerns. But plaintiffs have failed to allege plausibly that Howell Township has instituted such a ban. Although shooting ranges are not a permitted use within the AR district, Oakland Tactical does not allege that it ever sought permission to construct a shooting range on the specific piece of property it leases. It might have done so by seeking conditional rezoning of that parcel, *see* Mich. Comp. Laws § 125.3405; or by applying for a special use permit, *see* Howell Township Zoning Ordinance,

Art. XVI.[3] Oakland Tactical does not allege that it pursued these avenues or that they were denied. In the absence of any allegation that such efforts were pursued, or that doing so would be futile, there is no plausibility to plaintiffs' assertion that Howell Township "effectively ban[s] all firearms ranges within the township." SAC ¶ 4.

Moreover, the ordinance appears on its face to allow shooting ranges in districts other than those designated AR. Section 13.03(A) of the ordinance allows "[r]ecreation and sports buildings" within the highway service commercial district, and § 13.03(B) also allows in that district "[r]ecreation and sports areas, if areas are completely enclosed with fence, walls or berms with controlled entrances and exits."[4] Pls.' Mot. for Summ. J., Ex. 1 (PageID. 1399). Section 10.02(B) allows "indoor commercial recreation" establishments in the regional service commercial district. *Id.*, Ex. 1 (PageID. 1395). And § 12.05(E) allows "[r]ecreation and physical fitness facilities" in the heavy commercial district. *Id.*, Ex. 1 (PageID. 1405). In light of these ordinance provisions, plaintiffs' claim that Howell Township bans all shooting ranges is not plausible.

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3. A copy of the Howell Township Zoning Ordinance is attached to plaintiffs' motion for summary judgment as Exhibit 1 (PageID. 1323-1574). As noted above, the Court may consider matters of public record (and documents to which the complaint refers) in deciding a motion to dismiss or for judgment on the pleadings.

4. Plaintiffs acknowledge that an open-air shooting range might be permitted in this district, although they allege the available land is insufficient for their purposes. *See* SAC ¶ 41.

Appendix C

The Court concludes that plaintiffs have failed to state a Second Amendment claim because their allegation that defendant bans "all firearms ranges within the township," SAC ¶ 4, is implausible. Plaintiffs do not allege that they ever sought permission to construct a shooting range on the parcel Oakland Tactical leases. Instead, Oakland Tactical's member, non-party Mike Paige, asked the township to make a sweeping amendment to its zoning ordinance to allow for shooting ranges as a matter of right throughout the AR district. The township's denial of this request, which would have permitted shooting ranges in two-thirds of the township's land, can hardly be viewed as a ban on shooting ranges. The alleged "ban" on shooting ranges is all the more implausible in light of the ordinance provisions that permit recreational facilities. Accordingly,

IT IS ORDERED that defendant's motion to dismiss is granted.

IT IS FURTHER ORDERED that plaintiffs' motion for summary judgment is denied as moot.

APPENDIX D — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED JULY 8, 2024

UNITED STATES COURT OF APPEALS,
SIXTH CIRCUIT

No. 23-1179

OAKLAND TACTICAL SUPPLY, LLC;
JASON RAINES; MATTHEW REMENAR;
SCOTT FRESH; RONALD PENROD;
EDWARD GEORGE DIMITROFF,

Plaintiffs-Appellants,

v.

HOWELL TOWNSHIP, MICHIGAN,

Defendant-Appellee.

FILED July 8, 2024

BEFORE: COLE, KETHLEDGE, and WHITE, Circuit Judges.

ORDER

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full

court.* No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied. Judge Kethledge would grant rehearing for the reasons stated in his dissent.

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* Judge Davis recused herself from participation in this ruling.

APPENDIX E — SECOND AMENDED COMPLAINT IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, FILED JULY 11, 2019

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

Case No. 18-cv-13443-BAF-DRG
(Hon. Bernard A. Friedman)

OAKLAND TACTICAL SUPPLY, LLC, JASON RAINES, MATTHEW REMENAR, SCOTT FRESH, RONALD PENROD AND EDWARD GEORGE DIMITROFF,

Plaintiffs,

v.

HOWELL TOWNSHIP, A MICHIGAN GENERAL LAW TOWNSHIP,

Defendant.

Filed July 11, 2019

SECOND AMENDED COMPLAINT

COMES NOW the Plaintiffs, Oakland Tactical Supply, LLC, Jason Raines, Matthew Remenar, Scott Fresh, Ronald Penrod, and Edward George Dimitroff by and through undersigned counsel, and complains of the Defendant, Howell Township, as follows:

Appendix E

1. This is an action to vindicate the rights of the people of the State of Michigan to keep and bear arms under the Second Amendment to the United States Constitution, which prohibits infringement of the right of law-abiding citizens to possess firearms for defense of self and family and for other lawful purposes.

2. Such lawful purposes include the right to operate firearms at a range, for purposes of learning about firearms, safely gaining proficiency with firearms, obtaining any training required as a condition of firearms ownership, hunting, recreation, and competition; and the right to own and operate a range for these purposes.

3. Howell Township has prohibited the siting, construction, and operation of shooting ranges in the town through its zoning regulations by failing to provide or allow any designated areas within the town wherein the siting, construction, or operation of a shooting range would be permissible.

4. Through its actions and inactions, Howell Township has infringed the rights of Oakland Tactical Supply, LLC ("Oakland") to site, construct, and operate a shooting range within the borders of Howell Township, effectively banning all firearms ranges within the township, and the rights of the individual Plaintiffs to practice for lawful purposes with firearms.

THE PARTIES

5. Plaintiff Oakland is a Michigan limited liability company and a firearms retailer, with a retail store

in Hartland Township, Livingston County, Michigan. Oakland plans to build an extensive outdoor shooting range facility for both private and public use in Howell Township, Michigan.

6. Oakland has entered into a lease, with an option to purchase for six million dollars, 352 acres of former rock quarry land for the express purpose of operating one or more outdoor shooting ranges to provide a safe location for residents in the area to practice target shooting for self-defense and other lawful purposes, including but not limited to a long distance (e.g. 1,000 yard) range for qualified shooters and public access rifle, shotgun and handgun ranges on North Fleming Road in Howell Township (the "Property").

7. Plaintiff Scott Fresh is a natural person and a citizen of the United States residing in Livonia, Michigan. Mr. Fresh would like to participate in long-range competitive target shooting; however, he currently would have to travel 4.5 hours to reach a long-distance shooting range. This distance is too far for Mr. Fresh, so he is unable to engage in training in the proficient use of long-range firearms. The range that Oakland wishes to open would be convenient for him for this purpose as well as for practicing target shooting at shorter distances.

8. Plaintiff Jason Raines is a natural person and a citizen of the United States residing in Oceola Township, Michigan. Mr. Raines has had multiple surgeries due to back injuries and engaging in the shooting sports is one of the few competitive activities in which he can still

engage. Mr. Raines would like to participate in long-range competitive shooting, but there are currently no feasible locations. Travelling takes a toll on his back injuries. Mr. Raines is also a hunter and would like to improve his long-range shooting skills to enhance his ability to make a humane kill. If a facility were available, Mr. Raines would undertake training to become a long-range shooting instructor and train future generations in long-range shooting. The range that Oakland wishes to open would be convenient for him for these purposes as well as for practicing target shooting for self-defense and other lawful purposes.

9. Plaintiff Matthew Remenar is a natural person and a citizen of the United States residing in Rochester Hills, Michigan. Mr. Remenar has engaged in long-range target shooting over the past seven years and would like to engage in long-range shooting competitions. To participate in long-range target shooting, Mr. Remenar must travel 1.5 hours to state land that allows shooting. This location is vacant land. Mr. Remenar and his friends must setup the targets on their own, must hike a significant distance from the firing line to the target location to change targets and tally scores. Due to the distance and difficulty in setting up the range and practicing, Mr. Remenar only participates in long-range shooting about once per year. Other developed ranges are more than a three hour drive for Mr. Remenar. The distance and difficulty in practicing prevent Mr. Remenar from competitive long-range shooting. The range that Oakland wishes to open would be convenient for him for this purpose as well as for practicing target shooting for self-defense and other lawful purposes.

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10. Plaintiff Ronald Penrod is a natural person and a citizen of the United States residing in Howell Township, Michigan. Mr. Penrod is 71 years old and lives in close proximity to the Property and Oakland's proposed range facility. He is a firearms owner who was able to practice with his firearms several times a week when he lived in another state near a shooting range. He uses his shotguns and pistol for recreation as well as for self-defense. Mr. Penrod would like to be able to practice at least a couple of times a week with a shotgun, rifle and pistol, but currently there are no ranges where he can practice with these firearms within a practicable drive of his home in Howell Township. Mr. Penrod's work schedule does not leave sufficient time to travel more than 10-15 miles to reach a shooting range and there are currently no ranges that allow him to practice with each of his firearms within that distance. In addition to practicing with his firearms, he would like to participate in shooting matches with a shotgun on a regular basis at an outdoor shooting range; however, he is unable to participate in matches due to the lack of a publicly-accessible outdoor shooting range within a practicable drive of his home in Howell Township.

11. Mr. Penrod and his wife live in a rural part of Howell Township with horses, and he fears for his family's safety and the safety of their animals due to the sound of uncontrolled shooting occurring on other residents' properties around his property. Mr. Penrod is aware of two horses being hit accidentally by stray bullets in the area and of a man who was hit and killed, by a stray bullet from a .22 that travelled across a lake in a state where he lived previously. Given the amount of uncontrolled

shooting on private property near his residence, Mr. Penrod believes Oakland's proposed range facility would provide a valuable asset to him and to his neighbors and the greater community by providing a safe and controlled environment for practicing shooting in Howell Township. Mr. Penrod would practice with shotguns, rifles and pistols recreationally as well as for self-defense and other lawful purposes and participate in matches at least a couple of times per week if a suitable shooting range, such as Oakland's, were made available to him in Howell Township.

12. Plaintiff Edward George Dimitroff is 60 years old and a long-time resident (22 years) of Howell Township. He resides in close proximity to the Property. Oakland's proposed shooting range facility is approximately a 6 mile drive from his residence. Mr. Dimitroff is a firearms owner and unable to practice with his shotguns or with rifles because there are no outdoor ranges that allow shooting with long guns within a feasible driving distance from his home.

13. Mr. Dimitroff works for a large employer in Livonia, Michigan, which is a 1 to 1.5 hour drive one way (depending on traffic). Travelling to and from work, he passes the Island Lake public range (located about a 30-45 minute drive one way from his home, depending on traffic). In addition, there are other ranges located near his place of work in Livonia. However, it is not feasible for him to shoot at any of the ranges located on his way to work or near his work because his large employer has policies that prohibit firearms in cars parked at his place of employment.

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14. In addition, Mr. Dimitroff works in Livonia 7 days a week, 10-12 hours a day, which leaves him no time to drive to distant ranges such as the nearest range, the Island Lake public range, which is about a 1 to 1.5 hour round trip drive (depending on rush hour traffic/the time of day) from his home in Howell Township. He would like to practice regularly with shotguns, handguns and rifles, but he is prevented from practicing with anything but a handgun (which he does at an indoor range in the City of Howell) due to the fact that travelling to the nearest outdoor public range is over an hour round trip drive, making practice with his firearms impracticable.

15. Mr. Dimitroff owns a handgun and a shot gun, both of which he keeps for recreational and self-defense purposes. He considers it critical to practice with his firearms regularly in order to maintain proficiency with firearms. Mr. Dimitroff is frustrated and saddened by the fact that, while he owns firearms and believes proficiency with firearms is an important skill, he has not been able to teach his three children (one is a teenager and two are in their twenties), how to use them due to the lack of access to an appropriate range for the types of firearms that he owns and would like to shoot. In addition to practicing with the firearms that he owns currently, Mr. Dimitroff would like to take up long range precision shooting with a rifle but is unable to do so, or teach his children how to do so, due to the lack of access to a range with facilities for this type of shooting. If an appropriate shooting range facility, such as the range facility proposed by Oakland, were allowed to open in Howell Township, Mr. Dimitroff would practice there regularly each week with handguns,

shotguns and rifles for both recreational and self-defense purposes and teach his children how to use such firearms.

16. Defendant Howell Township is a political subdivision of and municipal entity organized under the Constitution and laws of the State of Michigan.

JURISDICTION AND VENUE

17. Jurisdiction is founded on 28 U.S.C. § 1331 in that this action arises under the Constitution and laws of the United States, and under 28 U.S.C. § 1343(a)(3) in that this action seeks to redress the deprivation, under color of the laws, statutes, ordinances, regulations, customs and usages of Howell Township, of rights, privileges or immunities secured by the United States Constitution. This action seeks relief pursuant to 28 U. S.C. §§ 2201, 2202, and 42 U.S.C. § 1983.

18. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

STATEMENT OF FACTS

Shooting Ranges' Role in American Tradition and Michigan's Safety Policy

19. Familiarity with firearms, and proficiency in their use, promotes public safety.

20. Firearms owners trained in and familiar with the operation of their firearms are less likely to be involved

in accidental shootings, and more likely to successfully use their firearms in self-defense in case of need.

21. Recreational shooting is a traditional lawful use of firearms in the United States.

22. The promotion of civilian marksmanship has been a priority of the federal government throughout American history, beginning with the Second Militia Act of 1792 and continuing through today with the modern implementation of the Civilian Marksmanship Program through the federally-chartered Corporation for the Promotion of Rifle Practice and Firearms Safety, 36 U.S.C. §§ 40701, et seq.

23. "The functions of the Civilian Marksmanship Program are—(1) to instruct citizens of the United States in marksmanship; (2) to promote practice and safety in the use of firearms; (3) to conduct competitions in the use of firearms and to award trophies, prizes, badges, and other insignia to competitors; (4) to secure and account for firearms, ammunition, and other equipment for which the corporation is responsible; (5) to issue, loan, or sell firearms, ammunition, repair parts, and other supplies under sections 40731 and 40732 of this title; and (6) to procure necessary supplies and services to carry out the Program." 36 U.S.C. § 40722.

24. The State of Michigan recognizes the value of, and promotes through public policy, the development of firearms training and proficiency in the use of firearms. The State of Michigan mandates, as a condition of

possessing a pistol, that all individuals successfully complete an appropriate pistol safety training course or class with a minimum of eight hours of instruction. The program must be certified by the state or a national or state firearms training organization, and must provide at least three hours of instruction on a firing range.

25. Michigan residents wishing to lawfully possess handguns must first obtain a Concealed Pistol License ("CPL"). Mich. Comp. Laws § 28.422.

26. An application for a CPL "must include . . . (h) A certificate stating that the applicant has completed the training course prescribed by this act." Mich. Comp. Laws § 28.425b. The course must consist of " . . . not less than 8 hours of instructions and . . . (a) . . . certified by this state or a national or state firearms training organization, . . . (b) The program provides at least 3 hours of instruction on a firing range and requires firing at least 30 rounds of ammunition." Mich. Comp. Laws § 28.425j.

27. The State of Michigan encourages the recreational use of firearms and shooting ranges through the development of public shooting ranges. The Michigan Department of Natural Resources ("DNR") receives federal grant monies, which it uses to support improvements to shooting ranges throughout Michigan. *See* "Federal funding boosts DNR's efforts to improve public shooting ranges throughout Michigan" (June 13, 2018), https://www.michigan.gov/som/0,4669,7-192-47796-470854--,00.html, (last visited July 2, 2018). "The U.S. Fish and Wildlife Service recently approved a total of

$1.25 million over a five-year period for the Department of Natural Resources to provide up to 75 percent of funding for improvements to partner shooting ranges throughout Michigan." *Id.* The DNR's website refers to its staffed ranges as a "fun, safe shooting environment for you and your friend and family," the use of which it encourages.

28. There are approximately 327,000 rifle target shooters and 638,000 hunters within a 100 mile radius of the Property.

29. There is a shortage of ranges available to the public in the Howell Township area.

30. Indoor ranges in the nearby City of Howell are often unable to meet the public demand for range time and they do not provide opportunities for rifle practice.

31. There are no shooting ranges in Howell Township open to the public.

32. The nearest public range is the Island Lake Shooting Range operated by Michigan Department of Natural Resources in Green Oak Township, Michigan, which is approximately a 30 minute drive by car. The Island Lake range charges fees that are considered by users very high ($40.00/per shooting session, at this time) and it is unable to meet current demand, as there are often long waiting lines to shoot. The Island Lake range offers rifle shooting only out to a distance of 100 yards.

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Howell Township Regulation of Firearms Ranges, Recreational Shooting, and Firearms Training

33. Howell Township adopted zoning regulations known as the Howell Township Zoning Ordinances on January 8, 1983, "pursuant to Public Act 110 of 2006 (MCLA 125.3101–125.3701), and insofar as it is applicable, Public Act 33 of 2008 (MCLA 125.3801–125.3885), as amended, of the State of Michigan." (Howell Township, Ord. No. 1 eff. Jan. 8, 1983, further amended by Ord. No. 202 eff. Dec. 21, 2006.)

34. The Howell Township Zoning Ordinances are permissive zoning regulations, which prohibit any use not specifically listed:

> "Uses are permitted by right only if specifically listed as principal permitted uses in the various zoning districts or is similar to such listed uses. Accessory uses are permitted as listed in the various zoning districts or if similar to such listed uses, and if such uses are clearly incidental to the permitted principal uses. Special uses are permitted as listed or if similar to the listed special uses and if the required conditions are met." (Howell Township, Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 97 eff. Feb. 23, 2000.)

35. The Howell Township Zoning Ordinances explicitly reference "rifle ranges" under the definition of "open air business uses". (Howell Township, Ord. No. 271 eff. Oct. 3, 2017.)

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36. The Howell Township Zoning Ordinances, however, do not allow Open Air Business Uses, either by right or as a special use, in any zone in Howell Township.

37. The Howell Township Zoning Ordinances regulate approximately 20,000 acres of land area in the unincorporated portions of Howell Township, Livingston County, Michigan.

38. Of the approximately 20,000 acres regulated by the Howell Township Zoning Ordinances, the only district providing for stand-alone recreational facilities (ones not connected to other permitted uses in the zone) is the Highway Service Commercial District ("HSC District") consisting of 7 parcels with a total area of less than 30 acres.

39. The purpose of the HSC District is:

> "The highway service commercial district is designed to provide for servicing the needs of highway traffic at the interchange areas of public roads and highway facilities. The avoidance of undue congestion on public roads, the promotion of smooth traffic flow at the interchange area and on the highway, and the protection of adjacent properties in other districts from the adverse influences of traffic are prime considerations in the location of this district." (Howell Township, Ord. No. 1 eff. Jan. 8, 1983.)

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40. Permitted principal uses in the HSC District are:

A. Vehicle service and repair stations for automobiles, trucks, busses and trailers. See Section 14.34.

B. Emergency facilities related to highway travelers.

C. Parking garages and parking areas.

D. Parking areas, if enclosed by a six (6) foot high fence, wall or berm. All berms shall be completely planted with grass, ground covers, shrubs, vines and trees.

E. Bus passenger stations.

F. Retail and service establishments providing foods and services which are directly needed by highway travelers.

G. Transient lodging facilities, including motels and hotels.

(Howell Township, Ord. No. 1 eff. Jan. 8, 1983)

41. The HSC District is highly developed serving the principal uses, with only a few acres of undeveloped land available and significantly less area than that required for a safe, long-distance rifle range.

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42. "[O]pen land uses such as for (1) recreation, including hunting and fishing, hiking, outdoor camping and related activities. . . ." are permitted without requiring a zoning permit in "Wetland Areas." (Howell Township, Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 97 eff. Feb. 23, 2000; further amend by Ord. No. 265 eff. April 28, 2015.)

43. The Howell Township Zoning Ordinances require a permit from the Michigan DEQ and approval from the Planning Commission in Wetland Areas "when any building or structure is proposed to be built as accessory to a permitted use or when the physical characteristics of the natural environment are significantly changed or the natural resources are to be extracted and removed from the area, including the removal of topsoil, organic material, wildlife, minerals, sand and gravel and vegetation." (Howell Township, Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 97 eff. Feb. 23, 2000; further amend by Ord. No. 265 eff. April 28, 2015.)

44. The U. S. Environmental Protection Agency has published guidance known as "Best Management Practices for Lead at Outdoor Shooting Ranges," EPA-902-B-01-001, Revised June 2005 ("EPA's BMPs") (available at https://www.epa.gov/sites/productionifiles/documents/epa bmp. pdf).

45. EPA's BMPs discourage siting outdoor shooting ranges into or over wetland areas: "**It is essential that these ranges change the direction of shooting, to avoid shooting over or into wetlands or other navigable**

waters of the United States, and initiate lead removal and recycling activities, where feasible." (EPA's BMP, p.1-11, emphasis in original.)

46. In 2017, the Howell Township zoning staff advised Oakland's managing member, Michael Paige, that Oakland could not apply for a permit for a rifle range located on the Property because the Agricultural Residential District ("AR District") does not allow open air business uses, shooting ranges, or rifle ranges.

47. Howell Township zoning staff advised Oakland to apply for a text amendment to the Howell Township Zoning Ordinances to allow shooting ranges in the AR Zoning District.

48. On August 29, 2017, as the managing member of Oakland, Mr. Paige submitted an Application for Amendment to Zoning Ordinance/Map for the Property (the "Application") on the form prepared by Howell Township and paid the $1,000 application fee.

49. On September 26, 2017, the Howell Township Planning Commission approved a motion "to set public hearing on October 24, 2017 for a text amendment to allow the use of open air business on "AR" land and the proximity to the commercial district at Burkhart Road and Grand River."

50. During the October 24, 2017 public hearing, the following exchanges between Planning Commission Chairman Sloan and other board members were recorded in the meeting minutes:

> "4) As far as right out denial of any text amendment of this nature, are we concerned as far as exposure, where it relates to any constitutional rights? (This use is considered in the Zoning Ordinance in other districts. So it would not be exclusionary. There are options that can still be considered for this.) 5) Is there any zoning that will permit a commercial gun range in Howell Township? (It is listed in Open Air Businesses that are permitted in other districts.)"

51. On October 24, 2017, Howell Township Planning Commission voted "to recommend to the Township Board to deny the text amendment changes as presented."

52. On November 13, 2017, the Howell Township Board of Trustees held a public hearing to consider the Planning Commission's October 24, 2017, recommendation.

53. The minutes of the November 13, 2017 public hearing, reflect Livingston County Sheriff Mike Murphy's support for the text amendment: "His officers' practice shooting at least once a month. They do not have the long range availability right now. He thinks this would be a great opportunity for a great facility."

54. On November 13, 2017, the Howell Township Board of Trustees voted in favor of the following motion: "based on the information provided by the Township Planner, the recommendation of the Planning Commission and the input of the public, to keep the "AR" zoning text

as is." By that decision, the Board prohibited Oakland from opening the subject shooting range.

55. Oakland reasonably believes that the Township will enforce the zoning laws against it if it operates a shooting range on the property, which belief was reinforced by communications received from the Township on February 14, 2019 concerning shooting noises alleged to be coming from the Property.

The Impact of Howell Township's Shooting Range Prohibition on Plaintiffs and the Public

56. If allowed to do so under Howell Township Zoning Ordinance, Oakland would forthwith construct, open, and operate a shooting range within Howell Township, to further its purposes of promoting the shooting sports, hunting and self-defense, educating the public about firearms, training individuals to become better and safer shooters, enabling individuals to comply with training requirements such as those enacted by the State of Michigan, and generally serving its members.

57. If allowed to do so under Howell Township Zoning Ordinance, Oakland would provide training and certifications required by individuals to obtain a Michigan CPL. It would also offer and make available shooting activities of the type promoted by the Civilian Marksmanship Program.

58. Oakland has incurred costs to date of approximately $130,000 attempting to site a shooting range on the Property.

59. Oakland has lost revenue of approximately $1,820,000 as a result of Howell Township's Zoning Ordinances.

60. Mr. Remenar would engage in long-range target shooting and other shooting activities within Howell Township on a regular basis for training, competition, self-defense and other lawful purposes if a suitable range, such as Oakland's proposed range, were made available to him in Howell Township.

61. Mr. Raines would engage in long range target shooting and other shooting activities within Howell Township on a regular basis for training, competition, hunting practice, self-defense and other lawful purposes if a suitable range, such as Oakland's proposed range, were made available to him in Howell Township.

62. Mr. Fresh would engage in long range target shooting and other shooting activities within Howell Township on a regular basis for training, competition, self-defense and other lawful purposes if a suitable range, such as Oakland's proposed range, were made available to him in Howell Township.

63. Mr. Penrod would engage in long gun target shooting, firearms training, competition and other shooting activities within Howell Township on a regular basis for training, competition, self-defense and other lawful purposes if a suitable range, such as Oakland's proposed range, were made available to him in Howell Township.

64. Mr. Dimitroff would engage in long range target shooting, training with long guns and handguns, and other shooting activities within Howell Township on a regular basis for training, self-defense and other lawful purposes if a suitable range, such as Oakland's proposed range, were made available to him in Howell Township.

COUNT I
RIGHT TO KEEP AND BEAR ARMS
U.S. CONST., AMENDS. II AND XIV

65. Paragraphs 1 through 64 are incorporated as though fully stated herein.

66. The Second Amendment to the United States Constitution provides that "the right of the people to keep and bear arms, shall not be infringed." The Second Amendment is applicable to the States, including defendant herein, through the Fourteenth Amendment.

67. The U.S. Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570, 628-29 (2008), that "the inherent right of self-defense has been central to the Second Amendment right." The right to keep and bear arms for self-defense, hunting, and other lawful purposes includes the right to safely practice, train, and maintain proficiency with firearms.

68. The Second Amendment secures the right to operate and practice with firearms at a range, for purposes including learning about firearms, safely gaining proficiency with firearms, obtaining any training required

as a condition of firearms ownership, recreation, hunting, and competition.

69. In order to make possible the exercise of rights thereunder, the Second Amendment protects the right of the people, including Plaintiff, to own, construct, and operate a range for these purposes.

70. Facially and as applied, Howell Township's laws effectively ban the operation of rifle ranges and other shooting ranges, thereby prohibiting numerous traditional lawful uses of firearms that the Second Amendment protects. The shooting range ban and associated laws also impede firearm ownership itself by frustrating compliance with Michigan's CPL program, disallowing the opportunity to participate in activities promoted by the Civilian Marksmanship Program, and barring access to information and experience inherently necessary to the exercise of Second Amendment rights.

71. But for the shooting range ban and the aforesaid actions of Defendant, Plaintiff Oakland would forthwith build, construct, open, offer the use of, and operate the proposed range, thereby allowing members of the public the use thereof for the purposes described herein.

72. By banning shooting ranges in Howell Township, Defendant currently under color of law deprives individuals, including the Plaintiffs, of their right to keep and bear arms, in violation of the Second and Fourteenth Amendments to the United States Constitution. Defendant will continue to do so in the future unless the relief sought herein is granted.

73. Defendant's actions described herein, by denying approval to build, open, and operate a range, have proximately caused Plaintiff Oakland to suffer lost profit and other monetary damages and the individual Plaintiffs to suffer damages.

74. Plaintiffs are therefore entitled to declaratory relief, compensatory damages, and preliminary and permanent injunctions against continued enforcement and maintenance of Defendant's unconstitutional customs, policies, and practices described herein.

PRAYER FOR RELIEF

Plaintiffs request that judgment be entered in their favor and against Defendant as follows:

1. A declaratory judgment that Defendant's aforesaid actions have deprived and will continue to deprive Plaintiffs of rights under the Second Amendment;

2. Compensatory damages in an amount to be determined by the jury;

3. An order permanently enjoining Defendant, its officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing Howell Township Zoning Ordinances barring operation of shooting ranges open to the public;

4. An order permanently enjoining Defendant, its officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing any law against the ordinary operation and use of shooting ranges open to the public;

5. Attorney Fees and Costs pursuant to 42 U. S.C. § 1988 or other pertinent provisions of law; and

6. An order granting such further relief as the Court deems just and appropriate.

JURY TRIAL DEMANDED

Dated: July 11, 2019

Respectfully submitted,

Attorneys for Plaintiffs

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Appendix E

/s/ Martha A. Dean
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(Admitted 12/6/18)
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APPENDIX F — ZONING ORDINANCE OF HOWELL TOWNSHIP, DATED MARCH 2019

ZONING ORDINANCE
HOWELL TOWNSHIP
March 2019

Township Of Howell
Certification

This compilation of ordinances is printed by authority of the Township Board and contains those ordinances printed herein, compiled with all amendments up to November 22, 2018.

Jean Graham
Howell Township Clerk

Proof of Ordinances ***Evidence in Court***

Michigan compiled laws of 1970, Section 600.2116; as amended by Public Act No. 140 of the Public Acts of 1973, being M.S.A.27A.2116

Provides:

All laws, bylaws, regulations, resolutions, and ordinances of the common council or of the board of trustees of an incorporated city or village or the Township Board of a Township in this state may be read in evidence in all courts and in all proceedings before any officer, body, or board in which it is necessary to refer thereto, from a record thereof, kept by the Clerk or recorder of the city, village, or Township; or from a printed copy

thereof, purporting to have been published by authority of the common council, board of trustees, or Township Board, in a newspaper published in such city, village, or Township; or from any volume of ordinances, codification, or compilation of ordinances purporting to have been printed by authority of the common council or board of trustees of such city, village, or Township; and the record, certified copy, volume, codification, or compilation shall be prima facie evidence of the existence and validity of such laws, regulations, resolutions, and ordinances, without proof of the enactment, publishing, or any other thing concerning the same.(C.L. '70 600.2116, as amended by P.A. No. 140–1973–M.S.A.27A2116)

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Appendix F

ARTICLE I
TITLE, PURPOSES, ENABLING AUTHORITY AND CONDITIONS OF ENACTMENT

Section 1.01 Title.

This Ordinance shall be known and cited as the Howell Township Zoning Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 1.02 Purposes of this Zoning Ordinance.

An Ordinance for the protection of the public health, safety and other aspects of the general welfare of Howell Township through the establishment in the unincorporated portions of Howell Township, Livingston County, Michigan of zoning districts for the planned orderly growth and development of the Township within which the proper uses of land and natural resources may be encouraged or regulated, and within which zoning districts' provisions may also be adopted designating the location of, the size of, the land and structural uses that may be permitted without or with special use conditions, the minimum open spaces, sanitary, safety and protective measures that shall be required for, and the maximum number of families that may be housed in dwellings, buildings and structures that may be erected or altered; to provide, based upon the planned orderly growth and development of the Township, in an orderly manner and through the wise and efficient use of public services required to be provided to the residents of Howell

Township; to provide for the conservation of the use of energy; the conservation of agricultural, forest and open space lands, wetlands and land areas containing natural or cultural resources or features necessary to the social and economic well-being of present and future generations; to provide for a method for adoption of amendments to this Ordinance, to provide for the administration of this Ordinance; to provide for conflicts with other state laws and state administrative rules and regulations and local ordinances and regulations with this Ordinance; to provide for the penalties for violations of this Ordinance; to provide for the assessment, levy and collection of taxes on property zoned, developed and used in accordance with the provisions of Public Act 110 of 2006, as amended, being MCLA 125.3101–125.3701 and this Ordinance; to provide for the collection of fees for zoning permits required under this Ordinance; to provide for petitions, public hearings and referenda in accordance with the provisions of Public Act 110 of 2006, as amended, and this Ordinance, and to provide for appeals of the provisions of this Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983, (Amended by Ord. No. 202 eff. Dec. 21, 2006)

Section 1.03 State Legislation Enabling Authority.

This Ordinance is adopted pursuant to Public Act 110 of 2006 (MCLA 125.3101–125.3701), and insofar as it is applicable, Public Act 33 of 2008 (MCLA 125.3801–125.3885), as amended, of the State of Michigan. Said Public Acts covering Michigan Planning (Act 33) and Zoning (Act 110) are hereby made a part of this Ordinance

as if contained verbatim in their complete textual forms, as amended.

(Ord. No 1 eff. Jan. 8, 1983, further amended by Ord. No. 202 eff. Dec. 21, 2006)

Section 1.04 Enactment Declaration.

This Zoning Ordinance and its contained provisions are hereby declared to be necessary to the providing of a planned orderly growth and development of Howell Township, in the interest of providing for the public health, safety, peace, enjoyment, convenience, comfort and other aspects of the general welfare of the residents of this Township in order to provide adequately for the necessities in the pursuit of their daily living patterns. This Zoning Ordinance is hereby ordered to be given immediate effect upon its passage by the Howell Township Board of Trustees and subsequent publication of notice as required by law.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 1.05 Adoption of this Zoning Ordinance and Repeal of present Zoning Ordinance.

The Howell Township Zoning Ordinance previously adopted on June 2, 1979, and all amendments thereto, are hereby repealed on the effective date of this Ordinance; provided, however, if this Zoning Ordinance as a whole shall subsequently be judicially determined to have been unlawfully adopted, such judicial determination shall then

automatically reinstate the present Zoning Ordinance and all of its amendments to their full effect.

(Ord. No. 1 eff. Jan. 8, 1983)
Secs. 38-8–38-40. Reserved.

Appendix F

ARTICLE II
DEFINITIONS

Section 2.01 RULES APPLYING TO TEXT.

All words used in the present tense shall include the future, all words in the singular number include the plural number, and all words in the plural number include the singular number; the word "building" includes the word "structure," and "dwelling" includes "residence"; the word "person" includes "corporation", "copartnership," and "association" as well as an "individual"; the word "shall" is mandatory and directory. Terms not herein defined shall have the meaning customarily assigned to them.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 2.02 DEFINITIONS.

For the purposes of this Ordinance, the following terms and words are defined as follows:

Accessory Building. See "Building, Accessory."

Accessory Use. See "Use, Accessory."

Adult Day Care Facility. A facility that, for compensation, provides supervision, personal care, protection, and meals to adults for a period of less than twenty-four (24) hours per day, five (5) or more days a week, and for two (2) or more consecutive weeks.

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Adult Foster Care Family Home. A private residence with the approved capacity to receive not more than six (6) adults who shall be provided foster care for five (5) or more days a week and for two (2) or more consecutive weeks.

Adult Foster Care Large Group Home. A facility with the approved capacity to received at least thirteen (13), but not more than twenty (20), adults, who shall be provided with foster care.

Adult Foster Care Small Group Home. A facility with the approved capacity to received not more than twelve (12) adults, who shall be provided with foster care.

Agriculture. The use of land for tilling of the soil, raising of tree and field crops, or animal husbandry as a source of income, and as defined in the Michigan Right to Farm Act, Public Act No. 93 of 1981 (MCL 286.471 et seq.).

Alley. Any dedicated public way affording a secondary means of vehicular access to abutting property, and not intended for general traffic circulation.

Alterations. The term Alterations shall mean any change, addition or modification in construction or type of occupancy, any change in the structural members of a building, such as walls or partitions, columns, beams or girders, the consummated act of which may be referred to herein as "altered" or "reconstructed."

Appeal. See "Zoning Appeal."

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Apartments. The term "Apartments" shall mean the dwelling units in a multiple dwelling as defined herein:

(a) Efficiency Unit: is a dwelling unit and consisting of not more than one (1) room in addition to kitchen, dining and necessary sanitary facilities, and for the purpose of computing density, shall be considered as a one (1) room unit.

(b) One Bedroom Unit: is a dwelling unit consisting of not more than two (2) rooms in addition to kitchen, dining and necessary sanitary facilities, and for the purpose of computing density, shall be considered as a two (2) room unit.

(c) Two Bedroom Unit: is a dwelling unit consisting of not more than three (3) rooms in addition to kitchen, dining and necessary sanitary facilities, and for the purpose of computing density, shall be considered as a three (3) room unit.

(d) Three or More Bedroom Unit: is a dwelling unit wherein for each room in addition to the three (3) rooms permitted in a two (2) bedroom unit, for the purpose of computing density, said three (3) bedroom unit shall be considered a four (4) room unit, and each increase in a bedroom over three (3) shall be an increase in the room count by one (1) over the four (4).

Area, Net. The total area within the property lines of a project excluding external Road Right of Ways or easements.

Automobile Car Wash. A building, or portion thereof, where self-propelled motor vehicles are washed as a commercial enterprise.

Automobile Repair. A place where, along with the sale of engine fuels, the following services may be carried out: general repair, engine rebuilding, rebuilding or reconditioning of motor vehicles; collision service, such as body, frame or fender straightening and repair; painting and undercoating of motor vehicles.

Automobile Sales. Any space used for display, sale or rental of motor vehicles, in new or used and operable condition.

Automobile Service. A place where gasoline or any other automobile engine fuel (stored only in underground tanks), kerosene or motor oil and lubricants or grease (for operation of motor vehicles) are retailed directly to public on premises; including sale of minor accessories and service for automobiles.

Basement. That portion of a building partly below grade, but so located that the vertical distance from the grade level to the basement floor is greater than the vertical distance from the grade level to the basement ceiling. A basement shall not be included as a story for height measurement, nor counted as floor area, unless the room has walk-out capability. A walk-out basement shall be defined as a room with at least one wall below grade which provides barrier free access to the exterior of the structure and with at least fifty percent of one wall with no grade and two exits which are fire escape routes.

Appendix F

Bedroom. A bedroom is a dwelling room used for or intended to be used safely for sleeping purposes by human beings.

Block. The property abutting one side of a street and lying between the two nearest intersecting streets (crossing or terminating), or between the nearest such street and railroad right-of-way, unsubdivided acreage, lake, river or live stream; or between any of the foregoing and any other barrier to the continuity of development.

Board of Appeals. See "Zoning Board of Appeals".

Buffer Area. A strip or area of land as specified in this Ordinance or, if not specified, of not less than fifteen (15) feet in width which is planted and maintained with trees or shrubs, including earth berms, fencing, walls or other means of screening or separating the land uses located on opposite sides of the buffer, approved by the Planning Commission in accordance with the Site Plan Review Procedures of this Ordinance.

Building. An independent structure, either temporary or permanent, having a roof supported by columns or walls and includes sheds, garages, stables, greenhouses, or other accessory structures. A detached building is one separated on all sides from adjacent buildings by open spaces from the ground up. When any portion thereof is completely separated from every other part thereof by division walls from the ground up, and without openings,

each portion of such structure shall be deemed a separate building.

Building, Accessory. A supplementary building or structure on the same lot or parcel of land as the main building or buildings or part of the main building occupied by or devoted exclusively to any accessory use; but such use shall not include any building used for dwelling, residential or lodging purposes, or sleeping quarters for human beings except for these dwellings or residential buildings specifically permitted in this ordinance.

Building Area. The space remaining after the minimum yards, setbacks and open space requirements of this Ordinance have been complied with.

Building Coverage. See "Lot Coverage".

Building, Farm. Any building or structure other than a dwelling, maintained, used or built on a farm which is essential and customarily used on farms of that type for the pursuit of their agricultural activities, including the storage or housing of farm implements, produce or farm animals.

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

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Building Line. A line formed by the face of the building, and for the purposes of this Ordinance, a minimum building line is the same as the front setback line.

Building Permit. A building permit is the written authority issued by the Building Inspector permitting the construction, removal, moving, alteration, or use of a building, fence or sign in conformity with the provisions of the Livingston County Construction Ordinance (Code).

Building, Principal. A building in which is conducted the principal use of the premises on which it is situated.

Building Setback Line. The line formed by the outer surface of a structure or enclosure wall at or with the finish grade or surface of the ground; pertaining to and defining those minimum (building) setback lines which are established, in general, parallel to the front road right-of-way and within which setback area no part of a building shall project or be located, except as otherwise provided for by this Ordinance.

Building Site. That portion of a parcel of land independently identified and delineated upon which a structure will be constructed and be appurtenant thereto. (See also "Condominium Unit").

Building, Temporary. See "Use, Temporary".

Certificate of Compliance and Occupancy. ACertificate issued bythe Zoning Admi nistratororlawful use ofland,

buildingsand/or structures that have met the provisions and requirements of this Zoning Ordinance.

Child Day Care Center and Day Care Center. A facility, other than a private residence, receiving one (1) or more preschool or school age children for care for periods of less than twenty-four (24) hours a day, and where the parents or guardians are not immediately available to the child. A child care center or day care center includes a facility which provides care for not less than two (2) consecutive weeks, regardless of the number of hours of care per day. The facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, play group, or drop-in center. Such terms do not include any of the following:

(a) Sunday school, vacation Bible school or a religious instructional class that is conducted by a religious organization where (1) children are attending for not more than a period of three (3) hours per day for a indefinite period of time or for not more than eight (8) hours per day for a period not to exceed four (4) weeks during a twelve (12) month period.

(b) A facility operated by a religious organization, where children are cared for not more than a period of three (3) hours while (2) persons responsible for the children are attending religious services.

(c) A facility or program for school age children that is operated at a school by a public school or by a person or entity with whom (3) a public school contracts for services, in accordance with section 1285a(2) of the

revised school code, Public Act No. 451 of 1976 (MCL 380.1285a(2)), if that facility or program has been granted an exemption under Public Act No. 116 of 1973 (MCL 722.111(2)).

Church. A building wherein people regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such principal purpose.

Clinic. A building or group of buildings where human patients are admitted for examination and treatment by more than one (1) professional; such as a physician, dentist, or the like, except that such human patients are not lodged herein overnight.

Club or Lodge, Private. A non-profit association of persons who are bonafide members paying annual dues, which owns, hires or leases a building or portion therein, the use of such premises being restricted to members and their guests. The affairs and management of such Aprivate club or lodge are conducted by a board of directors, executive committee or similar body chosen by the members at a meeting. It shall be permissible to serve food and drink on such premises provided adequate dining room space and kitchen facilities are available. The sale of alcoholic beverages is in compliance with the applicable Federal, State, and Township laws.

Commercial. A business operated primarily for profit, including those of wholesale and retail trade and professional, personal, technical and mechanical services.

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Common Areas, Uses and Services. Land areas, improvements, facilities and utilities, the use, enjoyment and maintenance of which are intended to be shared by the owners and occupants of individual building units in a subdivision or a planned development.

Condominium Unit. That portion of a condominium project designed and intended for separate ownership and use, as described in the master deed. A condominium unit is not a lot or parcel as those terms are used in this ordinance.

Confined Animal Feed Lot. Any parcel of land or a premises on which the principal use is the concentrated feeding of livestock, including beef and dairy cattle, goats, hogs, poultry, or sheep, within a confined area. A commercial feedlot consists of more than then (10) farm animals that are on feed and may be owned by a person other than the owner of the feedlot.

Construction. The act or process of constructing a building or other structure or changing the natural existing configuration of the landscape, including any alteration of the ground surface or subsurface and vegetation.

Convalescent or Nursing Home. A structure with sleeping rooms where persons are housed or lodged and are furnished with meals, nursing and medical care.

Density. The number of dwelling units located upon, or to be developed upon a gross acre of land.

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District. See 'Zoning District'.

Drive-in Restaurant. A Drive-in Restaurant shall be deemed to be any restaurant designed to permit or facilitate the serving of meals, sandwiches, ice cream, beverages, or other food served directly to or permitted to be consumed by patrons in automobiles or other vehicles parked on the premises, or permitted to be consumed by patrons elsewhere on the site, outside the main building.

Driveways.

(a) Driveway-Residential. A way of at least 12 feet in width which shall serve the residents of one single-family dwelling, or one two-family dwelling.

(b) Driveway-Commercial. A way of at least 30 feet in width providing access to a public road right-of-way to land which is used for industrial, institutional or commercial purposes. (Ord. eff. Aug. 6, 1992)

Dwelling. A building designed or used exclusively as a living quarters for one (1) or more families but not including automobile chassis, tents or portable buildings.

Dwelling, Conventional. A dwelling which is constructed in accordance with the requirements of the Livingston County Construction Ordinance and has the following characteristics:

(1) The building has a minimum width across all sections of 20 feet and complies in all respects with

the Livingston County Construction Code, including being attached to a permanent foundation.

(2) The building meets all of the requirements of this Ordinance, including those for (1) minimum floor area and (2) connections to public sewer and water supply facilities or to such private facilities approved by the Livingston County District Health Department.

(3) The building contains enclosed storage space, exclusive of that for automobiles, equal to at least 15% of the net floor area of the dwelling, located in either the basement, attic, closets or attached structure of similar construction to the principal dwelling structure.

(4) The dwelling is aesthetically compatible in design and appearance with other residences in the vicinity and (1) has a roof overhang of at least 6 inches on all sides, (2) a roof drainage gutter system which collects rainwater at the edges of the structure, (3) has not less than 2 exterior entrance and exit doors with one located as a front door and the other located as side or rear door and (4) the building has no additions which are not similar in design and construction character with the principal building and built in accordance with the Livingston County Construction Code.

Dwelling, Farm. A dwelling used to house the principal family operating a farm, and which is accessory to the operation of the farm, which is the principal use of the land upon which it is located.

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Dwelling Group. (Group Housing) Two (2) or more multiple family dwellings on a parcel of land under single ownership

Dwelling, Mobile Home. A mobile home is a dwelling manufactured for the purpose of being transported on a wheeled undercarriage from the place of manufacture to an initial and any subsequent temporary or permanent location on a lot, parcel or mobile home park site, and shall not be classified as a conventional dwelling unless it meets the same requirements that a conventional dwelling is required to meet under the Livingston County Construction Ordinance and those additional characteristics listed in the definition of Dwelling, Conventional in this Zoning Ordinance.

Dwelling, Mobile Home Park. A mobile home that meets all of the requirements of the United States Department of Housing and Urban Development under that agency's current regulations entitled "Mobile Home Construction and Safety Standards" or those standards established by the American National Standards Institute under that Institute's current mobile home construction and safety standards as evidenced by that Institute's label if found affixed to the mobile home.

Dwelling, Multiple Family. A conventional dwelling/building, or portion thereof, designed for occupancy by three (3) or more families living independently of each other.

Dwelling, One Family. A conventional dwelling/building designed exclusively for occupancy by one (1) family.

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Dwelling, Two Family or Duplex. A conventional dwelling/building designed exclusively for occupancy by two (2) families independent of each other, such as a duplex dwelling unit.

Dwelling Unit. A dwelling unit is any building or portion thereof having cooking facilities, which is occupied wholly as the home, residence or sleeping place of one (1) family, either permanently or transiently, but in no case, shall a travel trailer, motor home, trailer coach, automobile chassis, tent or other portable building be considered a dwelling in single, multiple, or two family residential areas. In cases of mixed occupancy, where a building is occupied in part as a dwelling unit, the part so occupied shall be deemed a dwelling unit for the purpose of this Ordinance and shall comply with the provisions thereof relative to dwelling.

Emergency Services Facility. A public, semi-public or private facility from or within which a public service is provided by a legally established and operational organization or institution which provides immediate action for those persons in need of immediate help or assistance in order to overcome a mental or physical problem which, if not provided, would otherwise be harmful to such persons seeking immediate short term attention.

Essential Services. Shall mean the erection, construction, alteration or maintenance by public utilities or municipal governments, departments, commissions, boards, or by other governmental agencies of underground, surface or

overhead gas, electrical, steam, or water transmission or distribution systems, collection, communications, supply, or disposal systems, including public safety communication towers, structures and facilities, dams, weirs, culverts, bridges, canals, locks, including poles, wires, mains, drains, sewers, towers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, or signs and hydrants, and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such Public Utilities or Municipal Departments, Commissions, or Boards, or other governmental agencies, or for the public health, safety, or general welfare, and buildings which are primarily enclosures or shelters of such essential service equipment. An essential service shall not include other buildings associated with an essential service, or cellular telephone facilities, including cellular telephone transmitting towers, the use of essential service public safety communication towers, structures and facilities for cellular telephone or other wireless communication facilities, or commercial broadcast television and radio facilities.

Excavation. Any breaking of ground, except farm use, common household gardening and ground care.

Exception. See "Zoning Interpretation".

Family.

(a) One (1) or more persons related by blood, marriage or adoption with their direct lineal descendants, and

including the (1) domestic employees thereof, living as a single, nonprofit housekeeping unit; or

(b) A collective number of individuals living together in one (1) house under one (1) head, whose relationship is of a permanent (2) and distinct domestic character, and working as a single housekeeping unit. This definition shall not include any society, club, fraternity, sorority, association, lodge, combine, federation, group, coterie or organization, which is not a recognized religious order, nor a group of individuals whose association is temporary and resort-seasonal in character or nature.

Family Day-Care Home. A private home in which more than one (1) but fewer than seven (7) minor children are received for care and supervision for periods of less than twenty-four (24) hours a day, for more than four (4) weeks during a calendar year, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption.

Farm. All of the contiguous neighboring or associated land, operated as a single unit, on which "farming," as defined by the Michigan Right to Farm Act No. 93 of 1981 (MCL 286.471 et seq.), is carried on directly by the owner-operator, manager, or tenant-farmer, by his or her own labor or with the assistance of members of his or her household or hired employees. Land to be considered a farm under this definition shall include a continuous parcel of not less than ten (10) acres in area. Farms may be considered as including establishments operated as greenhouses, sod farms, nurseries, orchards, chicken

hatcheries, livestock and poultry farms, and apiaries, but establishments keeping fur-bearing animals, game or operating fish hatcheries, confined animal feedlots, stone quarries, or gravel or sand pits shall not be considered farms under this definition unless combined with a farm operation on the same continuous tract of land.

Farm Building. See "Building, Farm".

Farming. See "Agriculture".

Farm Operation. The operation and management of a farm, or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products, and includes operations defined by the Right to Farm Act, MCL 286.471 et. seq. as amended, but is not limited to:

(a) Marketing produce at roadside stand or farm markets.

(b) The generation of noise, odors, dust, fumes, and other associated conditions.

(c) The operation of machinery and equipment necessary for a farm, including but not limited to irrigation and drainage systems and pumps and on-farm grain dryers, and the movement of vehicles, machinery, equipment, and farm products and associated inputs necessary for the farm operations on the roadway as authorized by the Michigan Vehicle Code, Public Act No. 300 of 1949, as amended, MCL sections 257.1 to 257.923.

(d) Field preparation and ground and aerial seeding and spraying.

(e) The application of chemical fertilizers or organic materials, conditioners, liming materials, or pesticides.

(f) Use of alternative pest management techniques.

(g) The fencing, feeding, watering, sheltering, transportation, treatment, use, handling, and care of farm animals.

(h) The management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes.

(i) The conversion from a farm operation activity to other farm operation activities.

(j) The employment and use of labor.

Farm Product. Those plants and animals useful to human beings, 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, cervidae, livestock, including breeding and grazing, equine, fish, and other aquacultural products, bee and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur, as determined by the Michigan Commission

of Agriculture. Those plants and animals useful to man and includes, but is not limited to: forages and sod crops, grains and feed crops, dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing; fruits, vegetables, flowers, seeds, grasses, trees, fish, apiaries, equine and similar products; or any other product which incorporates the use of food, feed, fiber or fur.

Fence. A structural barrier of posts and boards, wire, pickets, rail and any other material which provides a means of preventing escape or intrusion, to mark a boundary or used to enclose all or a portion of a field or yard or a lot or parcel of land.

Fence, Decorative. A fence which in addition to its utility as a barrier has something added to it that adorns, embellishes, enriches and beautifies the appearance of its character, excluding chain link, woven wire and stockade.

Filling Station. See "Automobile Service".

Flood Plain. That portion of land adjacent to a water body or water course which is subject to periodic inundation, as defined by the U.S. Army Corps of Engineers for the National Flood Insurance Program based upon the 100-year flood cycle.

Floor Area, Gross (GFA). The sum of the gross horizontal areas of the several floors of the building measured from the exterior face of the exterior walls or from the center line of walls separating two (2) buildings. The gross floor

area of a building shall include the basement floor area when more than one-half (2) of the basement height is above the established curb level or finished lot grade. Any space devoted to off-street parking or loading shall not be included in gross floor area. Areas of dwelling basements, unfinished attics, utility rooms, breeze-ways, porches (enclosed or unenclosed) or attached garages are not included.

Floor Area, Usable (UFA). The measurement of usable floor area shall be that portion of floor area (measured from the interior face of the exterior walls) used for or intended to be used for services to the public as customers, patrons, clients, or patients; including areas occupied by fixtures or equipment used for display or sale of goods or merchandise, but not including areas used or intended to be used principally for storage of merchandise, utility or mechanical equipment rooms, or sanitary facilities. In the case of a half story area, the usable floor area shall be considered to be only that portion having a clear height of more than ninety (90) inches of headroom.

Floor Area Ratio (FAR). The ratio between the maximum amount of floor area permitted on all floors in a building or group of buildings and the total lot area or total site area. For example, a FAR of 2.0 would allow a maximum floor area equal to twice the lot area (a two-story building covering the entire lot or a four-story building covering half the lot). A FAR of 0.5 would allow a maximum floor area equaling one-half (2) lot area (or a two-story building covering one-fourth (1/4) of the lot).

Foster Care. The provision of supervision, personal care, and protection, in addition to room and board, for compensation, which occurs twenty-four (24) hours a day, five (5) days a week, for two (2) or more consecutive weeks.

Foster Family Group Home. A private home in which more than four (4), but less than seven (7) minor children who are not related by blood or marriage to an adult member of the household, or who are not placed in the household pursuant to the Michigan Adoption Code, chapter X of the probate code of 1939, Public Act No. 288 of 1939 (MCL 710.21-710.70), are provided care for twenty-four (24) hours a day, four (4) or more days a week, for two (2) or more consecutive weeks, unattended by a parent or legal guardian.

Foster Family Home. A private home in which at least (1), but not more than four (4), minor children who are not related by blood or marriage to an adult member of the household, or who are not placed in the household pursuant to the Michigan Adoption Code, chapter X of the probate code of 1939, Public Act No. 288 of 1939 (MCL 710.21-710.70), are provided care for twenty-four (24) hours a day, four (4) or more days a week, for two (2) or more consecutive weeks, unattended by a parent or legal guardian.

Frontage, Street. See "Road Frontage".

Garage, Commercial. Any garage, other than a private garage available to the public, operated for gain, and used for storage, repair, rental, greasing, washing, sales,

servicing, adjusting, or equipment of automobiles or other motor vehicles.

Garage, Private. An accessory building not over one (1) story in height used for parking or storage of vehicles as may be required in connection with the permitted use of the principal building.

Garage, Public. See "Garage, Commercial".

Gasoline Service Station. See "Automobile Service".

Grade. The term 'Grade' shall mean a ground elevation established for the purpose of regulating the number of stories and the height of the building. The building grade shall be the level of the ground adjacent to the walls of the building if the finished grade is level. If the ground is not entirely level, the grade shall be determined by averaging the elevation of the ground for each face of the building.

Greenbelt. See "Buffer Area".

Highway. Any public thoroughfare dedicated and maintained for the use and operation of vehicular traffic by the Michigan Department of Transportation. (Also see "Road")

Historical Building, Site or Area. Those parcels and/or uses of land and/or structures whose basic purpose is to (a) safeguard the heritage of the local unit by preserving or allowing a structure or use which reflects elements of the community's cultural, social, economic, political, or

architectural history; (b) stabilize and improve property values in the area; (c) foster civic beauty; (d) strengthen the local economy; and (e) promote the use of such sites for the education, pleasure, and welfare of the local residents and of the general public.

Home, Motor. A motorized vehicular unit primarily designed for travel and/or recreational usage, which may also contain facilities for overnight lodging. This term does not include mobile homes.

Home, Nursing. See "Convalescent Home".

Home Occupation. Any use customarily conducted entirely within the dwelling and carried on by the inhabitants thereof, not involving employees other than members of the immediate family residing on the premises, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes, does not change the character thereof, and which does not endanger the health, safety, and welfare of any other persons residing in that area by reasons of noise, noxious odors, unsanitary or unsightly conditions, fire hazards and the like, involved in or resulting from such occupation, professions or hobby. Providing further, that no article or service is sold or offered for sale on the premises, except as such as is produced by such occupation; that such occupation shall not require internal or external alterations of construction features, equipment, machinery, outdoor storage, or signs not customarily in residential areas.

Hospital. An institution providing health services, primarily for inpatients and medical or surgical care

of the sick or injured, including as an integral part of the institution, such related facilities as laboratories, outpatient departments, training facilities, central service facilities and staff offices.

Hotel. A building occupied or used as a more or less temporary abiding place of individuals or groups of individuals with or without meals, and in which there are more than five (5) sleeping rooms, and in which no provisions are made for cooking in any individual room. (Also See "Motel")

House Hold Pets. Any domesticated animal customarily kept as a pet in the home as an incidental accessory to the principal use as a residence. No more than 4 such animals six (6) mouths or older, excluding caged animals, may be kept per dwelling unit. No more than one litter of such animals six (6) mouths or younger shall be permitted at any one time.

Industrial. A business operated primarily for profit including those of product manufacturing or conversion through assembly of new or used products or through the disposal or reclamation of salvaged material and including those businesses and service activities that are a normal integral part of an industrial enterprise or area.

Industrial Park. A special or exclusive type of planned industrial area designed and equipped to accommodate a community of industries, providing them with all necessary facilities and services in attractive surroundings among compatible neighbors.

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Institution. An organization having an enduring social, educational or a religious purpose, established by law, custom, practice or a system to serve the public in the form of governmental, religious, educational and charitable facilities or facilities for the sick, abused, unwanted or aged.

Irrigation. Is the artificial application of water on a lot or portion of a lot or parcel of land

Junk. All rubbish, refuse, waste material, garbage, including but not limited to, the following: waste composed of animal, fish, fowl, fruit or vegetable matter, dead animals, putrescible and non-putrescible solid waste (except body wastes), ashes, glass, cans, bottles, discarded or abandoned machinery, household appliances, industrial wastes, discarded, inoperative, dismantled, or partially dismantled motorized vehicles or parts thereof.

Junk Yard. Any lot, parcel, field or tract of land on which there is an accumulation of junk, equipment or machinery, whether operated for profit or not-for-profit basis. The term junk yard includes automobile wrecking yards and salvage areas of more than 200 square feet for the storage, keeping or abandonment of junk or for the dismantling, demolition or abandonment of automobiles or other vehicles of machinery or parts thereof, but does not include uses established entirely within an enclosed building.

Kennel, Commercial. Any combination of buildings and/or land used, designed or arranged for the commercial

boarding, breeding, training, and/or care of three (3) or more household pets subject to the regulations in Section 14.42. This definition shall not be construed to include, retail pet stores, or veterinary clinics unless boarding occurs in a way that is not incidental to the primary purpose of those operation.

Kennel, Rural. Any combination of buildings and/or land used, designed or arranged for breeding, training and/or care of three (3) or more household pets six (6) mouths or older which are kept for purposes of sale, show, or hunting. Rural kennels do not include commercial boarding. No more than one litter of such animals six (6) mouths or younger shall be permitted at any one time. The keeping of such animals shall be strictly incidental to the principal use of the premises. Rural kennels are subject to the regulations in Section 14.44.

Laboratory. A place devoted to experimental, routine study or basic study such as testing and analytical operations and in which manufacturing of a product or products, except prototypes, is not performed.

Land Use Permit. See "Zoning Permit".

Lighting, Source of. For purposes of this Ordinance, the source of light shall refer to the light bulb or filament which is exposed or visible through a clear material. Exposed mercury vapor lamps or neon lamps shall be considered a direct source of light.

Loading Space. An off-street space on the same lot with a building or group of buildings, for temporary parking

of a commercial vehicle while loading and/or unloading merchandise or materials.

Lodge. See "Club or Lodge, Private".

Lot. A portion of land divided in conformance with all of the provisions of Public Act 288 of 1967 in accordance with Public Act 288 Land Division Act of 1967 as amended, Subdivision Control Act and the Subdivision Regulations of Howell Township.

Lot Area. The total horizontal area within the lot lines of a lot or parcel excluding road right of ways and road easements.

Lot of Record. A lot existing prior to the adoption of this Ordinance and recorded in the office of the County Register of Deeds. For the purposes of this Ordinance, land contracts and purchase options not recorded in the County Register of Deeds' Office, but dated and executed prior to the effective date of this Ordinance shall also constitute a "lot of record". (Includes "Parcel of Record")

Lot, Corner. A lot where the interior angle of two (2) adjacent sides at the intersection of two (2) roads are less than 135 degrees. A lot abutting upon a curved road or roads shall be considered a corner lot for the purpose of this Ordinance if the arc is of less radius than 150 feet and the tangents to the curve, at the two (2) points where the lot lines meet the curve or the straight road line extended, form an interior angle of less than 135 degrees.

Lot Coverage. The percentage of the lot or parcel covered by all buildings and structures located on a lot or parcel, elevated above the surface, on the surface or below the surface of the ground and which impairs the percolation of surface water into the subsurface groundwater areas and causes additional surface runoff.

Lot Depth. The horizontal distance between the front and rear lot lines, measured along the median between the side lot lines.

Lot, Double Frontage. Any interior lots having frontages on two (2) more or less parallel roads as distinguished from a corner lot. In the case of a row of double frontage lots, all sides of said lots adjacent to roads shall be considered frontages, and front yards shall be provided as required.

Lot, Interior. Any lot other than a corner lot.

Lot, Lakefront. See "Lot, Waterfront".

Lot Lines. The exterior perimeter boundary; lines of a lot or parcel excluding road right of ways and easements.

Lot Line, Front. In the case of an interior lot, that line separating said lot from the road. In the case of a corner lot, or double frontage lot, "front lot line" shall mean that line separating said lot from that road which is designated as the front road in the plat and in the application for a Zoning Compliance Permit.

Lot Line, Rear. That lot line opposite the front lot line. In the case of a lot pointed at the rear, the rear lot line shall

be an imaginary line parallel to the front lot line not less than ten (10) feet long farthest from the front lot line and wholly within the lot.

Lot Line, Side. Any lot line other than the front lot line or rear lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.

Lot, Waterfront. A lot having a frontage directly upon a lake, river or other reasonably sized impoundment of water. The portion adjacent to the water shall be designated as the lake frontage of the lot, and the opposite side shall be designated the road frontage of the lot.

Lot Width. The horizontal distance between the side lot lines measured at the point where the building line intersects the side lot line and measured where the front lot line intersects the side lot lines.

Manufactured Home Park. A residential development which meets the regulations of PA 96 of 1987, as amended, the Manufactured Housing code and the provisions of Article XXIX of this ordinance.

Master Plan. (Or Comprehensive Development Plan) The plan prepared and adopted by the Township Planning Commission in accordance with Public Act 33 of 2008 relative to the agreed upon desirable physical land use pattern for future Township development. The plan consists of a series of maps, plans, charts and written material, representing in summary form, the soundest planning direction to the Township as to how it should

grow in order to realize the very best community living environment in the Township in the intent of the public health, safety and general welfare of its inhabitants.

Mini Warehouse. A building or group of buildings in a controlled access and fenced area that contains varying sizes of individual, compartmentalized and controlled access storage stalls for storage of the customer's property.

Manufactured Home. A unit primarily designed for year-round dwelling purposes, built upon a chassis, which equals or exceeds eight (8) feet in width and exceeds thirty-two (32) feet in length, and is not motorized or self propelled. Also may be known as a trailer coach or house trailer. Does not include a unit which must be transported in two (2) or more separate sections and involving installation of heating or extensive siding elements after such transport.

Manufactured Home Sales. Any space used for display, sale or rental of mobile homes, in new or used and operable condition.

Mobile Home Park. For the purpose of this Ordinance, a specifically designated parcel of land constructed and designed to accommodate three (3) or more mobile homes for residential dwelling use. See Manufactured Home Park definition.

Motel. (Also see "Hotel") A motel or motor court is a business comprising of a dwelling unit or a group of dwelling units so arranged as to furnish lodging accommodations for the public for compensation.

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Motor Court. See "Motel".

Natural Undeveloped State. Means preserving natural resources, natural features, or scenic or wooded conditions; agricultural use; open space; or similar use condition. Land in an undeveloped state does not include a golf course, but may include a recreational trail, picnic area, children's play area, a passive recreation area where no intensely active recreation takes place, greenway, linear park, conservation easement, as defined in Section 2140 of P.A. 451 of 1994, the Natural Resources and Environmental Protection Act, flora and fauna preserve, natural study area and similar types of undeveloped areas essentially kept in their natural state. (See definition of Open Space Preservation).

Non-Conforming Building or Structure. A non-conforming building is a building or portion thereof lawfully existing at the effective date of this Ordinance, or amendments thereto, and which does not conform to the provisions of the Ordinance in the zoning district in which it is located.

Non-Conforming Use. A non-conforming use is a use which lawfully occupied a building or land at the effective date of this Ordinance, or amendments thereto, and that does not conform to the use regulations of the zoning district in which it is located.

Nuisance. Is an offensive, annoying, unpleasant, or obnoxious thing or practice, a cause or source of annoyance, especially a continuing or repeating invasion

of any physical characteristics of activity or use across a property line which can be perceived by or affects a human being, or the generation of an excessive or concentrated movement of people or things such as: noise, dust, smoke, odor, glare, fumes, flashes, vibration, shock waves, heat, electronic or atomic radiation, objectionable effluent, noise of a congregation of people (particularly at night), passing traffic, invasion of street frontage by traffic generated from an adjacent land use which lacks sufficient parking and circulation facilities.

Nursing Home. See "Convalescent Home".

Office. An enclosed area which has as its primary use, rooms for professional or financial organizations, individuals, labor unions, civic, social, fraternal and/or other various related organizations or enterprises.

Off-Street Parking. See "Parking, off-street".

Off-Street Parking Space. See "Parking, Off-street, space".

Off-Street Parking Lot. See "Parking, off-street, lot".

Open Air Business Uses. Open air business uses operated for profit substantially in the open air shall include such uses as the following:

(a) bicycle, utility truck or trailer, motor vehicle, boats or home equipment sale, repair, or rental services.

(b) outdoor display and sales of garages, motor homes, mobile homes, snowmobiles, farm implements, swimming pools, and similar products.

(c) retail sale of trees, fruit, vegetables, shrubbery, plants, seeds, topsoil, humus, fertilizer.

(d) tennis courts, archery courts, shuffleboard, horseshoe courts, rifle ranges, miniature golf, golf driving range, children's amusement park or similar recreation uses (transient or permanent).

Open Space. Any space suitable for growing vegetation, recreation, gardens or household service activities such as clothes drying, but not occupied by any buildings.

1) Open Space, Useable: A separate area of land from all other use areas which is set aside, planned and developed as a park and recreation area for use by residents living in an area or on a site which provides facilities and areas for active and passive recreation purposes for such residents.

2) Recreations, Active: Activities by residents living in an area or on a site conducted on facilities provided on areas set aside, planned and developed for such purposes, including, but not limited to, court and field game areas, swimming and bathing facilities, family gathering and picnic areas, shelters, bathroom facilities and other related activity facilities, areas and structures.

3) Recreation, Passive: Refer to Definition No. 115a "Natural Undeveloped State" for the type of area, development and typical activities associated with such areas.

Open Space Preservation. Land which has been set aside in accordance with Section 506b of P.A. 110 of 2006, The Michigan Zoning Enabling Act in its natural undeveloped state. (See definition of Natural Undeveloped State.)

Open Storage. All outdoor storage of building materials, sand, gravel, stone, lumber, equipment and other supplies.

Parcel. A continuous area, tract or acreage of land that has not been divided or subdivided according to the provisions of Public Act 288 as amended of 1967, the Subdivision Control/Land Division Act and the Subdivision Regulations of Howell Township.

Parking, Off-Street. Vehicular parking provided on a lot or parcel, but not within a highway or road right-of-way.

Parking, Off-Street, Space. An area of definite length and width; said area shall be exclusive of drives, aisles, or entrances giving access thereto, and shall be fully accessible for the storage or parking of permitted vehicles on lots or parcels, but not within a public highway or public or private road right-of-way.

Parking, Off-Street, Lot. A facility providing vehicular parking spaces along with adequate drives and aisles for maneuvering so as to provide access for entrance and exit for the parking of more than two (2) automobiles.

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Parking Space. A land area exclusive of driveways and aisles, and so prepared as to be usable for the parking of a motor vehicle and so located as to be readily accessible to a public road or alley.

Pet. Shall mean only such animals as may commonly be housed within domestic living quarters.

Planned Unit Development. (Residential, commercial or industrial). This is a tract of land which includes two (2) or more principal buildings, developed under single ownership or control; the development of which is unique and of a substantially different character than that of surrounding area, and where the specific requirements of a given district may be modified and where the minimum area is fixed. Such development shall be based on a plan which allows for flexibility of design not available under normal zoning district requirements. Plat. A map or plan of the layout of the subdivision of a parcel of land which is in conformance with all of the provisions of Public Act 288 of 1967, The Subdivision Control/Land Division Act and The Subdivision Regulations of Howell Township.

Porch, Enclosed. (Includes patio). A covered entrance to a building or structure which is totally enclosed, and projects out from the main wall of said building or structure and has a separate roof or an integral roof with the principal building or structure to which it is attached.

Porch, Open. (Includes patio). A covered entrance to a building or structure which is unenclosed except for columns supporting the porch roof, and projects out

from the main wall of said building or structure and has a separate roof or an integral roof with the principal building or structure to which it is attached.

Private Road. See "Road, private".

Public Utility. Any person, firm, corporation, municipal department, board, or commission duly authorized to furnish and furnishing, under federal, state, or municipal regulations, to the public; electricity, gas, steam, communications, telegraph, transportation, water, storm water collection or wastewater collection and treatment.

Recreation Vehicle (RV). A motorized vehicle primarily designed and used as temporary living quarters for recreational camping or a non-motorized vehicle mounted on or drawn by another vehicle to be used for recreation, vacation or traveling purposes.

Residential. A development of land with dwelling units for the purpose of housing families and including all accessory or related uses necessary to normal everyday family living.

Restaurant. Is a lot upon which food or beverages are cooked or prepared and offered for sale and where consumption is permitted on the premises whether or not entertainment is offered, and includes establishments commonly known as grills, cafes, and nightclubs.

Restaurant, Drive-in. See "Drive-in Restaurant".

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Right-of-Way. A street, alley or other thoroughfare or easement permanently established for passage of persons, vehicles or the location of utilities. The right-of-way is delineated by legally established lines or boundaries.

Road. Any public thoroughfare dedicated and maintained for the use and operation of vehicular traffic by the Livingston County Road Commission.

Road Frontage. The legal line of demarcation between a dedicated road right-of-way or easement and abutting land.

Road, Frontage Access. A public or private road paralleling and providing ingress and egress to adjacent lots and parcels but connected to the major highway or road only at designed intersections or interchanges.

Road, Hard Surface. A highway or road built to the concrete or asphalt surface road building specifications of the Livingston County Road Commission or the Michigan Department of Transportation.

Road Line. The line which forms the outer limits of a road right-of-way or easement and which forms the line from which all road setbacks and front yards are measured.

Road, Major Area. Those roads designated by the Livingston County Road Commission as Primary Roads and any roads and any roads designated as major by the Howell Township Board of Trustees.

Roads, Major Regional. Those roads designated as Federal Interstate or United States Highways and those designated as Michigan State Highways.

Roads, Minor. All other roads public or private

Road, Private. An access road or drive which provides ingress and egress to two (2) or more principal buildings located upon separate lots or parcels from a public highway or public road.

Roadside Stand. A temporary or permanent building operated for the purpose of selling only produce raised or produced on the same premises by the proprietor of the stand or his family; its use shall not make, in a commercial district, land which would be otherwise classified as agricultural or residential, nor shall its use be deemed a commercial activity.

Sanitary Landfill Dump. A private or public dumpsite that meets all of the requirements of Public Act 641 of 1978 and the rules promulgated under this Act by the Department of Natural Resources.

Service Road or Drive. See "Road, Frontage Access".

Setbacks.

1) Front yard setback. The minimum horizontal distance between a front property line of a lot, parcel or site and all buildings and structures located on a lot, parcel or site.

2) Side yard setback. The minimum horizontal distance between a side property line of a lot, parcel or site and all buildings and structures located on a lot, parcel or site.

3) Rear yard setback. The minimum horizontal distance between a rear property line of a lot, parcel or site and all buildings and structures located on a lot, parcel or site.

Sign. See definitions in Section 19.02.

Special Use. A use which is subject to approval by the Planning Commission. A special use may be granted when specified by this Ordinance. A permitted special use is not considered to be a nonconforming use.

State Licensed Day Care Facilities.

(a) Adult Day Care Facility includes the following definitions:

(1) Adult Family Day Care Home. A private home in which six (6) or less adults eighteen (18) years of age or older, receive care for periods of less than twenty-four (24) hours a day. It includes facilities for adults, who are aged, mentally ill, developmentally disabled, or physically handicapped that require supervision on an ongoing basis. An adult day care home does not include alcohol or substance abuse rehabilitation centers, residential centers for persons released from or assigned to a correctional

facility, or any other facilities which do not meet the definition of adult care center.

(2) Adult Group Day Care Home. A private home in which more than six (6) but not more than twelve (12) adults eighteen (18) years of age or older, receive care for periods of less than twenty four (24) hours a day. It includes facilities for adults who are aged, mentally ill developmentally disabled or physically handicapped that require supervision on an ongoing basis An adult day care home does not include alcohol or substance abuse rehabilitation centers, residential centers for persons released from or assigned to a correctional facility, or any other facilities which do not meet the definition of adult day-care center.

(3) Adult Day Care Center. A facility, other than a private residence, receiving one (1) or more persons, eighteen (18) years of age or older, for care for periods of less than twenty-four (24) hours a day. It includes facilities for adults who are aged, mentally ill, developmentally disabled or physically that require supervision on an ongoing basis. An adult day-care center does not include alcohol or substance abuse rehabilitation centers, residential centers for persons released from or assigned to a correctional facility, or any other facilities which do not meet the definition of adult day-care center.

(b) Child Day Care Facilities includes the following definitions as defined and regulated by Public Act No. 116 of 1973 as amended:

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(1) Child Family Day Care Home. A state-licensed, owner-occupied private residence in which one (1) but not more than six (6) minor children are received for care and supervision for periods less than twenty-four (24) hours a day unattended by a parent or legal guardian, excepting children related to an adult member of the family by blood, marriage or adoption. It includes a home that gives care to an unrelated child for more than four (4) weeks in a calendar year.

(2) Child Group Day Care Home. A state-licensed, owner-occupied private residence in which seven (7) but not more than twelve (12) minor children are received for care and supervision for periods less than twenty-four (24) hours a day unattended by apparent or legal guardian, excepting children related to an adult member of the family by blood, marriage or adoption. It includes a home that gives care to an unrelated child for more than four (4) weeks in a calendar year.

(3) Child Care Center. Also known as "day care center", a state-licensed facility, other than a private residence, receiving one (1) or more minor children for care and supervision for periods less than twenty-four (24) hours, and where the parents or guardians are not immediately available to the child.

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State Licensed Foster Care Facilities.

(a) Adult Foster Care Facility. A state-licensed establishment that provides foster care to adults. It includes facilities and foster care homes for adults who are aged, mentally ill, developmentally disabled, or physically handicapped who require supervision on an ongoing basis but who do not require continuous nursing care. An adult foster care facility does not include convalescent or nursing homes, homes for the aged, hospitals, alcohol or substance abuse rehabilitation centers, residential centers for persons released from or assigned to a correctional facility, or any other facilities which have been exempted from the definition of adult foster care facility by the Adult Foster Care Facility Licensing Act, Public Act No. 218 of 1979 as amended. The following additional definitions shall apply in the application of this Ordinance.

(1) Adult Foster Care Small Group Home. A facility with the approved capacity to receive (12) or fewer adults who are provided supervision, personal care, and protection in addition to room and board, for twenty-four (24) hours a day, five (5) or more days a week, and for two (2) or more consecutive weeks for compensation.

(2) Adult Foster Care Large Group Home. A facility with approved capacity to receive at least thirteen (13) but not more than twenty (20) adults who are provided supervision, personal care, and protection in addition to room and board, for

twenty-four hours a day, five (5) or more days a week, and for two (2) or more consecutive weeks for compensation.

(3) Adult Foster Care Family Home. A private residence with the approved capacity to receive six (6) or fewer adults who are provided supervision, personal care, and protection in addition to room and board, for twenty-four (24) hours a day, five (5) or more days a week and for two (2) or more consecutive weeks for compensation. The adult foster care family home licensee must be a member of the household and an occupant of the residence.

(4) Adult Foster Care Congregate Facility. An adult foster care facility with the approved capacity to receive more than twenty (20) adults who are provided supervision, personal care, and protection in addition to room and board, for twenty-four (24) hours a day, five (5) or more days a week and for two (2) or more consecutive weeks for compensation.

(b) Child Foster Care Facility. A state-licensed establishment that provides foster care to minor children. The following definitions shall apply in the application of this Ordinance.

(1) Child Foster Family Home. A private home in which one (1) but not more than four (4) minor children, who are not related to an adult member of the household by blood, marriage, or who are not placed in the household pursuant to the adoption

code, Chapter X of Public Act No. 288 of 1939 as amended, being sections 710.21 to 710.70 of the Michigan Compiled Laws, are given care and supervision for twenty-four (24) hours a day, for four (4) or more days a week, for two (2) or more consecutive weeks, unattended by a parent or legal guardian.

(2) Child Foster Family Group Home. A private home in which more than four (4) but fewer than seven (7) minor children, who are not related to an adult member of the household by blood, marriage, or who are not placed in the household pursuant to Chapter X of Public Act No. 288 of 1939 as amended, are provided care for twenty-four (24) hours a day, for four (4) or more days a week, for two (2) or more consecutive weeks, unattended by a parent or legal guardian.

Story. That part of a building, except a mezzanine included between the surface to one (1) floor and the surface of the next floor, or if there is no floor above, then the ceiling next above. A story thus defined shall not be counted as a story when more than fifty (50) percent, by cubic content, is below the height level of the adjoining ground.

Story, Half. An uppermost story lying under a sloping roof, the usable floor area of which, at a height of four (4) feet above the floor does not exceed two-thirds (2/3) of the floor area in the story directly below, and the height above at least two hundred (200) square feet of floor space is seven feet, six inches (7'6").

Story, Height. The vertical distance from the top surface of one (1) floor to the top surface of the next above. The height of the topmost story is the distance from the top surface of the floor to the ceiling above it.

Street. See "Road".

Street Line. See "Road Line".

Structure. See "Building", and in addition any manmade surface or subsurface feature or designed earth feature, other than normal finished grading for drainage purposes, including garden houses, pole barns, sheds, tents, pergolas, decks, porches, play houses, game courts, walls, trailers, septic tanks, underground storage tanks, above ground dispensing devices, among others, but not including wires and their supporting poles, towers, or frames for electrical, telephone, gas or television utilities or other public utilities located above or below ground.

Structural Alterations. Any change in an existing structure which would expand the size of the structure, significantly change the outside dimensions of the structure, or which would effectively convert the building into a different structure.

Swimming Pool (Outdoor). Any permanent, non-portable structure or container located either above or below grade designed to hold water to a depth of greater than 24 inches, intended for swimming or bathing. A swimming pool shall be considered an accessory structure for purposes of computing lot coverage.

Temporary Building. See "Use, Temporary".

Temporary. See "Use, Temporary".

Tent. Tent, as used in this Ordinance shall mean a shelter of canvas or the like supported by poles and fastened by cords or pegs driven into the ground and shall not include those types of small tents used solely for children's recreational purposes.

Travel Trailer. A portable vehicular unit primarily designed for travel and/or recreational usage, which may also contain facilities for periodic overnight lodging. This term also includes folding campers and truck mounted campers but does not include mobile homes

Travel Trailer Park. A family recreation oriented facility for the overnight or short term (not to exceed fifteen (15) days consecutively) parking of travel trailers or tents. May also be known as a campground.

Use. The lawful purpose for which land or premises of a building thereon is designed, arranged, intended, or for which is occupied, maintained, let or leased.

Use, Accessory. A use normally and naturally incidental to, subordinate to, and devoted exclusively to the main use of the land or buildings.

Use, Agricultural. Any use permitted in the "AR" Agricultural Zone in this Ordinance. See definition of "Agriculture".

Use, Building and Structural. The use or uses made of a building or structure.

Use, Commercial. Any use permitted in the various Commercial Zones (NSC, RSC, HC, HSC or OS) in this Ordinance. See definition of "Commercial".

Use, Industrial. Any use permitted in the AI Industrial Zone in this Ordinance. See definition of "Industrial".

Use, Institutional. Any of the public or private Institutional uses permitted in this Ordinance.

Use, Land. The principal and accessory uses being made of all land areas and buildings and structures located upon a lot or parcel.

Use, Public. Any of the publicly owned or leased uses of land, buildings or structures administered and operated by a public agency or official.

Use, Residential. Any of the uses permitted in the various Residential Zones (AR, SFR or MFR) in this Ordinance. See definition of "Residential".

Use, Temporary. A use or building permitted to exist during period of construction of the main building or use, or for special events.

Variance. See "Zoning Variance".

Wetland. Land characterized by the presence of water at a frequency and duration sufficient

to support and under normal circumstances does support wetland vegetation or aquatic life and is commonly referred to as a bog, swamp or marsh, and which includes the following:

(a) Such an area contiguous to a lake, pond, river or stream.

(b) Such an area located in an inland area and more than five (5) acres in area.

(c) Such an area of less than five (5) acres if the DEQ determines that it is essential to the preservation of natural resources from pollution, impairment or destruction.

Wireless Communication Facilities or Facility. Shall mean all structures and accessory facilities relating to the use of the radio frequency spectrum for the purpose of transmitting or receiving radio signals or other wireless communications services, and include wireless communications equipment, wireless communications support structures, and wireless communications equipment compounds, as defined herein. This may include, but shall not be limited to, radio towers, television towers, telephone devices and exchanges, microwave relay towers, telephone transmission equipment buildings and commercial mobile radio service facilities. Not included within this definition are citizen band radio facilities, short wave facilities, ham amateur radio facilities, private/stand-alone satellite dishes, essential services structures and facilities, and governmental facilities which may be subject to state or federal law or regulations which

preempt municipal regulatory authority. For purposes of this Chapter, the following additional terms are defined:

(a) Attached Wireless Communications Facilities shall mean wireless communication equipment attached to an existing wireless communications support structure or in an existing wireless communications equipment compound.

(b) Substantial change in physical dimensions means one or more modifications of the height, width, length, or area of a wireless communications facility at a location, the cumulative effect of which is to materially alter or change the appearance of the wireless communications facility.

(c) Wireless communications equipment means the equipment and components, including antennas, transmitters, receivers, base stations, equipment shelters or cabinets, emergency generators, and power supply, coaxial and fiber optic cables used in the provision of wireless communications services, but excluding wireless communication support structures.

(d) Wireless communications equipment compound means a delineated area surrounding or adjacent to the base of a wireless communications support structure within which any wireless communications equipment related to that support structure is located.

(e) Wireless Communication Support Structures or Support Structures shall mean structures

designed to support or capable of supporting wireless communication equipment. Support structures within this definition include, but shall not be limited to, monopoles, lattice towers, utility poles, wood poles and guyed towers, buildings, or other structures with such design capability.

(f) Collocation shall mean the location by two (2) or more cellular communication providers of cellular communication facilities on a common wireless communication support structure.

Yard. The open spaces on the same lot, parcel, or building site with the nearest of all buildings and other structures, unoccupied and unobstructed from the ground upward, except as otherwise provided in this Ordinance and as defined herein.

(a) Front Yard. An open space extending the full width of the lot, parcel, or building site the depth of which is the minimum horizontal distance between the front property line or front building site line and the nearest point of the nearest buildings and other structures located on the lot, parcel or site. Front yards shall include all areas of lots and parcels of land fronting on all roads and lakes, ponds and rivers.

(b) Rear Yard. An open space extending the full width of the lot, parcel, or building site the depth of which is the minimum horizontal distance between the rear property line or rear building site line and the nearest buildings and other structures located on the lot, parcel or site.

(c) Side Yard. An open space between all buildings and other structures and the side lot, parcel, or building site line extending from the front yard to the rear yard the width of which is the minimum horizontal distance between the side property line or side building site line and the nearest point of the nearest buildings and other structures located on the lot, parcel or site.

Zoning Appeal. An entreaty or demand for a hearing and/or review of facts and/or actions.

Zoning Board of Appeals. As used in this Ordinance, the term "Board of Appeals" means the Township of Howell, Livingston County, Michigan, Zoning Board of Appeals.

Zoning District. A portion of the unincorporated area of the Township within which certain regulations and requirements, or various combinations thereof, apply under the provisions of this Ordinance.

Zoning Exception. See "Zoning Interpretation".

Zoning Interpretation. A principal or accessory use permitted within the intent and purpose of this Ordinance only after review of an application by the Board of Appeals with the advice and counsel of the Planning Commission, such review being necessary because the provisions of this Ordinance in respect and the listed permitted principal and accessory uses are not precise enough to all applications without interpretation, and such review is therefore required by the Ordinance.

Zoning Permit. A permit issued by Howell Township for commencing construction issued in accordance with a plan for construction that complies with all the provisions of this Zoning Ordinance.

Zoning Variance. The term Variance shall mean a modification of literal provisions of the Zoning Ordinance granted when strict enforcement of the Zoning Ordinance would cause undue hardship owing to circumstances unique to the individual property on which the variance is granted. The crucial points of variance are (a) undue hardship, (b) unique circumstances, and (c) exceptional and unusual elements are present that would preclude the same type of development permitted in a zoning district, but, which with a variance, would permit similar and compatible development to the character of development permitted in a zoning district.

Zoning Violation. Any land use development or activity which does not conform to (1) the provisions of this Zoning Ordinance, (2) an approved special use of land, building(s) or structure(s), (3) an approved planned unit development, (4) an approved site plan, (5) a decision of the Zoning Board of Appeals, (6) a decision of the Planning Commission, (7) a decision of the Township Board, (8) a court order of a Michigan Court of jurisdiction, or (9) a court order of any United States Federal Court relative to the provisions of this Zoning Ordinance.

(Ord. No. 271 eff. Oct. 3, 2017; further amend. eff. Nov. 22, 2018; further amend. eff. Mar. 31, 2019)

Appendix F

ARTICLE III
GENERAL PROVISIONS

Section 3.01 ESTABLISHMENT OF ZONING DISTRICTS.

The Township is hereby divided into the following zoning districts as shown on the Official Zoning Map, which together with all explanatory matter shown thereon, is hereby adopted by reference and declared to be a part of this Ordinance:

AR - AGRICULTURAL-RESIDENTIAL DISTRICT

SFR - SINGLE FAMILY RESIDENTIAL DISTRICT

MFR - MULTIPLE FAMILY RESIDENTIAL DISTRICT

MHD - MANUFACTURED HOUSING DISTRICT

OS - OFFICE SERVICE DISTRICT

NSC - NEIGHBORHOOD SERVICE COMMERCIAL DISTRICT

RSC - REGIONAL SERVICE COMMERCIAL DISTRICT

HSC - HIGHWAY SERVICE COMMERCIAL DISTRICT

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HC - HEAVY COMMERCIAL DISTRICT

I - INDUSTRIAL DISTRICT

RT - RESEARCH AND TECHNOLOGY DISTRICT

(Ord. No. 1 eff. Jan. 8, 1983, Amend. by Ord. 255 eff. April 12, 2013)

Section 3.02 PROVISION FOR OFFICIAL ZONING DISTRICT MAP.

These Districts, so established, are bounded and defined as shown on the map entitled:

"ZONING MAP OF HOWELL TOWNSHIP"

Adopted by the Township Board, and which, with all notations, references, and other information appearing thereon, is hereby declared to be a part of this Ordinance and of the same force and effect as if the Districts shown thereon were fully set forth herein.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 3.03 CHANGES TO OFFICIAL ZONING DISTRICT MAP.

If, in accordance with the procedures of this Ordinance and of Public Act 110 of 2006, as amended, a change is made in a zoning district boundary, such change shall be made by the Zoning Administrator promptly after

the Ordinance authorizing such change shall have been adopted and published by the Township Board. Other changes in the Zoning District Map may only be made as authorized by this Ordinance and such changes, as approved, shall also be promptly made by the Zoning Administrator.

(Ord. No. 1 eff. Jan. 8, 1983, further Amended by Ord. No. 202 eff. Dec. 21, 2006)

Section 3.04 AUTHORITY OF OFFICIAL ZONING DISTRICT MAP.

Regardless of the existence of other copies of the Official Zoning District Map which may from time to time be made or published, the Official Zoning District Map, which shall be located in the office of the Zoning Administrator, shall be the final authority as to the current zoning status of any land, parcel, lot, district, use, building or structure in the Township.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 3.05 INTERPRETATION OF ZONING DISTRICTS.

Where uncertainty exists as to the boundaries of zoning districts as shown on the Official Zoning District Map, the following rules for interpretation shall apply:

A. A boundary indicated as approximately following the centerline of a highway, street, alley, railroad

or easement shall be construed as following such centerline.

B. A boundary indicated as approximately following a recorded lot line, a boundary of a parcel, section line, quarter section line, or other survey line shall be construed as following such line.

C. A boundary indicated as approximately following the corporate boundary line of a city, village, or township shall be construed as following such line.

D. A boundary indicated as following a shoreline shall be construed as following such shoreline, and in the event of change in a shoreline shall be construed as following the actual shoreline.

E. A boundary indicated as following the centerline of a stream, river, canal, lake or other body of water shall be construed as following such centerline.

F. A boundary indicated as parallel to or an extension of a feature indicated in paragraphs A through E above shall be so construed.

G. A distance not specifically indicated on the Official Zoning District Map shall be determined by the scale of the map.

H. All questions concerning the exact location of boundary lines of any zoning district not clearly shown on the Official Zoning District Map shall be determined

by the Zoning Board of Appeals consistent with the intent and purpose of this Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 3.06 APPLICATION OF REGULATIONS.

The regulations established by this Ordinance within each zoning district shall be the minimum regulations for promoting and protecting the public health, safety, and general welfare and shall be uniform for each permitted or approved use of land or building, dwelling and structure throughout each district. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Ordinance, the Zoning Board of Appeals shall have power in passing upon appeals to vary or modify any rules, regulations or provisions of this Ordinance so that the intent and purposes of this Ordinance shall be observed, public safety secured and substantial justice done, all in accordance with the provisions of Article XXII of this Ordinance and Public Act 110 of 2006.

(Ord. No. 1 eff. Jan. 8, 1983, further Amended by Ord. No. 202 eff. Dec. 21, 2006)

Section 3.07 SCOPE OF PROVISIONS.

A. Except as may otherwise be provided in Article XXII herein, every building and structure erected, every use of any lot, building, or structure established, every structural alteration or relocation of any

existing building or structure occurring, 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 all regulations of this Ordinance which are applicable in the zoning district in which such use, building, or structure shall be located.

B. Uses are permitted by right only if specifically listed as principal permitted uses in the various zoning districts or is similar to such listed uses. Accessory uses are permitted as listed in the various zoning districts or if similar to such listed uses, and if such uses are clearly incidental to the permitted principal uses. Special uses are permitted as listed or if similar to the listed special uses and if the required conditions are met.

C. All uses, buildings, and structures shall conform to the area, placement, and height regulations of the district in which located, unless, otherwise provided in this Ordinance.

D. No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any use, building or structure, for the purpose of complying with this Ordinance, shall be included as part of a yard, open space, or off-street parking lot or loading space similarly required for any other use, building, or structure. Refer to Section 14.06.

E. No yard or lot existing at the time of adoption of this Ordinance shall be reduced in dimensions or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established herein except as otherwise provided in this Ordinance.

F. No lot, out lot or other parcel of land in a recorded plat shall be further partitioned or divided unless in conformity with the Zoning and Subdivision Control Ordinances of the Township and the Subdivision Control Act of 1967 and the Land Division Act of 1996, as amended.

G. There shall be no more than one (1) principal use located on a lot, parcel or building site, except as otherwise permitted in this Ordinance. See Section 14.06.

(Ord. No. 1 eff. Jan 8, 1983; amend. by Ord. No. 97 eff. Feb. 23, 2000)

Section 3.08 SITE PLAN REVIEW PROCEDURES.

All uses permitted under the provisions or consequence of this Zoning Ordinance, applying for a zoning permit, shall follow the requirements of Article XX, "Site Plan Review", except that all farm dwellings, farm buildings and single family homes located on a single lot or parcel shall only be required to submit a site plan, prepared in accordance with those relative portions of Article XX,

"Site Plan Review", and submitted with the application for a zoning permit.

(Ord. No.1 eff. Jan. 8, 1983)

Section 3.09 ZONING PERMITS IN RELATION TO COUNTY BUILDING PERMITS.

Prior to the issuance of any County Building Permit in Howell Township it shall be necessary for any applicant for construction under the provisions of the Livingston County Construction Ordinance to first apply for and obtain a Zoning Permit from the Zoning Administrator of Howell Township in accordance with the provisions of this Zoning Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 3.10 PERMITTED ZONING DISTRICT USES AND OTHER PROVISIONS IN THIS ORDINANCE.

While each Zoning District and the uses it permits are designed to represent separate categories of compatible land uses and the regulations controlling, other Articles in this Zoning Ordinance may also appropriately apply including those provisions included in Article XIV "Supplemental Regulations", Article XV "Environmental Provisions", Article XVI "Special Uses", Article XVII "Nonconforming Land, Building and Structural Uses", Article XVIII "Off-Street Parking, Loading and Unloading Requirements", Article XIX "Sign Regulations", Article XX "Site Plan Review", Article XXVI "Roads,

Driveways and Related Land Use Developments and Construction in Private Developments", Article XXVII "PUD-Planned Unit Development Projects" and Article XXVIII "Landscaping Requirements". Applicants for zoning permits should relate their requests to both the appropriate zoning district as to use and the above Articles for applicability.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 3.11 CONTINUED CONFORMANCE WITH REGULATIONS.

The maintenance of yards, open spaces, lot areas, height and bulk limitations, fences, walls, clear vision areas, parking and loading spaces, signs and all other requirements for a building or use specified within this Ordinance shall be a continuing obligation of the owner of such building or property on which such building or use is located.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 3.12 WETLAND DEVELOPMENT.

All "Wetland Areas" in Howell Township as designated by the Michigan State Department of Environmental Quality shall be required to meet the provisions of this Ordinance and the provisions of Public Act 203 of 1979 "The Wetland Protection Act" and any rules promulgated by the Department of Environmental Quality.

(Ord. No. 1 eff. Jan. 8, 1983)

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Section 3.13 CONFORMANCE TO OTHER PUBLIC LAWS, RULES AND REGULATIONS.

All uses of land, buildings or structures shall conform to all applicable local, county, state and federal laws, rules and regulations that have been promulgated and administered by the respective responsible public agency or official as well as the provisions of the Zoning Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 3.14 PROJECT PLANNING AND PLAN INFORMATION FROM OTHER AGENCIES AND OFFICIALS.

All township, county, school district, state and federal agencies and officials are required to submit their planning programs and project plans relative to all building, structural and land improvements to be made within Howell Township prior to the final approval of site acquisition or construction plans and specifications by the respective township, county, school district, state and federal agencies and officials in accordance with MCL 124.3861 "Construction of certain projects in area covered by municipal master plan; approval; initiation of work on project; requirements; report and advice." , being Section 61 of the Township Planning Act, Public Act 33 of 2008.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 97 eff. Feb. 23, 2000)

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Section 3.15 CONFORMANCE OF LOTS AND PARCELS TO THE SUBDIVISION CONTROL/ PUBLIC ACT 591 OF 1996, LAND DIVISION ACT AS AN AMENDMENT TO PUBLIC ACT 288 OF 1967, THE SUBDIVISIOIN CONTROL ACT , AS AMENDED.

All uses permitted in any District shall be located on lots or parcels of land subdivided in accordance with the provisions of Public Act 591 of 1996, The Land Division Act.

(Ord. No. 1 eff. Jan. 8, 1983 further amended by Ord. No. 202 eff. Dec. 21, 2006)

Section 3.16 CHANGES TO TOWNSHIP MASTER PLAN; AIRPORT LAYOUT PLANS AND AIRPORT APPROACH PLANS.

A. If the Township adopts or revises its Master Plan pursuant to the procedures set forth in the Zoning Enabling Act, 2006 PA 110, as amended, after an airport layout plan or airport approach plan has been filed with the Township, the Township must incorporate the airport layout plan or airport approach plan into the Master Plan adopted.

B. In addition to other applicable legal requirements, any ordinance amendment that the Township adopts after the date that this ordinance amendment takes effect must be adopted after reasonable consideration of both of the following:

1. The environs of any airport within a district.

2. Comments received at or before a public hearing of the Township regarding potential adoption of a proposed zoning ordinance or amendment, or transmitted from the airport manager of any airport to the Township regarding a hearing on the proposed zoning ordinance.

C. A zoning ordinance amendment or variance granted after March 28, 2001, must not increase any inconsistency that may exist between this Ordinance or structures or uses and any airport zoning regulations, airport layout plan, or airport approach plan. This provision does not limit the right to petition for submission of a zoning ordinance or amendment hereto to the electors under 2006 PA 110, as amended.

(Ord. No. 202 eff. Dec. 21, 2006)

Section 3.17 SCHEDULE OF AREA, HEIGHT, AND SETBACK REGULATIONS

The following regulations regarding lot sizes, yards, setbacks, lot coverage, building size, and densities apply within the zoning districts as indicated. No building shall be erected, nor shall an existing building be altered, enlarged, or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity with the regulations established in this section for the district in which such building is located. No portion of a lot used in complying

with the provisions of this section for yards, courts, or lot area occupancy in connection with an existing or projected building or structure shall again be used to qualify or justify any other building or structure existing or intended to exist at the same time.

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ZONING DISTRICT	MINIMUM LOT SIZE PER UNIT		MAXIMUM BUILDING HEIGHT		MINIMUM FRONT YARD SETBACK REQUIRED			C P
	AREA	WIDTH AT BUILDING SITE	STORIES	FEET	FRONT YARD	SIDE YARD	REAR YARD	
AR, Agricultural Residential	1 acre	150 feet	2	45	50	20	50	
SFR, Single-Family Residential	10,000 sq. ft. with sewer	70 feet	2 1/2	35	30	10 foot minimum	40	
	1 acre without public sewer or water	120 feet						
MFR, Multiple-Family Residential	see Section 7.06	200 feet	5	60	30, plus 1 foot for every foot over 30 feet in height	30, plus 1 foot for every foot over 30 feet in height	50, plus 1 foot for every foot over 50 feet in height	
OS, Office Service	—	—	5	60	30	10, minimum both side yard setbacks total of 25 ft.	50	
NSC, Neighborhood Service Commercial	1 acre	150 feet	2	30	35	10, minimum both side yard setbacks total of 25 ft.	50	
	10,000 sq. ft. with public sewer	80 feet with public water and sewer						

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es	200 feet	—	70	35	10, minimum both side yard setbacks total of 25 ft.	50	75%	—
sq. ft. ublic vater	120 feet with public water/sewer							
es	200 feet	—	70	35	10, minimum both side yard setbacks total of 25 ft.	50	75%	—
sq. ft. ublic vater	120 feet with public water/sewer							
es	200 feet	—	70	35	10, minimum both side yard setbacks total of 25 ft.	50	75%	—
sq. ft. ublic vater	120 feet with public water/sewer							
es	200 feet	—	50	35	10, minimum both side yard setbacks total of 25 ft.	10 feet	60% with public water/sewer	—
sq. ft. ublic vater	120 feet with public water/sewer					50 feet where abutting AR, SRF, MFR	75%	
es	200 feet	—	70	35	10, minimum or height of building	50	75%	—
sq. ft. ublic vater	120 feet with public water/sewer							

Manufactured Housing Code Requirements, Section 29.06

k requirements are further subject to Section 26.05,
M-59, Grand River Road, Oak Grove Road and County Primary Highways

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ARTICLE IV
AR AGRICULTURAL—RESIDENTIAL DISTRICT

Section 4.01 PURPOSE

The purpose of this district is to provide for the compatible arrangement and development of parcels of land for conventional residential building purposes in a pastoral, agricultural, woodland or open land areas, that will remain unserved by public water distribution and waste water disposal systems in the foreseeable future and that is more suitable for residential purposes and which can accommodate healthful on-site water supply and wastewater disposal, but which reserves and conserves that land which is most adaptable for present and future agricultural, woodland, natural resource and other extensive land use.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 11 eff. Apr. 4, 1986)

Section 4.02 PERMITTED PRINCIPAL USES

A. General agriculture in accordance with PA 93 of 1981, The Right to Farm Act, including general farming, farming for crops, dairy and beef cattle, sheep, horses and similar kinds of domestic animals, including the following:

    1) Tree Fruit Production

    2) Small Fruit Production

3) Field Crop Production

4) Forage and Sod Production

5) Livestock and Poultry Production

6) Fiber Crop Production

7) Apiary Production

8) Maple Syrup Production

9) Mushroom Production

10) Fur Bearer Production

11) Greenhouse Production

12) Silviculture

B. State Licensed Day Care Facilities.

1) Child Family Day Care Homes (six (6) or fewer minor children).

2) Adult Family Day Care Homes (six (6) or fewer adults).

C. State Licensed Foster Care Facilities.

1) Adult Foster Care Family Home, excluding an adult foster care facility licensed by a state

agency for the care and treatment or persons released from or assigned t adult correctional institutions (six (6) or fewer adults).

2) Child Foster Care Family Homes (four (4) or fewer minor children).

3) Child Foster Family Group Homes (five (5) or six (6) minor children).

D. Agricultural buildings necessary to and functionally related on-site agricultural land uses.

E. Single family farm-related or non-farm conventional dwelling on a minimum one (1) acre parcel.

F. Public and private developments designed for the purpose of conserving natural resources including woodlands, watersheds, surface water, soil, wildlife and underground natural resources including ground water, minerals, oil and gas or any other natural resource important to the present and future local, regional or national economy.

G. The growing, harvesting and sale of nursery stock, plants, trees, and shrubs and any equipment, improvements and structures that are necessary to and designed to be functionally a part of such a land use.

H. The growing, stripping and sale of sod and any equipment improvements and structures that are

necessary to and designed to be functionally a part of such a land use, providing that any area stripped of sod shall be seeded by the fall season in which it was stripped, so as to prevent possible wind and water eroding the otherwise exposed soil.

I. Churches. (Group Day Care Facilities which are affiliated with the church on the same site may be permitted after special land use approval—See Sections 4.03 and 16.17)

J. Stables for breeding, rearing, and housing horses and similar animals, subject to the Michigan Right to Farm Act, Public Act No. 93 of 1981 (MCL 286.471).

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. no. 8 eff. Dec. 7, 1983; Ord. No. 62 eff. Oct. 8, 1997; Ord. No. 97 eff. Feb. 23, 2000; amend by Ord. No. 254 eff. 2/10/2013.)

Section 4.03 PERMITTED PRINCIPAL SPECIAL USES WITH CONDITIONS

A. Confined animal feedlots and similar concentrated feeding areas, buildings and structures.

1) A minimum lot of forty (40) acres.

2) A minimum distance of seven hundred and fifty (750) feet shall be required from any residential use.

B. Removed.

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C. Airports and airplane landing fields.

1) These regulations shall not apply for private air strips which are used only by the owner or lessee of the premise for the maintenance and flight of his/her aircraft.

2) Plans shall be approved by the Federal Aviation Agency and the Michigan Department of Aeronautics prior to submittal to the Township for review and approval.

3) The parcel shall be located so as to abut a major thoroughfare and to provide public access and egress to and from said lot from said thoroughfare.

D. Campgrounds and day camps.

1) Minimum lot size shall be forty (40) acres. The lot shall provide direct vehicular access to a public street or road. The term lot shall mean a campground or travel trailer park.

2) Each site on a lot designated for camping use may accommodate a travel trailer or tent, and shall be provided with individual electrical outlets.

3) Public stations, housed in all-weather structures containing adequate water outlet, toilet, waste container and shower facilities, shall be

provided uniformly throughout the lot at a ratio of not less than one (1) such station per each twenty (20) sites.

4) Each campground and day camp containing more than sixty (60) sites shall provide a masonry building containing machine laundry (wash and dry) facilities.

5) No commercial enterprises shall be permitted to operate on the lot, except that a convenience goods shopping building may be provided on a lot containing more than eighty (80) sites.

6) Each lot shall provide a hard surfaced vehicle parking area for site occupant and guest parking. Such parking area shall be located within four hundred (400) feet of the site it is intended to serve (except in the case of sites specifically designated only for tent camping). Each parking space shall be two hundred (200) square feet in area and guest parking shall be provided at a ratio of not less than one (1) space per each two (2) sites. Occupant parking space for two (2) vehicles shall be provided on each site.

7) Each site shall contain a minimum of fifteen hundred (1500) square feet. Each site shall be set back from any right-of-way or property line at least seventy-five (75) feet, and from any private street at least forty (40) feet.

8) A common use area shall be provided on each lot at a ratio of not less than one thousand (1000) square feet of such area per each site. This common area shall be developed by seeding, landscaping, picnic tables, barbeque stands and passive recreation equipment (i.e., swings, horseshoe pits, shuffleboard courts and the like) for the general use of all occupants of the entire lot.

9) Each travel trailer site shall have direct access to a hard-surfaced roadway of at least twenty-four (24) feet in width for two-way traffic and twelve (12) feet in width for one-way traffic. Parking shall not be allowed on any roadway. Public roads shall be paved with asphalt or concrete. Sites specifically designated for, and only used for, tent camping need not have direct vehicular access to any street or road, but shall be provided with adequately cleared and marked pedestrian pathway access which originates at a point on a street or road within two hundred (200) feet of the parking area mentioned in paragraph six (6). Access to the parcel or development shall be a hard-surfaced major thoroughfare.

10) Any open drainage ways must have seeded banks sloped at least 3:1 and designed to properly drain all surface waters into the county drain systems subject to approval by the Drain Commissioner of Livingston County.

11) The development of the entire lot is subject to all applicable requirements of the Department of Environmental Quality.

12) A minimum distance of fifteen (15) feet shall be provided among all travel trailers and tents.

13) Fences and green belts may be required by the Planning Commission. The location of common use areas, roadways, streets, and buildings shall be subject to approval by the Planning Commission.

14) Maximum lot density of not more than twelve (12) lots per acre (including roads and other common areas) shall be required.

E. Public and private cemeteries.

1) All cemeteries shall be developed on sites of at least forty (40) acres.

2) Refer to Ordinance No. 68 Cemetery Ordinance for additional regulations.

F. Agribusiness.

1) All agricultural industrial and commercial uses shall be located and developed on sites of at least forty (40) acres, and shall have a direct relationship to the existing types of permitted agricultural uses.

G. State Licensed Day Care Facilities.

1) Adult Group Day Care Homes (seven (7) to twelve (12) adults.)

2) Child Group Day Care Homes (seven (7) to twelve (12) minor children).

(Amend. Ord. No. 119 eff. Dec. 27, 2000, Amend. Ord. No. 160 eff June 20, 2003 Amend. Ord. No. 220 eff. Feb. 13, 2009; Amend. Ord. No 254, eff. Feb. 10, 2013.)

H. Home Business.

In those AR–Agricultural Residential areas of the Township which have direct access to Grand River Avenue, it is anticipated that Grand River Avenue will eventually be devoted primarily to commercial types of uses but also be subject to the existence of single-family dwellings on parcels of property with sufficient size to accommodate a residence and a business that is operated by the owner of the single-family dwelling. It is the intent of this section to allow and provide for the gradual change in uses along Grand River Avenue from low density residential to high density residential or commercial and allow for certain home businesses. A home business shall be considered as a technical, personal or professional service, or other type of commercial enterprise as permitted under Section 9.02 (A or C) which business either takes place in a home or one of its accessory structures which is operated

and carried on by the inhabitants thereof or with no more than one non-family employee which use is generally, but not necessarily, secondary to the use of the dwelling for dwelling purposes. Such use shall not significantly change the character of the properties adjacent to the subject parcel and it shall not endanger the health, safety, or welfare of any other persons residing in that area by reason of noise, obnoxious odors, unsanitary or unsightly conditions, fire hazards, and the like, involved in or resulting from such home business. Such home business shall be further subject to the requirements of Article XVI, "Special Uses", of this zoning ordinance and shall also be subject to the following conditions:

1) There shall be no outside display or storage of goods or materials.

2) The home business shall involve no more than one non-family employee or other employee who is not an inhabitant of the dwelling on the premises.

3) Uses related to the repair of motor vehicles and/or heavy equipment shall be specifically excluded.

4) The home business shall be entitled to a small announcement sign which shall not exceed four (4) square feet in area.

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I. Church affiliated group day care facilities.

Replaced by Section 16.17.

J. Agribusinesses.

1) An agribusiness shall be buildings, structures, lots, parcels or parts thereof which provide services, goods, storage, transportation or other activities directly related to the production of agricultural commodities. An agribusiness may include, but is not limited to:

a) Farm machinery, sales, service, rental and repair.

b) Bulk feed and fertilizer outlets and distribution centers.

c) Seed dealership outlets and distribution centers.

d) Truck and cartage facilities.

2) Agribusiness uses are permitted in the AR Zoning District on lots and parcels having frontages on Grand River or Burkhart Road.

3) Minimum lot or parcel area shall be five (5) acres and a minimum road frontage shall be 330 feet.

4) These uses shall meet all other requirements of the AR District.

K. Prohibited Principal Uses.

1) Slaughter houses and commercial processing.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 10 eff. May 3, 1984; further amend. by Ord. No. 11 eff. Apr. 4, 1986; Ord. No. 46 eff. Nov. 4, 1993; Ord. No. 52 eff. May 3, 1995; Ord. No. 62 eff. Oct. 8, 1997; amend. by Ord. No 254 eff. Feb. 10, 2013; amend. by Ord. 271 eff. Oct. 3, 2017)

SECTION 4.04 PERMITTED ACCESSORY USES.

A. Buildings and structures customarily incidental to the operation of an agricultural enterprise.

B. Accessory buildings and structures customarily incidental to single family residential.

C. Signs related to the permitted agricultural enterprise, provided that all such signs shall conform to the requirements of this Ordinance.

D. House Hold Pets.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. 271 eff. Oct. 3, 2017)

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SECTION 4.05 PERMITTED ACCESSORY USES WITH CONDITIONS.

A. Roadside Stands.

In agricultural districts each farm may have one (1) temporary roadside stand for the purpose of selling produce raised or produced on that farm in the course of its permitted agricultural activity. The stand shall be located and constructed to meet the following requirements:

1) The structure shall not be more than one (1) story in height.

2) The floor area shall not exceed 400 square feet for farms having forty (40) acres or less in area, and farms in excess of forty (40) acres may increase the floor area at the rate of 100 square feet for each additional ten (10) acres of area.

3) The stand shall be located no closer than forty (40) feet from the nearest highway pavement or other traveled surface. In no case, shall the stand occupy any part of the right-of-way.

B. Mobile homes and trailer homes.

Trailer coaches or mobile homes may be permitted as accessory dwellings to a permanent dwelling under the following circumstances:

1) The parcel of land shall be used for agricultural production, and shall not be less than eighty (80) acres in area.

2) The occupants of a said trailer shall qualify by being either:

   a) in direct family relationship to the principal dwelling, or

   b) a bona fide employee of the occupant of the principal dwelling, and engaged in an agricultural occupation on the premises.

3) The permit for such use shall terminate at such time as any of the above conditions shall cease to be met. In any case, the permit must be renewed each year, on the anniversary of its initial issue.

4) All mobile homes and travel trailers shall be located within the appropriate setback lines, and, in no case, shall be located in the front yard of the principal dwelling.

C. The rearing and housing of horses, mules and similar domestic animals.

1) The rearing and housing of horses, mules, and similar domestic animals for noncommercial purposes shall be subject to the Michigan Right to Farm Act, Public Act No. 93 of 1981 (MCL 286.471).

D. Rural Kennels subject to Section 14.44.

(Ord. No. 1 eff. Jan. 8, 1983; Ord. No. 46 eff. Nov. 4, 1993; Ord. No. 97 eff. Feb. 23, 2000; further amend Ord. No. 125 eff. March 25, 2001, amend Ord. No. 160 eff. June 20, 2003, amend Ord. No. 254 eff. Feb. 2013; Amend. by Ord. 271 eff. Oct. 3, 2017)

SECTION 4.06 DIMENSIONAL REGULATIONS.

A. Lot area. A non-farm single family residential parcel or lot shall have a minimum of one (1) acre in area, provided the parcel or lot contains a developable area or areas adequate to locate and space all buildings and structures proposed and required to be constructed on it.

B. Lot width. Minimum of 150 feet at the building setback line.

C. Lot coverage. Maximum of twenty (20) percent.

D. First floor area. The minimum first floor area of a one (1) story dwelling is 900 square feet, and for a two (2) story dwelling is 600 square feet and minimum total of 900 square feet for both stories.

E. Yard and setback requirements.

1) Front Yard. Minimum of fifty (50) feet from the road right-of-way line or as specified in Section 26.05, whichever is greater.

2) Side Yard. Minimum of twenty (20) feet for each side yard.

3) Rear Yard. Minimum of fifty (50) feet.

F. Height limitations. Maximum of 2.5 stories or forty-five (45) feet, except on all non-agricultural parcels, accessory buildings and structures shall not exceed twenty-five (25) feet.

(Ord. No. 1 eff. Jan. 8, 1983; amend. Ord. No. 8 eff. Dec. 7, 1983; further amend. Ord. No. 119 eff. Dec. 27, 2000, further amend. Ord. No. 217 eff. May 1, 2009)

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ARTICLE V
RT RESEARCH AND TECHNLOGY DISTRICT

Section 5.01 PURPOSE

The purpose of the RT Research and Technology Zoning District is to provide an area surrounding the Livingston County Airport property and other areas of the Township for the planning and development of land uses that directly relate to airport service, research and technology, and research office-type uses. The RT District is designed to recognize the growing convergence of office, industrial and research in terms of function, location, appearance and activities. However, this district is intended to permit only those uses which emit a minimum of noise, vibration, smoke, dust and dirt, gases or offensive odors, glare and radiation. Storage of materials, supplies, products and equipment shall be within a structure. Further, the RT District is so structured as to permit, along with any specific uses, the light assembly and/or treatment of finished or semi-finished products from previously prepared material. The processing of raw material for shipment in built form, to be used in an industrial operation at another location, is not permitted.

Section 5.02 PERMITTED PRINCIPAL USES

The following principal uses are permitted as long as they are conducted completely within a building or other type of enclosed structure or in a completely enclosed structure:

A. Airport related office service uses for passenger travel, air freight handling, public relations,

pilot training, aircraft sales, renting, leasing and financing, airport related banking, emergency services, airport research and development services, airport inspection and security services, airport contractor services, intermodal transportation services, literature, education and library service facilities, professional and scientific office and other similar office service uses and activities.

B. Airport related stores for the sales and service of airplanes and airplane parts; airplane equipment, clothing, medical supplies and electronic equipment; stores which sell food, hardware and pharmaceuticals; car and truck rental agencies, freight warehousing, handling and shipment facilities and other similar airport related store land uses and activities.

C. Industrial research, pilot manufacturing, experimental product development, and testing laboratories.

D. Scientific research, computer applications, data processing, computer programming, development and testing laboratories.

E. Business research, development and testing laboratories.

F. Photography, art and graphic art studios.

G. Educational and training facilities.

H. Administrative, professional office, medical, and healthcare facilities.

I. Public, organizational or institutional offices.

Section 5.03 PERMITTED PRINCIPAL SPECIAL USES WITH CONDITIONS

The following special uses of land, buildings and structures are permitted subject to the provisions of Article XVI, "Special Land Uses";

A. Tool and die, machine shops, light assembly, injection molding.

B. Mini-warehouse facilities.

C. Warehousing, wholesaling, refrigerated, and general storage.

D. Restaurants.

Section 5.04 PERMITTED ACCESSORY USES

Normal accessory uses to all permitted uses in Sections 5.02 and 5.03 above.

Section 5.05 PERMITTED CONDITIONAL ACCESSORY USES

The following accessory uses are permitted when they are an integral part of the permitted principal use or

permitted principal special use and are located within the building or structure housing the permitted use or permitted principal special use or are included as a separate accessory use structure on the site plan upon the site upon which the permitted principal use or permitted principal use or permitted special use are located:

A. Cafeterias

B. Medical and health care facilities

C. Office facilities

D. Warehouses and storage facilities

E. Recreation and physical fitness facilities

F. Banking facilities

G. Education, library and training facilities

H. Research, experimentation and development facilities

I. Truck, other vehicular and equipment maintenance and repair service

J. Storage Facilities

K. Sales display facilities and areas

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Section 5.06 REQUIRED CONDITIONS FOR ALL AC DISTRICT USES

A. Access Roads: All vehicular access shall be from a Livingston County Road Commission or Michigan Department of Transportation approved driveway intersection with a road or highway, which may include the use of acceleration and/or deceleration lanes, tapered lanes, or a frontage access road located parallel and adjacent to a major road or highway arterial in conformance with Section 26.04.

B. Other Provisions and Requirements: Refer to Section 3.10 of this Ordinance.

C. Disposal of Toxic Wastes: All uses shall dispose of toxic wastes in accordance with all State and Federal laws, rules and regulations governing their disposal.

Section 5.07 DIMENSIONAL REQUIREMENTS, EXCEPT AS OTHERWISE SPECIFIED IN THIS ORDINANCE

A. Lot Area: Minimum of two (2) acres, except where a lot is served by public sewer and water supply systems, in which case the lot or parcel may have a minimum of 20,000 square feet in area.

B. Lot Width: Minimum of 200 feet at the required minimum building setback line when on-site well water supply and septic tank and tile field wastewater disposal systems are used or a minimum of 120 feet

at the required minimum building setback line when public sewer and water systems are available and connections made to the lot or parcel.

C. Lot Coverage: Maximum of 75%.

D. Yard and Setback Requirements:

1) Front yard: Minimum of thirty-five (35) feet from the road right-of-way line or as specified in Section 26.05 of this Ordinance, whichever is greater.

2) Side Yards: Minimum of ten (10) feet, except a setback equal to the height of the building shall be required from all side lot lines.

3) Rear Yard: Minimum of fifty (50) feet.

E. Height Limitations: Maximum of seventy (70) feet unless reduced by the maximum permitted by the Livingston County Airport Zoning Ordinance.

(Ord. #225 eff. May 1, 2009—Deleted) (Ord. eff. June 2, 2014)

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ARTICLE VI
SFR SINGLE FAMILY RESIDENTIAL DISTRICT

Section 6.01 PURPOSE.

The purpose of this district is to provide for single family housing neighborhoods free from other uses except those which are (1) normally accessory and (2) compatibly supportive and convenient to the residents living within such a district. The size of lots and parcels in this district should be planned to be of such an area and width and density so that on-site water supply and wastewater disposal systems are not to be permitted and development can only be allowed if and when public water supply and wastewater sanitary sewer systems are available as a direct abutting service to each lot or parcel planned to be used for housing or other permitted use in the district. The language of the PURPOSE shall not preclude development of existing lots and parcels where sewer and or water are not available provided they or any future subdivision of them can meet the onsite water supply and wastewater disposal permit requirements of the Livingston County Public Health Department and other requirements of the SFR Zoning District and this Zoning Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983, Amend. by Ord. No. 223 eff. May 1, 2009, Amend. by Ord.247 eff. July 1, 2011)

Section 6.02 PERMITTED PRINCIPAL USES.

A. Single family conventional dwellings.

B. Single family conventional dwelling that meet the requirements of the Single Family Residential District. (Amend. By Ord. No. 223 eff. May 1, 2009)

C. State Licensed Day Care Facilities.

1) Child Family Day Care Homes (six (6) or fewer minor children).

2) Adult Family Day Care Homes (6) or fewer adults).

D. State Licensed Foster Care Facilities.

1) Adult Foster Care Family Home, excluding an adult foster care facility licensed by a state agency for the care and treatment of persons released from or assigned to adult correctional institutions (six (6) or fewer adults).

2) Child Foster Family Homes (four (4) or fewer minor children).

3) Child Foster Family Homes (five (5) or six (6) minor children).

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 97 eff. Feb. 23, 2000, by Ord. No. 107 eff. June 28, 2007; amend by Ord. No. 254 eff. Feb. 10, 2013)

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Section 6.03 PERMITTED PRINCIPAL SPECIAL USES WITH CONDITIONS.

The following special uses of land, buildings and structures are permitted subject to the provisions of Article XVI "Special Uses":

A. State Licensed Day Care Facilities.

1) Adult Group Day Care Homes (seven (7) to twelve (12) adults).

2) Child Group Day Care Homes (seven (7) to twelve (12) minor children).

B. The rearing and housing of horses, mules and similar domestic animals.

(Relocated to become 6.05C under Permitted Accessory Uses with Conditions)

Section 6.04 PERMITTED ACCESSORY USES.

A. Normal existing accessory uses to single family housing and existing agricultural uses.

B. Normal accessory uses to permitted and approved "Special Uses."

C. House Hold Pets.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. 271 eff. Oct. 3, 2017)

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Section 6.05 PERMITTED ACCESSORY USES WITH CONDITIONS.

A. Roadside stands for existing agricultural land uses in conformance with the provisions of Section 4.05A.

B. Private swimming pools for use as a part of single family dwellings in conformance with the provisions of Section 14.25.

C. The rearing and housing of horses, mules and similar domestic animals.

1) The rearing and housing of horses, mules or similar domestic animals, for noncommercial purposes shall be in accordance with the Michigan Right to Farm Act, Public Act 93 of 1981 (MCL 286.471

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 10 eff. May 3, 1984; further amend. by Ord. No. 12 eff. Sept. 5, 1986; further amend by Ord. No. 62 eff. Oct. 8, 1997; further amend by Ord. No. 125, eff. March 25, 2001, further amend. by Ord. No. 160 eff. June 20, 2003; further amend. by Ord. No. 254 eff. Feb. 10, 2013)

Section 6.06 DIMENSIONAL REQUIREMENTS EXCEPT AS OTHERWISE SPECIFIED IN THIS ORDINANCE.

A. Lot area. Minimum of 10,000 square feet with public sewer.

B. Lot area. A minimum of one (1) acre with on-site water supply and waste water disposal providing public sanitary sewer or public water supply systems are not available to the lot or parcel.

C. Lot width. Minimum of 120 feet for a one (1) acre or more parcel and a minimum of 70 feet for a 10,000 square feet to less than (1) acre parcel.

D. Lot coverage. Maximum of 30%.

E. Gross Floor Area. Minimum for:

1) One (1) story dwellings: 900 square feet.

2) Two (2) story dwellings: 600 square feet on the first floor and at least 900 square feet for both stories.

F. Yard and setback requirements.

1) Front yard. Minimum of thirty (30) feet from the road right-of-way line, or as specified in Section 26.05, whichever is greater.

2) Side yard. Minimum of ten (10) feet for each side yard, but a minimum total of twenty (20) feet for both side yards.

3) Rear yard. Minimum of forty (40) feet.

G. Height limitations. Maximum of two and one-half (2 1/2) stories or 35 feet, except that detached accessory structures shall not exceed twenty (20) feet.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 11 eff. Apr. 4, 1986; further amend. by Ord. No. 97 eff. Feb. 23, 2000, further amend. Ord. No. 119 eff. Dec. 27, 2000, further amended by Ord. No. 128 eff. Oct. 21, 2001 further amend. Ord. No.223 eff. May 1, 2009)

Appendix F

ARTICLE VII
MFR MULTIPLE FAMILY RESIDENTIAL DISTRICT

Section 7.01 PURPOSE

The purpose of this district is to provide a relatively small and inexpensive type of housing as well as a broader range of choice of housing types to the people who desire to live in Howell Township in condominium, owner or rental units and their normal accessory uses which are compatibly supportive or convenient to the residents living within such a district. The buildings containing the dwelling units may be in single or group building arrangements having group use facilities held in common to which all residents have equal access and share equally in the financing for operation and maintenance. These developments will only be allowed to develop if State Department of Health and locally approved on-site, common or public water supply system and wastewater disposal sanitary sewer system including wastewater treatment is available adjacent to or can be extended to a multiple family building site.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 7.02 PERMITTED PRINCIPAL USES.

Multiple family dwelling structures, including duplexes, triplexes, quadruplexes, garden apartments, townhouses, and other similar types of multi-family dwelling unit buildings.

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A. State Licensed Facilities.

1) Adult Foster Care Small Group Home.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. 254 eff. Feb. 10, 2013)

Section 7.03 PERMITTED PRINCIPAL SPECIAL USES WITH CONDITIONS.

The following special uses of land, buildings, and structures are permitted subject to the provisions of Article XVI, "Special Uses".

A. State Licensed Facilities.

1) Adult Foster Care Large Group Home (thirteen (13) to twenty (20) adults).

2) Adult Foster Care Congregate Facility (more than twenty (20) adults).

3) Child Care Centers.

4) Adult Day Care Centers.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 11 eff. Apr. 4, 1986; Ord. No. 62 eff. Oct. 8, 1997; amend. by Ord. 254 eff. Feb. 10, 2013)

Appendix F

Section 7.04 PERMITTED ACCESSORY USES.

A. Normal accessory uses to multiple family dwelling units.

B. Normal accessory uses to permitted and approved "Special Uses."

C. House Hold Pets.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. 271 eff. Oct. 3, 2017)

Section 7.05 PERMITTED ACCESSORY USES WITH CONDITIONS.

A. Private swimming pools as a part of the multiple family housing development for use in common by all residents who will finance the operation and maintenance of such facilities in conformance with the provisions of Section 14.18.

B. Common open space and recreation areas and facilities as a part of the multiple family housing development for use in common by all residents who will be required to finance the operation and maintenance of such facilities.

C. Drives and off-street parking areas in accordance with Section 7.07D.

D. Recreation, meeting and other group activity facilities located in buildings or as a part of a

structure developed as a part of the multiple family housing project for the common use and enjoyment by all residents who will be required to operate and maintain such facilities and financed through a nonprofit association representing the owners and renters.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 7.06 DIMENSIONAL REQUIREMENTS EXCEPT AS OTHERWISE SPECIFIED IN THIS ORDINANCE.

A. Lot area. The first multiple family dwelling unit in a residential structure shall occupy a lot or parcel comprising not less than one-half (1/2) acre, and meet the requirements of Section 7.07B. Each additional multiple family dwelling unit shall require the following additional lot or parcel area:

1) Efficiency	2,000 square feet
2) One bedroom	2,500 square feet
3) Two bedroom	3,500 square feet
4) Three bedroom	5,000 square feet
5) Four bedroom	6,500 square feet
6) Extra bedrooms over four	1,500 square feet

B. Lot width. Minimum of 200 feet.

C. Lot coverage. Maximum of 40%.

D. Number of dwelling units per gross acre. Maximum of Eight (8) dwelling units.

E. Yard and setback requirements.

1) Front yard. Minimum of thirty (30) feet plus one (1) foot for each foot of height of structure in excess of thirty (30) feet from the road right-of-way line, or as otherwise required in Section 26.05, whichever is greater.

2) Side yards. Minimum of thirty (30) feet for each side yard, and one (1) foot for each foot of height of structure in excess of thirty (30) feet from the side lot line.

3) Rear yard. Minimum of fifty (50) feet plus one (1) foot for each foot of height of structure in excess of fifty (50) feet from a property line.

F. Height limitations. Maximum of five (5) stories and sixty (60) feet, except that detached accessory structures shall not exceed twenty (20) feet.

G. Spacing between buildings. Shall be at least the height of the highest of the abutting buildings.

H. Gross floor area requirements. Minimum standards for gross floor area for each type of a family dwelling unit shall be as follows:

1) Efficiency	450 square feet
2) One bedroom	600 square feet
3) Two bedroom	750 square feet
4) Three bedroom	900 square feet
5) Each additional bedroom	150 square feet

I. Number of multiple family dwelling units per building. Multiple Family Residential structures shall contain no more than twenty-four (24) units provided public water and appropriate fire protection equipment are available, otherwise the structures shall contain no more than twelve (12) units.

(Ord. No. 1 eff. Jan. 8, 1983; amend. Ord. No. 97 eff. Feb. 23, 2000; further amend. Ord. No. 98 eff. Feb. 23, 2000; Ord. No. 100 eff. Feb. 23, 2000; further amend. Ord. No. 119, eff. Dec. 27, 2000; Ord. No. 200, eff. 12/11/06)

Section 7.07 LOCATIONAL AND OTHER REQUIREMENTS.

A. Available common or public water supply system and wastewater disposal sanitary sewer and sewage treatment system to which all dwelling units in the multiple family dwelling unit project shall be connected on a permanent basis.

B. Open spaces comprising at least 10% of the total gross area of the project with the open spaces of

at least three (3) acres in size and planned and built as a common facility to be used, operated and maintained by the developer or a nonprofit association representing the property owners and financed by means of a monthly or annual assessment.

C. Access shall be provided from a major arterial road when the frontage of the side road is directly connected to the major arterial road. Drives shall be located at least twenty (20) feet from any building.

D. Off-street parking shall be provided in accordance with Article XVIII, "Off-Street Parking" with parking spaces located within 200 feet of an entrance to the building for which the parking is designated. Each dwelling unit shall be provided with at least one (1) covered parking space which shall be of the same type of construction as the principal building.

E. Landscaping shall meet the requirements of Section 28.03B and other appropriate Sections of Article XXVIII, Landscaping Requirements and Section 14.26, Fences.

F. Enclosed storage space for garden equipment, supplies, tools, toys, bicycles and other household goods and supplies shall be provided in conjunction with covered parking spaces and shall be of the same type of construction as the principal building.

(Ord. No. 1 eff. Jan. 8, 1983; amend. Ord. No 74 eff. Sept. 30, 1998; further amend. Ord. No.97 eff. Further amend. Feb. 23, 2000)

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ARTICLE VIII
OS OFFICE SERVICE DISTRICT

Section 8.01 PURPOSE.

This District is intended to provide the necessary professional, technical and personal office related services to the residents of the Township and the surrounding area. The areas are generally to function as transition uses between residential and all other types of land uses such as industrial and commercial and transportation facilities.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 8.02 PERMITTED PRINCIPAL USES.

The following uses are permitted as long as they are conducted completely within a building:

A. Offices for professionally, commercially or technically skilled persons who provide a personal or commercial service.

B. Veterinary clinics and hospitals.

C. General office buildings in which no manufacturing, trading or selling of goods is conducted on site, except those incidental to the principal use.

D. Financial institutions.

E. Photographic, art and graphic art studios.

F. Educational and training facilities.

G. Public, organizational or institutional office.

H. Personal service establishments, such as barber shops, beauty shops and health salons.

I. Churches.

J. Other uses similar to the above.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 11 eff. Apr. 4, 1986; Ord. No. 62 eff. Oct. 8, 1997; Ord. No. 97 eff. Feb. 23, 2000)

Section 8.03 PERMITTED PRINCIPAL SPECIAL USES WITH CONDITIONS.

The following special uses of land, buildings and structures are permitted subject to the provisions of Article XVI, "Special Uses":

A. Funeral Homes when adequate assembly area is provided off street for vehicles to be used in funeral procession provided further that such assembly area shall be provided in addition to any required off-street parking area. A caretaker's residence may be provided within the main building of funeral homes.

(Ord. No. 1 eff. Jan. 8, 1983; Ord. No. 62 eff. Oct. 8, 1997; Ord. No. 102 eff. Mar. 26, 2000)

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Section 8.04 PERMITTED ACCESSORY USES.

A. Normal accessory uses to "Permitted Principal Uses."

B. Normal accessory uses to approved "Permitted Principal Special Uses."

C. Incidental commercial services that serve only the occupants of the offices and have access only from inside the building in which the occupants are located.

D. See Section 14.34.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 8.05 PERMITTED ACCESSORY USES WITH CONDITIONS.

Private swimming pools for use as a part of an Office District used in conformance with the provisions of Section 14.18.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 8.06 DIMENSIONAL REQUIREMENTS EXCEPT AS OTHERWISE SPECIFIED IN THIS ORDINANCE.

A. Lot area. Minimally adequate to accommodate all of the specific requirements for lot area coverage,

off-street parking, yards and setbacks, from roads and highways and other requirements specified for particular uses in this Ordinance.

B. Lot width. Minimally adequate to accommodate the building width, yards and off-street parking.

C. Lot coverage. Maximum of 50% for all principal and accessory buildings and structures.

D. Yard and setback requirements:

1) Front yard. Minimum of thirty (30) feet from the road or highway right-of-way line, or as specified in Section 26.05, whichever is greater.

2) Side yards. Minimum of ten (10) feet for one (1) side yard, but a minimum total of twenty-five (25) feet for both side yards.

3) Rear yard. Minimum of fifty (50) feet.

E. Height limitations. Maximum of five (5) stories and sixty (60) feet, except that a detached accessory structure shall not exceed twenty (20) feet.

F. Locational and other requirements.

1) The site shall have at least one (1) property line abutting a major road or highway arterial.

2) All vehicular access shall be from a Livingston County Road Commission or Michigan Department of Transportation approved driveway intersection with a road or highway, which may include the use of acceleration and/or deceleration lanes, tapered lanes, or a frontage access road located parallel and adjacent to a major road or highway arterial in conformance with Section 26.04.

3) No interior display shall be visible from the interior to the exterior for commercial purposes.

4) The outdoor storage of goods or materials is not permitted.

(Ord. No. 1 eff. Jan. 8, 1983; amend. Ord. No. 75 eff. Sept. 30, 1998; further amend. Ord. No. 97 eff. Feb. 23, 2000; Ord. No. 98 eff. Feb. 23, 2000; further amend. Ord. No. 119 eff. Dec. 27, 2000)

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ARTICLE IX
NSC NEIGHBORHOOD
SERVICE COMMERCIAL DISTRICT

Section 9.01 PURPOSE.

This District has the intent of providing areas wherein retail trade and service outlets can be located in order to satisfy the day to day needs of the residents in the immediate neighborhood.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 9.02 PERMITTED PRINCIPAL USES.

The following uses are permitted as long as the use is conducted completely within an enclosed building:

A. Retail establishments; including those selling groceries, meats, bakery products, fruits, vegetables, delicatessen foods, drugs and sundries, hardware goods, gifts, dry goods, notions, clothing, wearing apparel, shoes and boots.

B. Restaurants; except that food is not permitted to be consumed in parked vehicles on premises.

C. Service establishments; including medical, dental, veterinary, financial, hair cutting and hair dressing, millinery, dressmaking, tailoring, shoe repairing, fine arts studios, laundry and dry cleaning and household and personal equipment repair shops.

D. Vehicle service and repair facilities for automobile and light trucks, however specifically excluding body shops.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 11 eff. Apr. 4, 1986)

Section 9.03 PERMITTED PRINCIPAL SPECIAL USES WITH CONDITIONS.

A. Automotive gasoline and service stations in accordance with the provisions of Article XVI, "Special Uses" for this use. See Section 16.11.

B. Drive-in retail and service establishments in accordance with the provisions of Article XVI, "Special Uses" for these uses.

C. Neighborhood Shopping Centers in accordance with the provisions of Article XVI, "Special Uses" for a collective grouping of two (2) or more of the uses permitted in this District.

D. (Deleted by Ordinance #107).

E. Not for profit shelters for temporary housing of small animal domestic pets in accordance with the provisions of Article XVI, "Special Uses", and also in compliance with the terms and conditions of Section 16.16 of said Article XVI.

F. Commercial Kennels subject to Section 14.42.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 13 eff. Mar. 6, 1987; further amend. by Ord. No. 19 eff. Aug. 3, 1988; Ord. No. 31 eff. Oct. 3, 1991; Ord. No. 62 eff. Oct. 8, 1997, further amend. by Ord. No. 107, eff. May 24, 2000; further amend. by Ord. 271 eff. Oct. 3, 2017)

Section 9.04 PERMITTED ACCESSORY USES.

A. Normal accessory uses to all "Permitted Principal Uses."

B. Normal accessory uses to all "Permitted Principal Special Uses."

C. See Section 14.34.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 9.05 DIMENSIONAL REQUIREMENTS, EXCEPT AS OTHERWISE SPECIFIED IN THIS ORDINANCE.

A. Lot area. Minimum of one (1) acre, except where a lot or parcel is served by a public or common water supply system and a public wastewater sewer and treatment system, in which use of the lot or parcel may have a minimum area of 10,000 square feet. Neighborhood Shopping Centers shall meet the requirements of Article XVI, "Special Uses" for a collective grouping of two (2) or more of the uses permitted in this District.

B. Lot width. Minimum of 150 feet at building setback line when on-site well water supply and septic tank wastewater disposal systems are used or a minimum of 80 feet at building setback line when public or common water supply and wastewater sewerage and treatment systems are directly accessible to the lot or parcel.

C. Lot coverage. Maximum of 60%.

D. Yard and setback requirements.

1) Front yard. Minimum of thirty-five (35) feet from the road or highway right-of-way line, or as specified Section 26.05, whichever is greater.

2) Side yards. Minimum of ten (10) feet for one (1) side yard, but a minimum total of twenty-five (25) feet for both side yards.

3) Rear yard. Minimum of fifty (50) feet.

E. Height limitations. Maximum of two (2) stories or thirty (30) feet, except that a detached accessory structure shall not exceed 20 feet.

F. Locational and other requirements.

1) The site shall have at least one (1) property line abutting a major road or highway arterial.

2) All vehicular access shall be from a Livingston County Road Commission or Michigan Department of Transportation approved driveway intersection with a road or highway, which may include the use of acceleration and/or deceleration lanes, tapered lanes, or a frontage access road located parallel and adjacent to a major road or highway arterial in conformance with Section 26.04.

3) The storage of goods or materials is not permitted outside of the principal structure.

(Ord. No. 1 eff. Jan. 8, 1983; amend. Ord. No. 75 eff. Sept. 30, 1998; further amend. Ord. No. 97 eff. Feb. 23, 2000; Ord. No. 98 eff. Feb. 23, 2000; further amend. Ord. No. 119 eff. Dec. 27, 2000)

Appendix F

ARTICLE X
RSC REGIONAL SERVICE COMMERCIAL DISTRICT

Section 10.01 PURPOSE

This District is to recognize the unique regional location existing in Howell Township around the combination of I-96, M-59 and Grand River Road and therefore plan the surrounding adjacent area in part for regionally accessible commercial developments.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 10.02 PERMITTED PRINCIPAL USES.

The following uses are permitted as long as the use is conducted completely within an enclosed principal building and enclosed accessory structures and areas having controlled entrances and exits with the exits having operating cashier stations where the payment of goods or services purchased can be paid by customers:

A. Retail establishments, including supermarkets, department stores, home appliance stores, hardware stores, home improvement stores and other similar types of retail outlets that sell food items, hardware goods, drugs and sundries, home improvement items, gifts, dry goods, clothing and dressmaking equipment and supplies, notions, home appliances, wearing apparel, shoes and boots, automotive equipment, parts and supplies, photographic equipment and

supplies, electrical equipment and supplies, office equipment and supplies, home interior decorating equipment and supplies, art equipment and supplies, furniture, antiques, showrooms with interior and/or exterior exposure, home garden equipment and supplies, candy and confections, alcoholic and non-alcoholic beverages, toys and games, electronic equipment and supplies, musical instruments and supplies, outdoor and indoor recreation equipment and supplies, pets and pet equipment and supplies, building and construction equipment and supplies, medical and dental equipment and supplies, graphic arts equipment and supplies, computer and data processing equipment and supplies, leasing, rental, and sale of new and used motorized vehicles including but not limited to cars, trucks, recreational vehicles, and motorcycles, and other uses of a similar character that are normally an integral part of a regional shopping center.

B. Service establishments, either as completely separate units or as an integral part of any of the principal uses permitted in A. above, and additionally including service outlets for insurance, real estate, medical and dental clinics, veterinary clinics and hospitals, nursing and convalescent homes, theatres, assembly and concert halls, indoor commercial recreation, clubs, fraternal organizations and lodge halls, restaurants, private and business schools, churches, public and private office buildings, motels and hotels, and uses of a similar character that are normally an integral part of a regional shopping center.

C. Mini Warehouses.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 11 eff. Apr. 4, 1986, further amend. by Ord. No. 107 eff. May 24, 2000; Ord. No 200 eff. December 11, 2006)

Section 10.03 PERMITTED PRINCIPAL SPECIAL USES WITH CONDITIONS.

A. Automotive gasoline and service stations in accordance with the provisions of Article XVI, "Special Uses" for this use. See Section 16 11

B. Drive-in retail and service establishments in accordance with the provisions of Article XVI, "Special Uses" for this use.

C. Regional shopping centers in accordance with the provisions of Article XVI, "Special Uses" for a collective grouping of two (2) or more of the uses permitted in this district.

D. Commercial Kennels subject to Section 14.42.

(Ord. No. 1 eff. Jan. 8, 1983; Ord. No. 61 eff. Oct. 8, 1997; Ord. No. 62 eff. Oct. 8, 1997, further amend. by Ord. No. 107 eff. May 24, 2000; further amend. by Ord. 271 eff. Oct. 3, 2017)

Section 10.04 PERMITTED ACCESSORY USES.

A. Normal accessory uses to all "Permitted Principal Uses."

B. Normal accessory uses to all "Permitted Principal Special Uses." See Section 14.34.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 10.05 DIMENSIONAL REQUIREMENTS, EXCEPT AS OTHERWISE SPECIFIED IN THIS ORDINANCE.

A. Lot area. Minimum of two (2) acres, except where a lot or parcel is served by a public or common water supply system and a public wastewater sewer and treatment system, in which use the lot or parcel may have a minimum area of 40,000 square feet. Regional Shopping Centers shall meet the requirements of Article XVI, "Special Uses" for a collective grouping of two (2) or more of the uses permitted in this District.

B. Lot width. Minimum of 200 feet at building setback line when on-site well water supply and septic tank wastewater disposal systems are used or a minimum of 120 feet at building setback line when public or approved on-site common water supply and wastewater sewer and treatment systems are directly accessible to the lot or parcel.

C. Lot coverage. Maximum of 75%.

D. Yard and setback requirements.

1) Front yard. Minimum of thirty-five (35) feet from the road or highway right-of-way line,

or as specified in Section 26.05, whichever is greater.

2) Side yards. Minimum of ten (10) feet for one (1) side yard, but a minimum total of twenty-five (25) feet for both side yards.

3) Rear yard. Minimum of fifty (50) feet.

E. Height limitations. Maximum of seventy (70) feet.

F. Locational and other requirements.

1) The site shall have at least one (1) property line abutting a major road or highway arterial.

2) All vehicular access shall be from a Livingston County Road Commission or Michigan Department of Transportation approved driveway intersection with a road or highway, which may include the use of acceleration and/or deceleration lanes, tapered lanes, or a frontage access road located parallel and adjacent to a major road or highway arterial in conformance with Section 26.04.

3) The storage of goods or materials is not permitted outside of the principal structure.

(Ord. No. 1 eff. Jan. 8, 1983; amend. Ord. No. 75 eff. Sept. 30, 1998; further amend. Ord. No. 97 eff. Feb. 23, 2000; Ord. No. 98 eff. Feb. 23, 2000; further amend Ord. No. 119 eff. Dec. 27, 2000; Ord. No. 200 eff. Dec. 11, 2006)

Appendix F

ARTICLE XI
HSC HIGHWAY SERVICE COMMERCIAL DISTRICT

Section 11.01 PURPOSE

The highway service commercial district is designed to provide for servicing the needs of highway traffic at the interchange areas of public roads and highway facilities. The avoidance of undue congestion on public roads, the promotion of smooth traffic flow at the interchange area and on the highway, and the protection of adjacent properties in other districts from the adverse influences of traffic are prime considerations in the location of this district.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 11.02 PERMITTED PRINCIPAL USES.

The following uses are permitted as long as they are conducted completely within a building except as otherwise provided for specific uses:

A. Vehicle service and repair stations for automobiles, trucks, busses and trailers. See Section 14.34.

B. Emergency facilities related to highway travelers.

C. Parking garages and parking areas.

D. Parking areas, if enclosed by a six (6) foot high fence, wall or berm. All berms shall be completely planted with grass, ground covers, shrubs, vines and trees.

E. Bus passenger stations.

F. Retail and service establishments providing foods and services which are directly needed by highway travelers.

G. Transient lodging facilities, including motels and hotels.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 11.03 PERMITTED PRINCIPAL SPECIAL USES WITH CONDITIONS.

The following uses are permitted as long as they are conducted completely within a building except as otherwise provided for specific uses, and located in the District so as not to interfere with or interrupt the pattern of development of the "Permitted Principal Uses" in Section 11.02 and shall further meet the requirements of Article XVI, "Special Uses":

A. Recreation and sports buildings.

B. Recreation and sports areas, if areas are completely enclosed with fences, walls or berms with controlled entrances and exits.

C. Commercial Kennels subject to Section 14.42.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. 271 eff. Oct. 3, 2017)

Appendix F

Section 11.04 PERMITTED ACCESSORY USES.

A. Normal accessory uses to all "Permitted Principal Uses."

B. Normal accessory uses to all "Permitted Principal Special Uses."

(Ord. No. 1 eff. Jan. 8, 1983)

C. See Section 14.34.

Section 11.05 PERMITTED ACCESSORY USES WITH CONDITIONS.

Swimming pools for use as a part of a Highway Service Commercial District. Use in conformance with the provisions of Section 14.18.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 11.06 REQUIRED CONDITIONS OF ALL DISTRICT USES.

All principal and accessory uses in this District shall be required to meet the following conditions, except as otherwise specified for specific uses:

A. Barriers. Replaced by Article XXVIII.

B. Access ways. Each separate use, grouping of buildings or groupings of uses as a part of a single planned development shall not have more than two (2) access ways from a public road. Such access way

shall not be located closer than 300 feet to the point of intersection of an interstate highway entrance or exit ramp baseline and the public road centerline. In cases where the ramp baseline and the public road centerline do not intersect, no access way shall be located closer than 300 feet from the point of tangency of the interstate highway ramp baseline and the public road centerline. In those instances where properties fronting on a public road are of such width or are in multiple ownership and access ways to property cannot be provided in accord with the minimum 300 feet distance from the intersection of the public road an entrance or exit ramps of an interstate highway a frontage access road shall be provided to service such properties. The access way to a frontage access road shall not be located closer than 300 feet from the point of intersection or of tangency of the interstate highway ramp baseline and the public road pavement.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 74 eff. Sept. 30, 1998)

Section 11.07 DIMENSIONAL REQUIREMENTS, EXCEPT AS OTHERWISE SPECIFIED IN THIS ORDINANCE.

A. Lot area. Minimum of two (2) acres, except where a lot or parcel is served by a public or common water supply system and a public wastewater sewerage and treatment system, in which use the lot or parcel may have a minimum area of 40,000 square feet. Highway

Service Uses shall meet the requirements of Article XVI, Special Uses for a collective grouping of two (2) or more of the uses permitted in this district.

B. Lot width. Minimum of 200 feet at building setback line when on-site well water supply and septic tank wastewater disposal systems are used or a minimum of 120 feet at building setback line when public or common water supply and wastewater sewerage and treatment systems are directly accessible to the lot or parcel.

C. Lot coverage. Maximum of 75%.

D. Yard and setback requirements.

1) Front yard. Minimum of thirty-five (35) feet from the road or highway right-of-way line, or as specified in Section 26.05, whichever is greater.

2) Side yards. Minimum of ten (10) feet for one (1) side yard, but a minimum total of twenty-five (25) feet for both side yards.

3) Rear yard. Minimum of fifty (50) feet.

E. Height limitations. Maximum of seventy (70) feet.

F. Locational and other requirements.

1) The site shall have at least one (1) property line abutting a major road or highway arterial.

2) All vehicular access shall be from a Livingston County Road Commission or Michigan Department of Transportation approved driveway intersection with a road or highway, which may include the use of acceleration and/or deceleration lanes, tapered lanes, or a frontage access road located parallel and adjacent to a major road or highway arterial in conformance with Section 26.04.

3) The storage of goods or materials is not permitted outside of the principal structure or contained within an area on site screened from the public view and adjacent properties by a screen fence, wall or other means not to exceed twelve (12) feet in height.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 75 eff. Sept. 30, 1998; further amend. by Ord. No. 97 eff. Feb. 23, 2000; Ord. No. 98 eff. Feb. 23, 2000, further amend. Ord. No. 119 eff. Dec. 27, 2000)

Appendix F

ARTICLE XII
HC HEAVY COMMERCIAL DISTRICT

Section 12.01 PURPOSE

The intent of the Heavy Commercial District is to provide an area appropriate by location and design for a meaningful and realistic commercial utilization of Grand River road frontage that caters to both the business community and the public at large for those heavy commercial uses that can coexist and be compatible with the neighboring uses within the District.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 8 eff. Dec. 7, 1983; further amend. by Ord. No. 11 eff. Apr. 4, 1986)

Section 12.02 PERMITTED PRINCIPAL USES

The following uses are permitted as long as they are conducted completely within a building, structure or an area enclosed and screened from external visibility beyond the lot lines of the parcel upon which the use is located, except as otherwise provided in this Ordinance.

A. Facilities necessary to the operation of all existing methods of transportation, including those for highway, rail and air, including truck terminals, railroad sidings and airplane parking ramps, servicing, repair and storage.

B. Warehousing and related bulk handling facilities, equipment and support services.

C. Bulk handling of commercial and industrial services and related facilities, equipment and support services.

D. Contractor buildings, structures and equipment and materials storage yards for building and other types of construction.

E. Building material supply establishments.

F. Construction and farm equipment sales and service establishments.

G. Leasing, rental, and sale of new and used motorized vehicles including but not limited to cars, trucks, recreational vehicles, and motorcycles.

H. Gasoline Service Stations, provided they additionally meet the requirements of Section 16.11.

I. Gasoline Service Stations combined with restaurants, convenience stores and other traveler or commuter related uses provided they are located in the same building or a combination of buildings having common walls and the same front building façades.

J. Mini Warehouses.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 11 eff. Apr. 4, 1986; further amend. by Ord. No. 76 eff. Sept. 30, 1998, further amend. by Ord. No. 107, eff. May 24, 2000; further amend. By Ord No152 eff. Mar. 23, 2003)

Appendix F

Section 12.03 PERMITTED PRINCIPAL SPECIAL USES WITH CONDITIONS.

The following uses are permitted as special uses in accordance with Article XVI, "Special Uses":

A. (Deleted in its entirety).

B. Junk yards which receive, temporarily store, disassemble and reclaim used or damaged goods for the purpose of a resale as used or rebuilt goods or scrap materials.

C. The following uses are permitted as long as they are conducted completely within a building, structure or an area enclosed and screened from the external visibility beyond the lot lines of the parcel upon which the use is located and subject to Article XVI, "Special Uses":

1) Electrical machinery, equipment and supplies, electronic components and accessories.

2) Professional, scientific and controlling instruments, photography and optical goods.

3) Fabricating metal products, except heavy machinery and transportation equipment.

4) Contract plastic material processing, molding and extrusion.

D. Any of the uses listed in Section 12.05 A-K provided they are developed and operated primarily to serve the principal uses permitted by right as listed in Section 12.02 and/or permitted as principal special uses as listed in this Section 12.03.

E. Commercial Kennels subject to Section 14.42.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 8 eff. Dec. 7, 1983; further amend. by Ord. No. 11 eff. Apr. 4, 1986; Ord. No. 61 eff. Oct. 8, 1997; Ord. No. 62 eff. Oct. 8, 1997, further amend. by Ord. 107 eff. May 24, 2000, further amended by Ord. 110 eff. July 23, 2000, further amended by Ord. 113 eff. August 30, 2000; further amend. by Ord. 271 eff. Oct. 3, 2017)

Section 12.04 PERMITTED ACCESSORY USES.

A. Normal accessory uses to all "Permitted Principal Uses."

B. Normal accessory uses to all "Permitted Principal Special Uses."

(Ord. No. 1 eff. Jan. 8, 1983)

Section 12.05 PERMITTED ACCESSORY USES WITH CONDITIONS.

The following accessory uses are permitted when they are an integral part of the principal use and located within a building or structure housing the principal use or are included as a part of the site development upon which the principal use is located:

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A. Restaurants

B. Medical and health care facilities

C. Office facilities

D. Warehouse and storage facilities

E. Recreation and physical fitness facilities

F. Work clothing sales and service facilities

G. Banking facilities

H. Education, library and training facilities

I. Research and experimentation facilities

J. Truck, other vehicular and equipment service maintenance, repair and storage facilities

K. Sales display facilities and areas.

L. See Section 14.34

(Ord. No. 113 eff. August 30, 2000)

Section 12.06 REQUIRED CONDITIONS FOR ALL DISTRICT USES.

A. Access roads. All uses shall only have vehicular access via Burkhart Road, Grand River Road M-59 State Highway (Highland Ave.) and Tooley Road.

B. Barriers. Replaced by Article XXVIII—Landscaping Requirements.

C. Toxic waste disposal. All toxic wastes shall be disposed of in accordance with all state laws, rules and regulations governing their disposal.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 74 eff. Sept. 30, 1998, further amended by Ord. No. 113 eff. August 30, 2000, further amended by Ord. No. 209 eff. June 28, 2007.

Section 12.07 DIMENSIONAL REQUIREMENTS, EXCEPT AS OTHERWISE SPECIFIED IN THIS ORDINANCE.

A. Lot area. Minimum of two (2) acres, except where a lot or parcel is served by a public or common water supply system and a public wastewater sewerage and treatment system, in which use the lot or parcel may have a minimum area of 40,000 square feet.

B. Lot width. Minimum of 200 feet at building setback line when on-site well water supply and septic tank wastewater disposal systems are used or a minimum of 120 feet at building setback line when public or common water supply and wastewater sewerage and treatment systems are directly accessible to the lot or parcel.

C. Lot coverage. Maximum of 75%.

D. Yard and setback requirements.

1) Front yard. Minimum of thirty-five (35) feet from the road or highway right-of-way line, or as specified in Section 26.05, whichever is greater.

2) Side yards. Minimum of ten (10) feet for one (1) side yard, but a minimum total of twenty-five (25) feet for both side yards.

3) Rear yard. Minimum of fifty (50) feet.

E. Height limitations. Maximum of seventy (70) feet.

F. Locational and other requirements.

1) The site shall have at least one (1) property line abutting a major road or highway arterial.

2) All vehicular access shall be from a Livingston County Road Commission or Michigan Department of Transportation approved driveway intersection with a road or highway, which may include the use of acceleration and/or deceleration lanes, tapered lanes, or a frontage access road located parallel and adjacent to a major road or highway arterial in conformance with Section 26.04.

3) The storage of goods or materials is not permitted outside of the principal building or

contained within an area on site screened from the public view and adjacent properties by a screen fence, wall or other means not to exceed twelve (12) feet in height.

(Ord. No. 1 eff. Jan. 8, 1983; amend. Ord. No. 75 eff. Sept. 30, 1998; further amend. Ord. No. 97 eff. Feb. 23, 2000; Ord. No. 98 eff. Feb. 23, 2000, further amend. Ord. 113 eff. August 30, 2000; further amend. Ord. No. 119 eff. Dec. 27, 2000)

Appendix F

ARTICLE XIII
I INDUSTRIAL DISTRICT

Section 13.01 PURPOSE

It is the intent of this District to provide for the development of sites for industrial plants in which the manufacture of goods in the form of finished or semi-finished products or the assembly, compounding, or treatment of product parts or ingredients in order to create finished or semi-finished goods for sale to other industrial manufacturers, or to bulk or wholesale commercial purchasers. It is the further intent of this District to permit only those industrial manufacturing uses having performance characteristics which emit a minimum of noise, vibration, smoke, dust, dirt, glare, toxic materials, offensive odors, gases, electromagnetic radiation or any other physically adverse effect to the extent that they are abnormally discernible beyond the lot lines of the parcel or site upon which the industrial manufacturing activity is located.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 13.02 PERMITTED PRINCIPAL USES.

The following uses are permitted as long as they are conducted completely within a building, structure or an area enclosed and screened from external visibility beyond the lot lines of the parcel upon which the use is located, except as otherwise provided in this Ordinance:

1) Agricultural products.

2) Food and kindred products, excluding slaughterhouses and abattoirs.

3) Furniture and fixtures.

4) Converted paper and paper board products.

5) Printing, publishing and allied industries.

6) Biological products, drugs, medical, and pharmaceutical preparation.

7) Glass products made of purchased glass.

8) Electrical machinery, equipment and supplies, electronic components and accessories.

9) Professional, scientific and controlling instruments, photographic and optical goods.

10) Jewelry, silverware, musical instruments and parts, toys, amusements, sporting and athletic goods, pens, pencils and other office and artists' materials, and signs and advertising displays.

11) Canvas products made of purchased canvas.

12) Fabricating metal products, except heavy machinery and transportation equipment.

13) Metalworking machinery and equipment; general industrial machinery and equipment.

14) Office, computing and accounting machines.

15) Jobbing and repair machine shops.

16) Monuments.

17) Any uses which are charged with the principal function of research, such as industrial, scientific and business research and development, testing laboratories and offices.

18) Any other manufacturing plants and uses having performance characteristics similar to those listed in this District in that they emit a minimum of noise, vibration, smoke, dust, dirt, toxic or offensive odors or gases, and glare.

19) Major repair of automobiles, trucks, and construction equipment.

20) Lumber yards, manufacturers of woods, plastic, fabric, synthetic specialties, wood patterns.

21) Warehouses and distribution centers.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 11 eff. Apr. 4, 1986; Ord. No. 39 eff. June 3, 1993)

Section 13.03 PERMITTED PRINCIPAL SPECIAL USES WITH CONDITIONS.

The following special uses are permitted in this District as long as they are conducted completely within a building,

structure or an area enclosed and screened from external visibility beyond the lot lines of the parcel upon which the use is located, except as otherwise provided in this Ordinance and in Article XVI, "Special Uses":

A. Junk yards which disassemble, convert or otherwise treat used or damaged goods for the purpose of reclaiming them for parts or scrap and removing them from the site either as sales items or for disposal in an approved dump site.

B. Asphalt and Portland cement concrete mixing plants.

C. Any permitted principal use or permitted principal special use which cannot meet the minimum performance requirements for noise, vibration, smoke, dust, dirt, glare, toxic materials, offensive odors, gases, electromagnetic radiation or other external adverse effect, but because of location, orientation or environmental conditions will not have an adverse effect upon lots, parcels, or sites either within the District or in adjacent Districts as determined under the provisions of Article XVI, "Special Uses" and Article XX, "Site Plan Review Procedures."

D. Any of the uses listed in Section 13.05, provided they are developed and operated primarily to serve the principal uses permitted by right as listed in Section 13.02 and/or permitted as

principal special uses as listed in this Section 13.03.

(Ord. No. 1 eff. Jan. 8, 1983, further amend. by Ord. No. 113 eff. August 30, 2000)

Section 13.04 PERMITTED ACCESSORY USES.

A. Normal accessory uses to all Permitted Principal Uses.

B. Normal accessory uses to all Permitted Principal Special Uses.

C. See Section 14.34.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 13.05 PERMITTED ACCESSORY USES WITH CONDITIONS.

The following uses are permitted when they are an integral part of the building or structure or are included as a part of the site development upon which the principal use is located:

1) Restaurants

2) Medical and health care facilities

3) Office facilities

4) Warehouse and storage facilities

5) Recreation and physical fitness facilities

6) Work-clothing sales and service facilities

7) Banking facilities

8) Education, library and training facilities

9) Research and experimentation facilities

10) Truck and equipment service, maintenance, repair and storage facilities

11) Sales display facilities and areas

12) See Section 14.34.

(Ord. No. 1 eff. Jan. 8, 1983; Ord. No. 62 eff. Oct. 8, 1997)

Section 13.06 REQUIRED CONDITIONS FOR ALL DISTRICT USES.

A. Access roads. All uses shall only have vehicular access via Burkhart Road, Grand River Road and M-59 State Highway (Highland Ave.).

B. Barriers. Replaced by Article XXVIII—Landscaping Requirements.

C. Sewage disposal. Permitted industrial uses shall be served by public sewer service or an approved

packaged sanitary treatment facility, approved by Livingston County Health Department. All packaged treatment plant facilities shall provide a minimum of secondary level treatment and shall meet all other applicable federal, state, and local standards and regulations. The effluent from same shall be disposed of in a manner and method which conforms to or exceeds the minimum standards of the State of Michigan Water Resources Commission and the Livingston County Health Department. The collection system used in conjunction with a packaged treatment facility shall be located and designed to readily connect into a future public sewer service system without the need for reconstruction of any main or lateral sewer links.

D. Toxic waste disposal. All toxic wastes shall be disposed of in accordance with all state laws, rules and regulations governing their disposal. Refer to Section 14.38 Hazardous Materials for additional regulations.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. Ord. No. 74 eff. Sept. 30, 1998)

Section 13.07 DIMENSIONAL REQUIREMENTS, EXCEPT AS OTHERWISE SPECIFIED IN THIS ORDINANCE.

A. Lot area. Minimum of two (2) acres, except where a lot or parcel is served by a public or common water supply system and a public wastewater sewerage and

treatment system, in which use the lot or parcel may have a minimum area of 40,000 square feet.

B. Lot width. Minimum of 200 feet at building setback line when on-site well water supply and septic tank wastewater disposal systems are used or a minimum of 120 feet at building setback line when public or common water supply and wastewater sewerage and treatment systems are directly accessible to the lot or parcel.

C. Lot coverage. Maximum of sixty (60%) percent except when the lot or parcel is served by a public waste water sewerage and treatment system in which case the lot coverage may be increased to a maximum of seventy-five (75%) percent.

D. Yard and setback requirements.

1) Front yard. Minimum of thirty-five (35) feet from the road or highway right-of-way line, or as specified in Section 26.05, whichever is greater.

2) Side yards. Minimum of ten (10) feet for one (1) side yard, but a minimum total of twenty-five (25) feet for both side yards.

3) Rear yard. Minimum of ten (10) feet, except when adjacent to an AR, SFR, or MFR zoning district, the rear yard setback shall be a minimum of fifty (50) feet.

E. Height limitations. Maximum of fifty (50) feet, except that a detached accessory structure shall not exceed the height of the principal structure.

F. Locational and other requirements.

1) The site shall have at least one (1) property line abutting a major road or highway arterial.

2) All vehicular access shall be from a Livingston County Road Commission or Michigan Department of Transportation approved driveway intersection with a road or highway, which may include the use of acceleration and/or deceleration lanes, tapered lanes, or a frontage access road located parallel and adjacent to a major road or highway arterial in conformance with Section 14.32.

3) The storage of goods or materials is not permitted outside of the principal building or contained within an area on site screened from the public view and adjacent properties by a screen fence, wall or other means not to exceed twelve (12) feet in height.

(Ord. No. 1 eff. Jan. 8, 1983; amend. Ord. No. 24 eff. Dec. 7, 1989; Ord. No. 39 eff. June 3, 1993; Ord. No. 75 eff. Sept. 30, 1998; Ord. No. 97 eff. Feb. 23, 2000; Ord. No. 98 eff. Feb. 23, 2000; further amend. Ord. No. 119 & Ord. No. 120 eff. Dec. 27, 2000)

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ARTICLE XIV
SUPPLEMENTAL REGULATIONS

Section 14.01 PURPOSE

The intent of this Article is to recognize that there are certain conditions concerning land uses that warrant specific exceptions, regulations or standards in addition to the requirements of the Zoning District in which they are permitted to be located.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 14.02 EXISTING USES OF LANDS, BUILDINGS AND STRUCTURES.

The provisions of this Ordinance shall not be retroactive. At the discretion of the owners, the lawful use of any dwelling, building or structure, and of any land or premises as existing and lawful at the time of enactment of this Ordinance may be continued even though such use does not conform with the provisions of this Ordinance, or in the case of an amendment, then at the time of the amendment.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 14.03 FARM BUILDINGS AND STRUCTURES OTHER THAN DWELLINGS ACCEPTED FROM REGULATIONS.

The provisions of this Ordinance shall not apply to farm buildings and structures customarily erected and used

in agricultural activities in the township; provided, that no building or structure other than an open fence shall be erected less than the setbacks required in the zoning districts in which they are located, except as otherwise required in this Zoning Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 97 eff. Feb. 23, 2000)

Section 14.04 SCOPE OF ORDINANCE.

Except as provided by Sections 14.02 and 14.03 all land and premises shall be used, and all buildings and structures shall be located, erected and used in conformity with the provisions of this Ordinance following the effective date thereof.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 14.05 AREA LIMITATIONS.

In conforming to land setbacks and yard requirements, no area shall be counted as accessory to more than one (1) dwelling or main building.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 97 eff. Feb. 23, 2000)

Section 14.06 LIMITATIONS OF STRUCTURES UPON LOTS OR PARCELS.

There shall be no more than one (1) principal building or structure located on a lot or parcel except in accordance

with Section 14.33 of this Zoning Ordinance. See Sections 3.07 D. and G.

(Ord. No. 1 eff. Jan. 8, 1983 amend. by Ord. eff. May 7, 1992)

Section 14.07 ACCESSORY BUILDING PROVISIONS.

Accessory buildings, except as otherwise permitted in this Ordinance, shall be subject to the following regulations:

A. Any structure having two-hundred (200) square feet or less of internal floor area, which is used for any purpose other than the housing of humans, but is primarily to be use for the housing of non human purpose such as pets, yard equipment, yard maintenance supplies, tools, toys, including motorized or non motorized bicycles and types of household equipment, and which buildings do not have to met the requirements of the Livingston County Construction Code and will not be built on a structural foundation as required in the Construction Code for other types of buildings, shall be excluded from the requirements of this Section and any required zoning permits and payment of fees required under other provisions of this Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983; amend by Ord. 249, eff. Nov. 25, 2011)

B. Detached accessory buildings shall be located entirely in the rear yard outside of the side and rear setback,

unless said building is being constructed pursuant to a Special Use Permit, and in that case, the Township Board after receiving the recommendation of the Planning Commission may authorize the location of the accessory building in any required yard. In no instance shall an accessory building be located within a dedicated easement right-of-way.

C. Accessory buildings located on lots and parcels in all Zoning Districts shall be subject to the following regulations:

LOT OR PARCEL AREA REGULATION	REGULATION	MAXIMUM SQUARE FOOTAGE*
12,000 sq. ft. to 0.9 acre	4% of lot area	800 sq. ft
1 acre to 1.9 acres	4% of lot area	2000 sq. ft.
2 acre to under 19.9 acres	4% of lot area, except that commercial agricultural farm operations shall be excluded from this regulation	3000 sq. ft.
20 acres and above	No limit	No limit

D. No detached accessory building—shall be located closer than ten (10) feet to any main building.

E. No detached accessory building in AR, SFR, MFR, NSC, OS Districts shall exceed one (1) story or twenty (20) feet in height. Accessory buildings in all other districts may be constructed to equal the permitted maximum height of structures in said districts. Height shall be measured in accordance with Article II Definition 24.

F. When accessory buildings or structures are located on a corner lot, they shall not be located in any front yard or side yard, but if it is determined by the Zoning Administrator that there is insufficient rear yard in which to locate them, the Zoning Administrator shall determine the most appropriate location for them in the side yard with minimum encroachment upon the required side yard setback area.

G. In no instance shall an accessory building be allowed until there is a principal building or structure located on the lot or parcel of land.

H. No accessory building or structure shall be used as a dwelling, lodging or sleeping quarters for human beings, except as otherwise permitted in this Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 8 eff. Dec. 7, 1983; further amend. by Ord. No. 12 eff. Sept. 5, 1986; Ord. No. 20 eff. Feb. 8, 1989; Ord. No. 82 eff. Apr. 5, 1999; Ord. No. 97 eff. Feb. 23, 2000; Ord, 249, eff, Dec. 23, 2012)

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Section 14.08 USE OF YARD SPACES AROUND DWELLINGS.

No required yard surrounding a dwelling, building or structure utilized for dwelling purposes shall be employed, occupied or obstructed by accessory buildings or structures, either permanently or temporarily, provided however, that a side or rear yard may be used for the parking of not more than five (5) passenger automobiles in active service, but not for the storage of trucks, or for the location, parking, disposition, storage, deposit, or dismantling in whole or in part of junked vehicles, machinery, second-hand building materials, or other discarded, disused or rubbish-like materials or structures, except as otherwise provided in this Zoning Ordinance. See Section 14.24.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 14.09 LOT-BUILDING RELATIONSHIP.

Every building erected, altered, or moved shall be located on a lot as defined herein, and there shall be no more than one (1) principal building and its permitted accessory structure located on each lot. Any proposed divisions of individual building sites shall conform to the requirements of this Ordinance for minimum width, area, and building setback requirements and shall be approved by the Zoning Administrator. In the event of any proposed relocation of boundaries of any building site or sites, such relocation shall comply with all setback requirements of this Ordinance for the district in which the project is located and shall be approved by the Zoning Administrator.

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(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 97 eff. Feb. 23, 2000)

Section 14.10 ACCESSORY BUILDING AS DWELLING.

No building or structure on the same lot with a principal building shall be used for dwelling purposes, except as specifically permitted in this Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 14.11 BASEMENT AS DWELLING.

No basement structure shall be used for human occupancy unless a completed story is situated immediately above the basement structure and is used as a dwelling, except underground homes designed and built in accordance with the Construction Code in effect in the Township.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 14.12 DAMAGED BUILDINGS.

Any building that has been partially destroyed by fire or is in such a state of disrepair as to be uninhabitable and a hazard to the public health and safety shall either be entirely removed or repaired within six (6) months from the date of the occurrence of the damage.

(Ord. No. 1 eff. Jan. 8, 1983)

Appendix F

Section 14.13 REQUIRED WATER SUPPLY AND WASTEWATER DISPOSAL FACILITIES.

In addition to the requirements established by the Livingston County Health Department and the Michigan Department of Health, the following site development and use requirement shall apply:

A. No structure for human occupancy or use shall hereafter be erected, altered, or moved unless it shall be provided with a safe, sanitary and potable water supply and a safe effective means of collection, treatment, and disposal of wastewater.

B. No drain field for a septic tank system shall be located nearer than fifty (50) feet from the normal high water line of any surface body of water nor located in an area where the base of the drain field is less than four (4) feet above the normal high water table level.

C. Refer to Ordinance No. 21 Waste Water Collection and Treatment System Ordinance for additional regulations.

D. Refer to Ordinance No. 181 Water Use and Rate Ordinance for additional regulations.

(Ord. No. 1 eff. Jan. 8, 1983)

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Section 14.14 HEIGHT REGULATIONS.

The height requirements established by this Ordinance shall apply uniformly in each zoning district to every building and structure except that the following structures and appurtenances shall be exempt from the height requirements of this Ordinance: spires, belfries, penthouses and domes not used for human occupancy, chimneys, ventilators, skylights, water tanks, bulkheads, utility poles, power lines, radio and television broadcasting and receiving antennae, silos, parapets and other necessary mechanical appurtenances; provided, their location shall conform where applicable to the requirements of the Federal Communications Commission, the Michigan Aeronautics Commission, other public authorities having jurisdiction and any regulations established by authorized federal, state, county and township agencies and the provisions of P.A. 23 of 1978, "The Airport Zoning Act."

(Ord. No. 1 eff. Jan. 8, 1983; amended by Ord. No. 229 eff. July 24, 2009)

Section 14.15 LANDSCAPE REQUIREMENTS.

All uses shall meet the requirements of Article XXVIII, Landscaping Requirements and Section 14.26, Fences, except for single family and duplex homes located in platted subdivisions on separate lots or on separate metes and bounds parcels of land.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 74 eff. Sept. 30, 1998; further amend. by Ord. No. 97 eff. Feb. 23, 2000)

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Section 14.16 SHORELINE EXCAVATION AND DREDGING.

No persons shall alter, change, transform, or otherwise vary the edge, bank or shore of any lake, river or stream except in conformance with the following:

A. As provided in the Inland Lakes and Streams Act, Public Act 346 of 1972, as amended, and in the Soil Erosion and Sedimentation Control Act No. 347 of 1972 and in accordance with the requirements of the Michigan Department of Environmental Quality and Livingston County Drain Commissioner.

B. If any edge, bank or shore of any lake, river or stream is proposed to be altered in any way by any person, such person shall submit to the Planning Commission all data, exhibits and information as required by the Department of Environmental Quality.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 14.17 ESSENTIAL SERVICES.

A. This shall include the erection, construction, alteration or maintenance by public utilities, municipal departments, or other governmental agencies of underground or overhead gas, electrical communication, steam or water transmission or distribution systems or collection, supply or disposal systems; including electric power stations, relay stations, gas regulator stations, pumping stations,

poles, wires, mains, drains, sewers, pipes, conduits, cables, towers, fire alarm boxes, police or other call boxes, traffic signals, hydrants and other similar facilities, equipment and accessories in connection therewith reasonably necessary for furnishing adequate service by such utilities or agencies, or for the public health or safety or general welfare; but not including offices and buildings or yards used for bulk storage, fabrication, or manufacture of materials used by such utilities or municipal departments or other governmental agencies except when located in the Zoning Districts in which they are permitted.

B. No building shall be used for human occupancy.

C. An opaque fence or screening materials may be required by the Township Planning Commission when deemed necessary.

D. The surface of land used for pipeline and other essential services right-of-ways or easements shall be restored and maintained as near as possible to its original condition prior to the construction of the pipeline.

E. Essential service in all Districts shall meet the requirements of the SFR Single Family Residential District for all buildings, structures and areas used for offices, power generators, power transformers, storage, fabrication or manufacture of materials necessary to the provision of essential services. See Sections 14.36 and 20.08 E.

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F. Refer to Ordinance No. 85 Pipeline Ordinance for additional regulations and Refer to Ordinance No. 204 Ordinance to Approve with reservations, a Uniform Video Service Franchise Agreement Submitted by Comcast.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 97 eff. Feb. 23, 2000)

Section 14.18 SWIMMING POOLS (OUTDOOR).

Private pools shall be permitted as an accessory use in all zoning districts within the rear and side yards only, provided they meet the following requirements:

A. There shall be a distance of not less than twenty (20) feet between the adjoining property line and the outside of the pool wall.

B. There shall be a distance of not less than four (4) feet between the outside pool wall and any building located on the same lot.

C. No swimming pool shall be located less than thirty-five (35) feet from any front lot line.

D. No swimming pool shall be located less than the distance required for a side yard by the zoning ordinance.

E. If electrical service drop conductors or other utility wires cross under or over a proposed pool area, the applicant shall make satisfactory arrangements

with the utility involved for the relocation of wires before a permit shall be issued for the construction of a swimming pool.

F. No swimming pool shall be located in an easement.

G. For the protection of the public, all yards containing swimming pools shall be completely enclosed by a fence not less than four (4) feet in height. The gate shall be of a self-closing and latching type, with the latch on the inside of the gate not readily available for children to open. Gates shall be capable of being securely locked when the pool is not in use for extended periods. Provided, however, that if the entire premises of the residence are enclosed, then this provision may be waived by the Zoning Administrator upon inspection and approval.

H. Above ground pools require removable ladders, or deck with self latching gate.

(Ord. No. 240 eff. September 3, 2010) (Ord. No. 1 eff. Jan. 8, 1983; amend. By Ord. No.107 eff. May 24, 2000)

Section 14.19 HOME OCCUPATIONS AND ON-SITE SALES.

Home occupations shall be permitted in all residences in all districts and include such customary home occupations as small workshops and businesses: hairdressing, millinery, dressmaking, bookkeeping and accounting service, real estate and insurance sales; professional office for occupancy by not more than one (1) physician,

surgeon, dentist, attorney, architect, engineer or similar recognized professional practitioner provided such home occupation shall satisfy the following conditions:

A. The nonresidential use shall be only incidental to the primary residential use.

B. The occupation shall utilize no more than twenty-five (25) percent of the ground floor area of the principal structure or an accessory structure not to exceed twenty-five (25) percent of the gross floor area of the principal structure.

C. Only normal domestic or household equipment and equipment characteristic of small workshops, businesses and professional office shall be used to accommodate the home occupation.

D. The home occupation shall involve no employees other than members of the immediate family residing on the premises except one non-resident employee shall be permitted per dwelling unit.

E. All activities shall be carried on indoors. No outdoor activities or storage shall be permitted.

F. No alterations, additions, or changes to a principal or accessory structure which will change the residential character of the dwelling structure shall be permitted in order to accommodate or facilitate a home occupation.

G. There shall be no external evidence of such occupations except a small announcement sign not

to exceed two (2) square feet in area and attached to the principal or accessory structure.

H. The permission for home occupations as provided herein is intended to secure flexibility in the application of the requirements of this Ordinance; but such permission is not intended to allow the essential residential character of Residential Districts, in terms of use and appearance, to be changed by the occurrence of home occupations.

I. Garage sales, rummage sales, yard sales and similar activities may be conducted for no longer than three (3) days and no more than twice per calendar year on the same property.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 97 eff. Feb. 23, 2000, further amend. by Ord. No.107 eff. May 24, 2000)

Section 14.20 TEMPORARY BUILDINGS AND STRUCTURES.

Temporary buildings and structures are permitted during the period of construction, and sales involving change of ownership or rental occupancy. Such buildings, and structures shall be removed upon completion or abandonment of construction, sale or rental activities and prior to occupancy and use of the building or structure for permitted uses. Also refer to Sections 14.28 and 16.09 for permits to park or use mobile homes on a temporary basis.

Also, refer to Sections 14.25 and 14.28.

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(Ord. No. 1 eff. Jan. 8, 1983; further amend. eff. Mar. 31, 2019)

Section 14.21 SOLID WASTE RECEPTACLE AREAS.

A. Truck-lifted or transported receptacle areas. All such receptacle areas shall be enclosed by a six (6) foot high wooden or a masonry wall to prevent the unsightly deposit or collection of solid waste and prevent children and pets from having access to these areas.

B. Man-lifted or transported receptacle areas. All such receptacle areas shall be enclosed by a four (4) foot high wooden or a masonry wall to prevent the unsightly deposit or collection of solid waste and to prevent children and pets from having access to these areas.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 14.22 EXTERIOR LIGHTING.

All sources of lighting for parking areas or for the external illumination of buildings or grounds or for the illumination of signs shall be directed away from and shall be shielded from adjacent properties and shall also be so arranged as to not affect driver visibility adversely on adjacent public roads and highways. Lighting of parking areas are required when the number of parking spaces is more than five (5).

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(Ord. No. 1 eff. Jan. 8, 1983 further amended by Ord. No. 200, eff. Dec. 11, 2006)

Section 14.23 RATIO OF LOT WIDTH TO LOT DEPTH.

Lots, parcels, and building sites shall not have a ratio of width to depth that exceeds 1:4.

(Ord. No. 1 eff. Jan. 8, 1983 amend. by Ord. eff. May 7, 1992)

Section 14.24 OUTDOOR PARKING OR STORAGE OF RECREATIONAL VEHICLES, COMMERCIAL VEHICLES AND TRUCKS ON RESIDENTIAL LOTS AND PARCELS:

A. Recreational Vehicles: The outdoor parking and/or storage of not more than two (2) non-residential type recreational vehicles such as motor homes, travel trailers, boats and their respective trailers, may be permitted on residential lots and parcels only in a side or rear yard, but not in a required side or rear yard setback.

B. Pick-up trucks of one (1) ton or less rated capacity for personal or occupational use may be parked on residential lots or parcels in the same manner as cars.

One single bottom truck of over one (1) ton rated capacity may be parked on residential lots or parcels, provided that 1) the vehicle is necessary to the

occupation of the occupant of the housing located on a residential lot or parcel, 2) the lot or parcel is not located in a platted subdivision or condominium project or on a private road, 3) the lot or parcel has at least two (2) acres of area, 4) the vehicle is not a refrigeration truck, a truck which requires the continuous running of motors or exceeds the total length of 65', 5) it is parked only in a rear or side yard, but not in a required side or rear yard setback.

Trucks and other equipment necessary to the function of permitted uses and activities on parcels of land of 2 or more acres in area shall be permitted only in a side or rear yard, but not in the required side or rear yard setback.

C. School busses may be parked or stored on school or church property, but are otherwise prohibited to locate on other lots and parcels in residential districts.

D. Busses, other large vehicles and equipment not otherwise specified in this Section are prohibited from locating on residential lots and parcels.

E. See Section 14.08.

(Ord. No. 1 eff. Jan 8, 1983, Amend by Ord. No. 124 eff. May 6, 2001)

Appendix F

Section 14.25 TEMPORARY USE.

Temporary land, building and structural uses may be permitted in any district, upon approval of the Planning Commission, upon finding that the location of such uses and their related activities will not adversely affect public health, safety, morals and general welfare in the district in which it is to be temporarily located. All -s, if approved by the Planning Commission, shall have a reasonable time limit placed upon their use based upon the normal periods of time such uses need to exist for their expressed purpose. The time limit shall be expressed in calendar dates for the number of days authorized by the Planning Commission. Temporary uses may be granted on the basis of compliance with the criteria stated in Section 20.08.

Also, refer to Sections 14.20 and 14.28.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 75 eff. Sept. 30, 1998)

Section 14.26 FENCES.

A. Any permanent fence, partition, structure, or gate erected as a dividing marker, barrier, or enclosure, and not a part of a structure for which a building permit is required. An ornamental fence is one that is less than four (4) feet in height, normally used in setting off planting areas, may be located on a property line of a lot or parcel provided the owner of the adjacent parcel agrees in writing to the location of the fence on the mutual property line; otherwise

the fence shall be located adjacent to the mutual property line.

B. The erection, construction, or alteration of any fence or other type of protective barrier shall be approved through a permit by the Zoning Administrator as to their conforming to the requirements of the zoning districts herein they are required because of land use development.

C. Delete entire section—Amendment #208 eff. June 28, 2007.

D. Any existing fence not in conformance with this Ordinance shall not be altered or modified except to make it more conforming.

E. Fences, not including farm fences, which are not specifically required otherwise under the regulations for the individual zoning districts shall conform to the following requirements:

1) No fence shall hereafter be erected along the line dividing lots or parcels of land or located within any required side or rear yard in excess of six (6) feet, or less than three (3) feet in height above the grade of the surrounding land.

2) No fence shall hereafter be located in any required front yard except as provided in this Section 14.26 and where otherwise specified in this Ordinance.

3) Barbed wire, spikes, nails or any other sharp point or instrument of any kind on top or on the sides of any fence is prohibited. Barbed wire cradles may be placed on top of fences enclosing public utility buildings or wherever deemed necessary in the interests of public safety.

4) In an Industrial District, no fence shall exceed twelve (12) feet in height.

5) Electric current or charged wire fencing shall be permitted in all districts on lots or parcels of land five (5) acres or more in area for the purpose of containing pet and domestic animals. Underground invisible electric current wiring shall be permitted in all Districts on all lots or parcels of any size in area for the purpose of containing pet animals.

6) No fence or structure shall be erected, established or maintained on any corner lot which will obstruct the view of a driver of a vehicle approaching the intersection. Such unobstructed corners shall mean a triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines or in the case of a rounded property corner, from the intersection of the street property lines extended. This shall not prohibit the establishment of shrubbery thirty (30) inches or less in height.

F. Also refer to Sections 28.08 and 28.09 of Article XXVIII, Landscaping Requirements.

(Ord. No. 1 eff. Jan. 8, 1983; amend. By Ord. No. 161 eff. June 15, 2003 further amended by Ord. No. 208 eff. June 28, 2007)

Section 14.27 WALLS, FENCES AND PROTECTIVE SCREENING.

1) Refer to Article XXVIII, Landscaping Requirements for Required Screening for specified uses and uses permitted in zoning districts.

2) Refer to Sections 28.08 and 28.09 of Article XXVIII, Landscaping Requirements for Walls and Fencing, and to Section 14.26, Fences, for additional requirements.

(Ord. No. 74 eff. Sept. 30, 1998; amend. by Ord. No. 97 eff. Feb. 23, 2000)

Section 14.28 MOBILE HOMES LOCATED OUTSIDE OF A MOBILE HOME PARK.

From and after the effective date of this Ordinance, it shall be unlawful for any person to move a mobile home onto any lot, parcel or tract of land in Howell Township for any purpose, except as provided and permitted hereinafter in this Section, or as specifically permitted elsewhere in this Ordinance.

Appendix F

A. Mobile homes shall be permitted when parked by visitors in the yard of a permitting dwelling owner or lessee without charge, upon application by the owner or the issuance of a Temporary Permit by the Zoning Administrator. Application shall be made at least three (3) days prior to the date of arrival. The property owner or lessee shall present a written agreement to furnish the occupants of the mobile home with sanitary facilities approved by the Township. A Temporary Permit may only be issued to one (1) mobile home at a time in any one location and shall be valid for a maximum period of thirty (30) days. Extensions of time shall not be permitted and the mobile home shall be removed from the property on or before the 30th day of the permit period.

B. A mobile home shall be a permitted use when it is to be temporarily located on the lot or parcel of a free title owner or land contract purchaser upon the application by the owner and issuance of a Temporary Permit by the Zoning Administrator during the construction of a permanent dwelling thereon. Prior to the occupancy of a mobile home, the following procedure will be as follows:

1) The location shall be deemed as not being injurious or constitute a nuisance to adjacent properties or the neighborhood.

2) A "Temporary Permit" may be issued upon the approval of the location of the mobile home on the property by the Zoning Administrator and the approval of the method of providing

water supply and sewage disposal service to the mobile home by the Livingston County Health Department.

3) The Zoning Administrator shall issue the owner and occupant a "Temporary Permit" for temporary use of a mobile home on the property for a period of up to six (6) months, with an additional twelve (12) months allowed by the Zoning Administrator if substantial construction has been started and completed during the first six (6) month period of the permit. The mobile home shall be removed from the property at the expiration of the "Temporary Permit." The owner and occupant shall verify in a space allotted for that purpose on the permit that they have full knowledge of the terms of the permit and penalty applicable in the event of violation of the Zoning Ordinance, and that no permit shall be transferable to any other owner or occupant.

C. Also, refer to Sections 14.20 and 14.25.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 10 eff. May 3, 1984; further amend. by Ord. No. 11 eff. Apr. 4, 1986)

Section 14.29 VALID NONCONFORMING USE OF MOBILE HOMES.

The use of any mobile home placed on a lot, parcel or tract of land in Howell Township prior to the effective

date of this Ordinance, which use is prohibited by this Ordinance, shall be a "Valid Nonconforming Use" that may be continued, subject to the provisions pertaining to "Nonconforming Uses" contained in Article XVII.

A. Nonconforming use of mobile homes. It is hereby provided that as of the effective date of this Ordinance that any mobile home shall become a legal nonconforming use, and said mobile home may not be thereafter moved onto or used upon the premises in the event of any one or more of the following conditions pertaining to the mobile home or premises occur, except as otherwise provided in this Ordinance:

    1) If said mobile home is removed from the lot, parcel or tract of land on which it has been located.

    2) If said mobile home is moved from its original location to another location on the same lot, parcel or tract of land.

    3) If the wheels of said mobile home are removed, except for repair of wheel or tire.

    4) If any structural additions or alterations are made to a mobile home or within ten (10) feet of a mobile home or for the purpose of expanding the use of a mobile home outside of the manufactured design of the mobile home.

5) If said mobile home is not connected with fresh water supply and septic tank/drain field wastewater disposal system prior to or on the effective date of this Ordinance.

6) If the yards surrounding a mobile home are not properly maintained and become unsightly enough, in the opinion of the Zoning Administrator, to be declared a nuisance.

B. Any and all "ILLEGAL NONCONFORMING USES OF MOBILE HOMES" on lots, parcels or tracts of land in Howell Township shall as soon as reported or detected be listed by the Zoning Administrator. Due written notice and complaint shall be served on the owner or occupant of the land being thus illegally used. Any such unlawful use shall cease forthwith or be subjected to the penalties provided by this Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 10 eff. May 3, 1984)

Section 14.30 PERFORMANCE GUARANTEES REQUIRED FOR TEMPORARY USES.

Prior to the issuance of all temporary permits pursuant to the Howell Township Zoning Ordinance, except for signs issued pursuant to Article XIX, the applicant must give performance guarantees such as performance bonds, irrevocable bank letters of credit, cash deposit or other forms of security as shall be approved by the Township Treasurer in an amount not to exceed Two Thousand

Dollars ($2,000.00), as shall be determined by the Howell Township Planning Commission, which performance guarantees are provided to insure the removal of the structure or building at the termination of the temporary permit period. The performance guarantees shall include payment to the Township of its expenses including actual attorney fees, costs and fees paid by the Township or incurred by the Township in the removal of the structure and/or building at the termination of the permit period. The bond shall be good for ninety (90) days beyond the date of the permit expiration. Refer to Sections 14.20, 14.25, 14.28 and Section 20.15.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 13 eff. Mar. 6, 1987)

Section 14.31 LICENSED OR REGISTERED FAMILY DAY-CARE HOMES.

A Family Day-Care Home licensed or registered under Act 116 of Public Acts of 1973, shall be considered a principal, permitted residential use of property for the purposes of this Zoning Ordinance in all residential zoning districts, including those zoned for single family dwellings, and shall not be subject to a special use permit or procedure different from those required for other dwellings of similar density in the same zone.

A Family Day-Care Home as defined in the definition section of the ordinance shall apply only to bona fide private residence of the operator of the Family Day-Care Home.

Appendix F

CARE FACILITIES FOR ADULTS AND CHILDREN

The following care facilities for Adults and Children are permitted as either a permitted use by right with prescribed conditions listed below, or as a special use, which meets the requirements of Article XVI Special Uses, in the zoning districts listed in the following:

A. State Licensed Residential Facility or Foster Care Home as a use permitted by right providing 24 hour or more of extended care for six (6) or less number of adults or children per single family dwelling located in any zoning district.

B. State Licensed Residential Facility or Foster Care Home as a special use providing 24 hour or more of extended care for more than six (6) but not more than twelve (12) adults or children located in MFR, OS, NSC and RSC zoning districts.

C. State Licensed Family Day Care Facility/Home as a use by right providing for six (6) or less children or adults in a single family dwelling unit located in any zoning district provided that no adult or child stay in the facility for a period not to exceed sixteen (16) hours of each 24 hour day.

D. State Licensed Group Day Care Facility/Home as a special use providing for more than six (6) but no more than twelve (12) people per single family dwelling unit located in any zoning district provided that no person shall stay in the facility for a period not to exceed sixteen (16) hours of each 24 hour day.

E. State Licensed Group Day Care Facility/Home as a special principle use or accessory use permitted by right providing for any number of adults or children in a facility located in the MFR, OS, NSC, RSC, HSC, HC or I zoning districts provided that no adult or child shall stay in the facility for a period not to exceed sixteen (16) hours of each 24 hour day.

F. Homeless and needy persons and families may be temporarily housed and fed in churches and other public and semi-public buildings which are occupied and governed by organizations established to serve homeless and needy persons and families.

G. See Section 16.17.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 23 eff. Oct. 6, 1989; further amend. by Ord. No. 112 eff. August 30, 2000)

Section 14.32 ADJUSTMENT TO DIMENSIONAL REGULATIONS.

Dimensional regulations in each Zoning District may be reduced by 10% upon approval by the Planning Commission, provided the Planning Commission determines that such reduction will not have a detrimental effect on surrounding parcels, and states its reasons for the reduction for the record in the meeting minutes of the Planning Commission. See Section 27.07A.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 20 eff. Feb. 8, 1989, further amended by Ord. No. 129 eff. Oct. 21, 2001)

Section 14.33 MULTIPLE PRINCIPAL BUILDINGS UPON A PARCEL OF LAND.

As set forth in Section 14.06, more than one (1) principal building structure may be located on a parcel of land subject to approval by the Planning Commission following the site plan review as required by Article XX and upon compliance with this Section 14.33. In determining whether to approve the applicant's site plan under this section, the Planning Commission may consult with the Zoning Administrator, Township Planner, Township Attorney, and Township Engineer regarding the adequacy of the site plan, deed restrictions, master deed, if any, utility systems and streets, overall development layout and design and compliance with all the requirements of Act 59 of Public Acts of 1978, as amended, if the proposed project is a condominium.

(Ord. eff. May 7, 1992; amend. by Ord. No. 50 eff. Oct. 5, 1994; further amend. by Ord. No. 97 eff. Feb. 23, 2000)

Section 14.34 ACCESSORY RESIDENTIAL USES.

A. Purpose. Because of the need to provide 24-hour property protection, observation, operation and maintenance of the principal uses permitted in the OS, NSC, RSC, HSC, HC, and I Zoning Districts, it may be necessary to require the presence of an on-

site, continuously available daytime, and particularly, a nighttime employee, with or without a family, to live-in an on-site residential facility in order to carry out the necessary functions of the employee.

B. Requirements. Each such residence shall meet all of the necessities and requirements for a separate single-family dwelling unit or a single-family apartment. Whether a separate dwelling unit structure or an apartment incorporated into the same structure as the principal use or a building accessory to the principal use, the residence shall be provided with an on-site outdoor yard area which at least meets the minimum requirements of the SFR Residential Zoning District.

C. Location. Such residences shall be permitted as an accessory use to a permitted principal use in the OS, NSC, RSC, HSC, HC and I Zoning District.

(Ord. No. 69 eff. Aug. 12, 1998)

Section 14.35 RETENTION OR DETENTION PONDS LOCATED ON ADJACENT PARCELS OF LAND.

Retention and/or detention ponds, as structures, are permitted in all zoning districts, and shall meet the requirements of this Zoning Ordinance, including the setback requirements from property lines and highway and road right-of-way lines, and, depending upon the location of retention and/or detention pond, they shall meet the following additional requirements and/or exceptions:

Appendix F

A. If a retention and/or detention pond is located entirely within the boundary property lines of a lot or parcel, the pond shall meet all the requirements of a structure, including those for setbacks from all property lines and highway and road right-of-way lines.

B. If a detention and/or retention pond is to be shared by adjacent lots or parcels of land, having a common property line or common property lines, but not including highway and road right-of-way lines, and the pond straddles such a property lines or property lines, the setbacks from such property lines shall be abated within the area of the pond, provided that the pond shall be designed to meet the present and future storm water volume required for such adjacent properties as determined by and/or approved by the Livingston County Drain Commissioner. Such a pond may be built in phases as development of such adjacent lots or parcels occurs, provided that an adequate area of land for such a pond of the required storm water volume is reserved to serve the ultimate development of all of the adjacent lots or parcels.

C. If a detention and/or retention pond is to be shared by all lots or parcels of land located within a subdivision of land, but the pond is completely located off-site from such lots or parcels of land, but within the boundaries of a subdivision of land of which such lots or parcels are a part, the lot or parcel of land upon which a pond is located shall meet all of the requirements of a structure, including those for

setbacks from all property lines and highway and road right-of-way lines, provided that the pond shall be designed and built to meet the storm water volume required for the ultimate development of all lots and parcels included in the subdivision of land as determined by and/or approved by the Livingston County Drain Commissioner. Such a pond may be built in phases as development of the lots or parcel of land occurs, provided that an adequate area of land for such ponds is reserved to serve the ultimate development of all lots or parcels in the land subdivision.

(Ord. No. 109 eff. June 18, 2000)

Section 14.36 UTILITY EASEMENTS ALONG AND ADJACENT TO RIVERS AND STREAMS.

Within the required front yard setbacks established along rivers and streams by this Zoning Ordinance there shall be located within these setbacks a utility easement for the purpose of providing for the construction of the gravity flow systems for Township approved engineered sanitary sewers and gravity flow County Drain Commissioner approved engineered storm water drains and Township Board approved engineered pressurized water mains if and when needed to serve future development. The location of such easements within the front yard setbacks from rivers and streams shall be determined by the Township engineer as the need for such easements exist with the approval of the Township Board in the case of the Township sanitary sewer and water systems and by

the County Drain Commissioner in the case of the storm water drain system. The specific sewer and storm water drains shall be determined by a Michigan State licensed professional engineer based upon topography, soil types floodplains and wetlands existing in the required front yard setbacks established by the Zoning Ordinance.

When a site plan is submitted for processing by the Planning Commission, and it is determined that a utility easement may be required, the Township Engineer shall make a determination as to the need for the easement and present his/her findings to the Planning Commission for its approval, approval with conditions or disapproval of the need for and requirement of the utility easement. If the need for the utility easement is approved by the Planning Commission along with the approval or approval with conditions of the site plan, the applicant shall record the easement portion of the site plan with the Livingston County Register of Deeds as a deed restriction in perpetuity on the property.

(Ord. No. 127 eff. October 21, 2001)

Section 14.37 WATER SUPPLY AND DISTRIBUTION FOR IRRIGATION PURPOSES.

All water systems and use of water in Howell Township shall meet the provisions of the "Water Use and Rate Ordinance" of Howell Township. Land uses located on lots and parcels not located in a Howell Township established water district shall be permitted to drill their own onsite wells as an accessory use for the purpose of constructing

on site water irrigation distribution systems. Land uses located in a Howell Township established water district shall be required to apply for a special use permit in accordance with Article XVI "Special Uses" of this Ordinance, except that a special use permit shall not be required for any lot or parcel or portion of a lot or parcel of land connecting to the Township public water supply and distribution system which irrigates a contiguous area on a lot or parcel which is less than 12,000 square feet in area including those previous areas with exposed soil capable of growing vegetation, but not including those impervious areas covered by buildings, paved areas and other structures.

Section 14.38 HAZARDOUS MATERIALS

Whenever hazardous materials are involved with any permitted use in this Zoning Ordinance, the applicant shall refer to Ordinance No. 53 Hazardous Spill Recovery Ordinance for additional regulations.

(Ord. No. 165 eff. July 27, 2003)

Section 14.39 LAND USES RESULTING IN PUBLIC NUISANCE ACTIVITIES

Refer to Ordinance No. 123, Public Nuisance Ordinance for additional regulations.

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Section 14.40 OUTDOOR FREESTANDING FURNACES AND BOILERS

A. An outdoor freestanding furnace or boiler is defined as a furnace, stove, boiler or any other similar type of solid or liquid material burning device which is constructed or installed outdoors on a lot or parcel for the purpose of transmitting dry heat or heated liquids produced by them over extended periods of time from it to buildings or other structures located on the same lot or parcel.

B. The Applicant shall submit a Site Plan showing the location of the proposed outdoor furnace or oiler structure on the site and all existing or planned buildings and structures located or to be located on the site and the required side and rear yard setbacks of the lot or parcel and those of all properties adjacent to the rear yard of the Applicants lot or parcel.

C. *Spacing and Setback Requirements.* The furnace, stove or boiler shall be located in the rear yard or a lot or parcel upon which it is located and be at least ten (10) feet from all onsite buildings.

Outdoor Furnaces, Stoves or Boilers shall be located at least one hundred fifty (150) feet from the side yard and rear yard setback requirements of the adjacent properties.

Furnaces, Stoves, or Boilers shall be located at least the required setbacks from the side and rear property lines upon which they are located.

D. *Limitations on Types of Fuels to be Used in Outdoor Furnaces, Stoves or Boilers.* Outdoor furnaces, stoves or boilers shall only burn seasoned firewood, processed liquid fuels, dried corn cobs and stalks and other biomass burnable materials which have been specifically processed and designed to be burned in them.

In no case shall the burning of trash, burnable household and yard materials and other burnable materials not specifically designed to be burned in any outdoor furnace, stove or boiler be permitted to be used in them.

E. An area surrounding the furnace or boiler shall be kept clear of all types of burnable materials for a distance of at least five (5) feet in all directions.

F. The Applicant shall submit evidence that the proposed installation of the outdoor furnace or boiler will comply with the manufacturer's specifications with particular reference of the specific fuels to be burned in the model of outdoor furnace, stove or boiler to be constructed or installed in accordance with the Site Plan as presented for consideration and approval.

G. The plans for each installation of an outdoor furnace or boiler on a lot or parcel shall be reviewed by the County Construction Code Administrator and the Township Fire Marshall for compliance with their respective regulations with the reports of the County

Construction Code Administrator and the Township Fire Marshall submitted to the Township.

H. When the use of fuel produces discernable smoke, odor or fly ash, as determined by a reasonable person, that impact adjoining properties the Township may impose any additional requirements, such as extending the height of a chimney to mitigate any objectionable effects.

(Amended by Ord. 239 eff. Sept. 3, 2010)

Section 14.41 WIRELESS COMMUNICATIONS FACILITIES

A. Purpose and Intent.

It is the general purpose and intent of the Township to carry out the will of the United States Congress by authorizing communication facilities needed to operate wireless communication systems. However, it is further the purpose and intent of the Township to provide for such authorization in a manner which will retain the integrity of residential neighborhoods and the character, property values, and aesthetic quality of the Township at large. In fashioning and administering the provisions of this section, attempt has been made to balance these potentially competing interests.

Recognizing the number of providers authorized to establish and operate wireless communication services and coverage, and changes in State and Federal

legislation, it is the further purpose and intent of this section to:

1. Facilitate adequate and efficient provision of sites for wireless communication facilities and ensure that wireless communication facilities are situated in appropriate locations and relationships to other land uses, structures and buildings.

2. Establish predetermined districts in the location considered best for the establishment of wireless communication facilities, subject to applicable standards and conditions.

3. Recognize that operation of a wireless communication system may require the establishment of facilities in locations not within the predetermined districts. In such cases, it has been determined that it is likely that there will be greater adverse impact upon neighborhoods and areas within the community. Consequently, more stringent standards and conditions should apply to the review, approval, and use of such facilities.

4. Limit inappropriate physical and aesthetic overcrowding of land use activities and avoid adverse impact upon existing population, transportation systems, and other public services and facility needs.

5. Provide for adequate information about plans for wireless communication facilities in order to permit

the community to effectively plan for the location of such facilities.

6. Minimize the adverse impacts of technological obsolescence of such facilities, including a requirement to remove unused and/or unnecessary facilities in a timely manner.

7. Minimize the negative visual impact of wireless communication facilities on neighborhoods, community land marks, historic sites and buildings, natural beauty areas and public rights-of-way. This contemplates the establishment of as few structures as reasonably feasible, the use of structures which are designed for compatibility, and the use of existing structures.

8. Implement and provide for compliance with State and Federal legislation through new and amended application, review, and decision standards, requirements and procedures for wireless communication facilities requests.

B. Authorization.

1. As a Permitted Use Subject to Site Plan Approval.

In all Zoning Districts, a wireless communication facility described in this subsection (B)(1) shall be a permitted use subject to the standards and conditions in subsection (C), the application requirements in subsection (D), the collocation requirements in subsection (E), the procedures in

subsection (G), and any prior special land use or site plan approval conditions.

(a) Wireless communications equipment attached to an existing structure not previously approved and used as a wireless communications support structure and located within a nonresidential zoning district, where there will be no substantial change in physical dimensions of the existing structure.

(b) A proposed collocation upon a wireless communication support structure which has been approved by the Township for such collocation but which is not permitted by administrative review under subsection (B)(3).

(c) Wireless communication equipment on an existing utility pole structure located within a right-of-way and not previously approved and used as a wireless communications support structure, where there will be no substantial change in physical dimensions of the existing pole.

(d) Attached wireless communication facilities that are not permitted by administrative review under subsection (B)(3).

2. As a Special Use.

Unless permitted under subsections (B)(1) or (B)(3), wireless communication facilities require approval

as a special land use, which shall be subject to the standards and conditions in subsection (C), the application requirements in subsection (D), the collocation requirements in subsection (E), the procedures in subsection (G), and a demonstration of the need for the proposed facility based on one or more of the following factors:

i. Proximity to an interstate or major thoroughfare.

ii. Areas of population concentration.

iii. Concentration of commercial, industrial, and/or other business centers.

iv. Areas where signal interference has occurred due to tall buildings, masses of trees, or other obstructions.

v. Topography of the proposed facility location in relation to other facilities with which the proposed facility is to operate.

vi. Other specifically identified reason creating facility need.

(a) If it is demonstrated by an applicant that a wireless communication facility necessary to providing services cannot be established as permitted under subsection (B)(l), wireless communication facilities may be permitted as a special land use in non-residential zoning districts.

(b) If it is demonstrated by an applicant that a wireless communication facility necessary to providing services cannot be established as permitted under subsection (B)(l) or in a zoning district identified in subsection (B)(2)a, such wireless communication facility may be considered and permitted elsewhere in the Township as a special land use, subject to the following:

1. In the application, the applicant shall demonstrate that no existing structure identified in subsection (B)(l) or location in a zoning district identified in subsection (B)(2)a, above can reasonably meet the specifically disclosed service, coverage and/ or capacity needs of the applicant. Such demonstration requires identification of all structures and properties considered and a factual explanation of why they are not feasible in terms of availability, suitability, or otherwise.

2. Wireless communication facilities shall be of a "stealth" design, such as a steeple, bell tower, tree, or other form, which includes substantial landscape buffering and is located and compatible with the existing character of the proposed site, neighborhood and general area, as approved by the Township taking into account any alternative designs submitted by the Applicant or identified during the review and decision process.

3. Locations outside the zoning districts identified in subsection (B)(2)a, shall be limited to the following sites:

   i. Municipally-owned sites.

   ii. Other governmentally owned sites.

   iii. Religious or other institutional sites.

   iv. Public or private school sites.

   v. Other sites if: (i) not located in a residential zoning district, and (ii) no sites identified in i–iv, above are available and suitable, as demonstrated in the application and determined by the Planning Commission.

4. The applicant's demonstration of good faith efforts to identify and evaluate alternate sites, locations, designs, placements, or features for the proposed facility that would or could be more consistent with the ordinance purposes stated in subsection (A).

5. For each alternate site, location, design, placement, or feature for the proposed facility identified by the applicant or otherwise, the applicant's demonstration that the proposed facility is more consistent with the ordinance purposes stated in subsection (A), and/or that such alternate is not feasible.

Appendix F

3. Wireless Communication Equipment as a Permitted Use Subject to Administrative Review by the Building Official.

   A proposal for attached wireless communication facilities that satisfies the following criteria does not require special land use or site plan approval. Confirmation that these criteria are satisfied shall be determined by an administrative review per Section 20.17 and written certification by the Building Official to the construction code building official prior to issuance of any construction code permits. Such proposals shall also be reviewed for compliance with the standards and conditions in subsection (C), with the certification to identify any items of noncompliance.

   (a) The existing wireless communications support structure and/or wireless communications equipment compound are in compliance with this ordinance, and if not, are in compliance with a prior approval under this ordinance.

   (b) The proposal complies with the terms and conditions of any prior final approval under this ordinance of the wireless communications support structure and/or wireless communications compound.

   (c) The proposal will not increase the height of the wireless communications support structure by more than 20 feet or 10% of its

original height (as first erected without any later additions), whichever is greater.

(d) The proposal will not increase the width of the wireless communications support structure by more than necessary to the stated and documented purpose of the increase.

(e) The proposal will not increase the area of the existing wireless communications equipment compound to more than 2,500 square feet.

C. Review Standards and Conditions

All applications for wireless communication facilities shall be reviewed in accordance with the following standards and conditions, and, if approved, shall be constructed and maintained in accordance with such standards and conditions.

1. Facilities shall not be demonstrably injurious to neighborhoods or otherwise detrimental to the public safety and welfare.

2. Facilities shall be located and designed to be compatible with the existing character of the proposed site and harmonious with surrounding areas.

3. Facilities shall comply with applicable federal and state standards relative to the environmental effects of radio frequency emissions.

4. Applicants shall demonstrate an engineering justification for the proposed height of the support structure, and an evaluation of alternative designs and locations which might result in lower heights. Support structures shall not exceed the minimum height necessary for collocation by at least two (2) providers, or by a larger number of providers identified and disclosed in the application as intending and contracted or otherwise committed to use of the structure. Except as needed for communication services, and regardless of the number of collocators, wireless communication support structures shall not exceed a height of 140 feet in the SFR district, 160 feet in the AR and MFR districts, and 180 feet in all other districts. The accessory building contemplated to enclose such things as switching equipment shall be limited to the maximum height for accessory structures within the respective district.

5. The minimum setback of the support structure and equipment compound from an adjacent boundary of any property shall be equal to 125% of the height of the support structure.

6. There shall be unobstructed access to the support structure and equipment compound, for police, fire and emergency vehicles, and for operation, maintenance, repair and inspection purposes, which may be provided through or over an easement.

7. The division of property for the purpose of locating a wireless communication facility is prohibited unless all zoning requirements and conditions are met.

8. The equipment enclosure may be located within the principal building, an accessory building, or in an equipment compound with landscaping and screening at least eight (8) feet in height and approved by the Township upon a demonstration by the applicant that placement of the equipment inside a building is not practical due to site or equipment conditions or constraints. If proposed as an accessory building or equipment compound, it shall conform to all district requirements for principal buildings, including yard setbacks. Where a wireless communication facility is proposed on the roof of a building, any equipment enclosure proposed as a roof appliance or penthouse on the building, shall be designed, constructed and maintained to be architecturally compatible with the principal building. Wireless communication facilities mounted upon the side of a building shall be attached flush against the building surface, and shall not be allowed to protrude more than the depth of the antenna. Such facilities shall blend into the design, contour and color scheme of the building.

9. The Township shall review and approve the architecture and color of the support structure and all accessory buildings and structures so

as to minimize distraction, reduce visibility, maximize aesthetic appearance, and ensure compatibility with surroundings. It shall be the responsibility of the applicant to maintain the wireless communication facility in a neat and orderly condition. Lighting is only allowed if required by, and in compliance with the standards of, the Federal Aviation Administration, Federal Communications Commission, Michigan Aeronautics Commission, other governmental agencies, or the Township as a special use approval condition. Any such requirements and standards shall be documented by the Applicant

10. The support structure and system shall be designed to support, or capable of supporting the proposed wireless communication equipment, which shall be demonstrated by a structural analysis and certification from a registered professional engineer that identifies any modifications to an existing structure necessary to such capability.

11. Support structures shall be constructed, and maintained in accordance with all applicable building codes. Any approval or certification under this ordinance shall be subject to and conditioned on the construction code building official's authority to require and be provided with a soils report from a geotechnical engineer, licensed in the State of Michigan, based on actual soil borings and certifying the suitability of soil conditions, and a written engineering certification from the

manufacturer or designer of the support system that the support system can safely accommodate attached antennas under expected weather conditions.

12. A maintenance plan, and any applicable maintenance agreement, shall be presented and approved as part of the site plan for the proposed facility. Such plan shall be designed to ensure the long term, continuous maintenance to a reasonably prudent standard. Such plans shall include the names, pager number and email addresses, if any, business and home telephone numbers, mobile telephone numbers, if any, and identity of no fewer than two persons who can be contacted at any hour of the day or night that have full authority to act on behalf of the applicant in the event of a malfunction or emergency. Such list of persons shall be kept current by immediate written notice to the Township of any changes.

D. Application Requirements.

All of the following information and documents shall be required for a special land use, site plan, or administrative review application to be considered complete:

1. A site plan prepared in accordance with Section 20.17 shall be submitted, showing the location, size, screening, lighting and design of all buildings and structures.

2. The site plan shall also include a detailed landscape plan prepared in accordance with the Zoning Ordinance. The purpose of landscaping is to provide screening and aesthetic enhancement for the structure base, accessory buildings and enclosure. In all cases, fencing of a minimum of eight (8) feet in height shall be required for protection of the support structure and security from children and other persons who may otherwise access facilities.

3. The application shall include a description of security to be posted at the time of receiving a building permit to ensure removal of the facility when it has been abandoned or is no longer needed, as provided in Subsection (f). In this regard, the security shall be posted and maintained in the form of: (1) cash; (2) irrevocable letter of credit; or, (3) other security arrangement accepted by the Township Board.

4. A map or plan showing the locations and heights of existing wireless communications support structures in the Township and communities adjoining the Township, and which identifies structures the Applicant is using or has the right to use and the heights at which its antennas are or may be installed.

5. The name, address identity, home and business telephone numbers, pager number and email addresses, if any, and mobile phone number, if any, of the person to contact for engineering,

maintenance and other notice purposes. This information shall be kept current by immediate written notice of the Township of any changes.

6. An application fee in an amount established by Resolution of the Township Board.

7. Identification of the dates, nature and conditions of any prior zoning approvals or permits for the property.

8. If the application is for a new wireless communication support structure or to place or install additional wireless communications equipment on an existing support structure, a structural analysis and certification to the Township by a registered professional engineer that the structure is designed to support, or capable of supporting the proposed wireless communications equipment. Any modifications necessary to a structure being capable of supporting the proposed equipment shall be specifically identified in the analysis and certification.

9. If modifications to a wireless communications support structure are identified in a structural analysis under subsection (8) above, a written determination by the Township construction code building official that, subject to review of an actual building permit application and plans, the identified modifications would be allowed and that with the modifications, the structure would meet construction code requirements.

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10. If the application is for a new wireless communications support structure or to increase the height of an existing structure, a written analysis and justification by a registered engineer that the proposed height is the minimum necessary for the provision of personal wireless services and one colocation.

11. If the application is for a new wireless communications support structure, identification of all other structures and properties considered for the proposed use and a factual explanation of why they are not feasible in terms of availability, suitability, or otherwise.

12. If the application is for a new wireless communications support structure, identification of possible alternative locations, designs, or features, whether those alternatives were considered, and if so, a factual explanation of why those alternatives are not proposed.

13. If the application is for a new wireless communications support structure non-residential zoning districts, identification and submission in written form of the evidence and arguments the Applicant will rely on in claiming that those restrictions prohibit or have the effect of prohibiting it from providing personal wireless services and that its proposal is more consistent with the ordinance purposes stated in subsection (A), than alternate sites, locations, designs, placements and features.

14. Disclosure and copies of all other required governmental permits or approvals and the status and copies of pending applications for those permits or approvals.

15. If the application is for a special land use approval, the name, expertise, and relationship to applicant of each licensed or registered professional that has or will provide evidence to support the application, with a summary of that evidence that includes any opinions expressed and the bases for such opinions.

16. For each professional opinion disclosed by the applicant as supporting the application, a statement of whether the applicant agrees that it should be subject to separate review by or for the Township, and if so, the type, scope, time, and cost of such a separate review that applicant believes would be reasonable.

17. The Applicant's email address, fax number or address to which the Township should direct notices regarding the Application.

E. Collocation.

1. Statement of Policy.

   It is the policy of the Township to minimize the overall number of newly established locations for wireless communication facilities and Wireless Communication Support Structures within the

community, and encourage the use of existing structures for Attached Wireless Communication Facility purposes, consistent with the statement of purpose and intent, set forth in Subsection (A), Purpose and Intent, above. Each licensed provider of a wireless communication facility must, by law, be permitted to locate sufficient facilities in order to achieve the objectives promulgated by the United States Congress. However, particularly in light of the dramatic increase in the number of wireless communication facilities reasonably anticipated to occur as a result of the change of federal law and policy in and relating to the Federal Telecommunications Act of 1996, it is the policy of the Township that all users should collocate on Attached Wireless Communication Facilities and Wireless Communication Support Structures in the interest of achieving the purposes and intent of this section, as stated above, and as stated in Subsection (A), Purpose and Intent. If a provider fails or refuses to permit collocation on a facility owned or otherwise controlled by it, where collocation is feasible, the result will be that a new and unnecessary additional structure will be compelled, in direct violation of and in direct contradiction to the basic policy, intent and purpose of the Township. The provisions of this subsection are designed to carry out and encourage conformity with the policy of the Township.

2. Feasibility of collocation. Collocation shall be deemed to be "feasible" for purposes of this section where all of the following are met:

(a) The wireless communication provider entity under consideration for collocation will undertake to pay market rent or other market compensation for collocation.

(b) The site on which collocation is being considered, taking into consideration reasonable modification or replacement of a facility, is able to provide structural support.

(c) The collocation being considered is technologically reasonable, e.g., the collocation will not result in unreasonable interference, given appropriate physical and other adjustment in relation to the structure, antennas, and the like.

(d) The height of the structure necessary for collocation will not be increased beyond a point deemed to be permissible by the Township, taking into consideration the several standards contained in Subsections (B) and (C), above.

3. Requirements for Collocation.

(a) The construction and use of a new wireless communication facility shall not be granted unless' and until the applicant demonstrates that a feasible collocation is not available for the coverage area and capacity needs.

(b) All new and modified wireless communication facilities shall be designed and constructed so as to accommodate collocation.

(c) The policy of the community is for collocation. Thus, if a party who owns or otherwise controls a facility shall fail or refuse to alter a structure so as to accommodate a proposed and otherwise feasible collocation, such facility shall thereupon and thereafter be deemed to be a non-conforming structure and use, and shall not be altered, expanded or extended in any respect.

(d) If a party who owns or otherwise controls a facility shall fail or refuse to permit a feasible collocation, and this requires the construction and/or use of a new facility, the party failing or refusing to permit a feasible collocation shall be deemed to be in direct violation and contradiction of the policy, intent and purpose of the Township, and, consequently such party shall take responsibility for the violation, and shall be prohibited from receiving approval for a new wireless communication support structure within the Township for a period of five years from the date of the failure or refusal to permit the collocation. Such a party may seek and obtain a variance from the Zoning Board of Appeals if and to the limited extent the applicant demonstrates entitlement to variance relief which, in this context, shall mean a demonstration that enforcement of

the five year prohibition would unreasonably discriminate among providers of functionally equivalent wireless communication services, or that such enforcement would have the effect of prohibiting the provision of personal wireless communication services.

F. Removal.

1. A wireless communication facility must furnish reasonable evidence of ongoing operation at any time after construction.

2. A condition of every approval of a wireless communication facility shall be removal of all or part of the facility by users and owners when the facility has not been used for 180 days or more. For purposes of this section, the removal of antennas or other equipment from the facility, or the cessation of operations (transmission and/or reception of radio signals) shall be considered as the beginning of a period of nonuse.

3. The situations in which removal of a facility is required, as set forth in paragraph (2) above, may be applied and limited to portions of a facility no longer being used, by written application to and approval of the Zoning Administrator.

4. If removal of all or part of a facility is required, the property owner or persons who had used the facility shall immediately apply or secure the application for any required demolition or removal permits,

and immediately proceed with and complete the demolition/removal, restoring the premises to an acceptable condition as reasonably determined by the Zoning Administrator.

5. The required removal of a facility or a portion thereof shall be lawfully completed within 60 days of the period of nonuse under paragraph (2) above. If removal is not completed within that time, after at least 30 days written notice, the Township may remove or secure the removal of the facility or required portions thereof, with its actual cost and reasonable administrative charge to be drawn or collected from the security posted at the time application was made for establishing the facility.

G. Procedures.

1. Review and administrative actions on special land use and site plan approval applications.

   (a) The Zoning Administrator shall promptly review special land use and site plan approval applications to determine if they are administratively complete by inclusion of all information required in subsection (D). If the application is not complete, no later than 14 business days after receiving it, the Zoning Administrator shall provide a written or electronic notice to the Applicant specifying the information necessary to complete the application. Such initial review

for completeness by the Zoning Administrator shall be on behalf of the Planning Commission for special land use and site plan approvals.

(b) The Zoning Administrator shall review supplemental information submitted in response to an incomplete application notice and notify the Applicant of any remaining deficiencies.

(c) An application shall be administratively complete upon the Zoning Administrator's determination or the expiration of 14 business days from receipt of the application without a notice to the Applicant of deficiencies.

(d) Upon a special land use or site plan approval application being administratively complete, the Zoning Administrator shall promptly schedule it for a Planning Commission meeting that will allow for a Planning Commission site plan decision or special land use decision after the required public hearing within the time periods in subsection (2) below.

(e) If the application has disclosed professional opinions supporting the application and the Zoning Administrator or Planning Commission has determined that independent professional review for the Township of any such opinion should be performed, the reasonable costs of such review may

be assessed to the Applicant by a written notice from the Zoning Administrator, as a professional review cost to be paid in accordance with the notice.

2. Decisions on special land use and site plan approval applications.

   (a) The Planning Commission shall approve or deny a special land use application for a new wireless communications support structure not more than 90 days after it is administratively complete.

   (b) For all special land use and site plan applications other than new wireless communications support structures, the Planning Commission shall approve or deny the application not more than 60 days after it is administratively complete.

3. Post-approval costs, fees and administrative actions.

   Zoning permits to implement and grant the authority allowed by a special land use or site plan approval for wireless communication facilities, and zoning certificates of use and occupancy for such facilities shall be issued subject to and conditioned on all of the following:

   (a) Any conditions of the special land use or site plan approval.

(b) Payment of any outstanding professional review costs as described in subsection (G)(1)e.

(c) Payment of a permit fees in an amount established by or in accordance with a Resolution of the Township Board.

Section 14.42 COMMERCIAL KENNELS

1. All dog kennels shall be operated in conformance with all applicable county and state regulations, permits being valid no longer than one (1) year.

2. The minimum lot size shall comply with the dimensional requirements of the district in which the kennel is located.

3. Buildings wherein dogs are kept, dog runs, and/or exercise areas shall not be located nearer than one hundred (100) feet to any adjacent occupied dwelling and shall not be located in any required front, rear or side yard setback area.

4. All animals shall be kept in a sound proof, enclosed structure, except for walking and outdoor exercise when accompanied and controlled by an employee of the kennel. The Special Use Permit may limit the time during which the animals are permitted out of the building.

5. An operations and maintenance plan shall be submitted that specifically addresses how noise

attenuation will be accomplished and how waste will be handled.

6. Facilities must be connected to public utilities where available.

7. Such facilities shall be under the jurisdiction of the Township Planning Commission, and subject to other conditions and requirements of said body deemed necessary to ensure against the occurrence of any possible nuisance (i.e., fencing, soundproofing, sanitary requirements.)

8. The owner of an approved dog kennel shall, prior to December 1st each year, fill out an Annual Dog Kennel Renewal Application and submit it to the Township Clerk for processing. The fee for this annual renewal shall be specified in the Township Fee Schedule.

(Ord. No. 271 eff. Oct. 3, 2017)

Section 14.43 STANDARDS FOR SINGLE-FAMILY DWELLINGS, MOBILE HOMES, AND PREFABRICATED HOUSING

A. No site built single-family dwelling, mobile home, modular housing dwelling or prefabricated house located outside a mobile home park, or mobile home subdivision shall be permitted unless such dwelling unit conforms to the following standards:

1. ***Square footage.*** Each such dwelling unit shall comply with the minimum square footage requirements of this Ordinance for the zone in which it is located.

2. ***Dimensions.*** Each such dwelling unit shall have a minimum width across any front, side, or rear elevation of twenty (20) feet and shall comply in all respects with the single state construction code act, Public Act No. 230 of 1972 (MCL 125.1501 et seq.), including minimum heights for habitable rooms. Where a dwelling is required by law to comply with any federal or state standard or regulation for construction, and where such standard or regulation for construction is different than that imposed by the single state construction code, then and in that event such federal or state standard or regulation shall apply.

3. ***Foundation.*** Each such dwelling unit shall be firmly attached to a permanent foundation constructed on the site in accordance with the single state construction code and shall have a wall of the same perimeter dimensions of the dwelling and constructed of such materials and type as required in the applicable building code. All dwellings shall be securely anchored to the foundation in order to prevent displacement during windstorms.

4. ***Undercarriage.*** Such dwelling units shall not be installed with attached wheels. Additionally,

no dwelling shall have any exposed towing mechanism, undercarriage, or chassis.

5. ***Sewage disposal or water supply.*** Each such dwelling unit shall be connected to a public sewer and water supply or to such private facilities approved by the local health department.

6. ***Storage area.*** Each such dwelling unit shall contain a storage capability area either in a basement located under the dwelling, in an attic area, or in a separate or attached structure of standard construction similar to, or of better quality than, the principal dwelling. Such storage area shall be equal to ten percent (10%) of the square footage of the dwelling or one hundred (100) square feet, whichever shall be less.

7. ***Architecture, roofs, eaves.*** All dwellings shall be aesthetically compatible in design and appearance with other residences in the vicinity. All homes shall have a roof overhang or eave of not less than twelve (12) inches on all sides, or alternatively with windowsills or roof drainage systems concentrating roof drainage at collection points along the sides of the dwelling. The dwellings shall not have less than two (2) exterior doors, with the second one being in either the rear or side of the dwelling. Steps shall also be required for exterior door

areas or to porches connected to such door areas where a difference in elevation requires such steps.

8. ***Compatibility determination.*** The compatibility of design and appearance shall be determined in the first instance by the Zoning Administrator or designee. Any determination of compatibility shall be based upon the character, design, and appearance of one (1) or more residential dwellings located outside of mobile home parks within two thousand (2,000) feet of the subject dwelling where such area is developed with dwellings to the extent of not less than twenty percent (20%) of the lots situated within such area, or, where such area is not so developed, by the character, design, and appearance of one(1) or more residential dwellings located outside of mobile home parks throughout the Township. The foregoing shall not be construed to prohibit innovative design concepts involving such matters as solar energy, view, unique land contour, or relief from the common or standard designed home.

9. ***Additions.*** Each such dwelling unit shall contain no addition, room, or other area which is not constructed with similar quality workmanship as the original structure, including permanent attachment to the principal structure and construction of a foundation as required in this section.

10. ***Code compliance.*** Each such dwelling unit shall comply with all pertinent building and fire codes. In the case of a mobile home, all construction and plumbing, electrical apparatus, and insulation within and connected to such mobile home shall be of a type and quality conforming to the Mobile Home Construction and Safety Standards, as promulgated by the United States Department of Housing and Urban Development, being 24 CFR 3280, and as such standards may be amended from time-to-time. Additionally, all dwellings shall meet or exceed all applicable roof snow load and strength requirements.

11. ***Building and land use permit.*** All construction required in this section shall be commenced only after a building and land use permit has been obtained in accordance with the applicable state construction code provisions and requirements.

12. ***Exceptions.*** The standards of this section shall not apply to a mobile home located in a licensed mobile home park, except to the extent required by state or federal law or as otherwise specifically required in this chapter and pertaining to such parks. Mobile homes which do not conform to the standards of this section shall not be used for dwelling purposes within the Township unless located within a mobile home park or a mobile home subdivision district for such uses, or unless used as a temporary residence as otherwise provided in this chapter.

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Section 14.44 RURAL KENNELS

1. All dog kennels shall be operated in conformance with all applicable county and state regulations, permits being valid no longer than one (1) year.

2. For rural kennels, the minimum lot size shall be five (5) acres for the first five (5) dogs and an additional one (1) acre for each one (1) additional dog with a maximum of 10 dogs.

3. Buildings wherein dogs are kept, dog runs, and/or exercise areas shall not be located nearer than one hundred (100) feet to any adjacent occupied dwelling or any adjacent building used by the public and shall not be located in any required front, rear or side yard setback area.

4. All animals shall be kept in an enclosed structure, except for walking and outdoor exercise when accompanied and controlled by an employee of the kennel. The Special Use Permit may limit the time during which the animals are permitted out of the building.

5. An operations and maintenance plan shall be submitted that specifically addresses how noise attenuation will be accomplished and how waste will be handled.

6. Such facilities shall be under the jurisdiction of the Township Planning Commission, and subject to other conditions and requirements of said body deemed necessary to ensure against the occurrence of any possible nuisance (i.e., fencing, soundproofing, sanitary requirements.)

7. The owner of an approved dog kennel shall, prior to December 1st each year, fill out an Annual Dog Kennel Renewal Application and submit it to the Township Clerk for processing. The fee for this annual renewal shall be specified in the Township Fee Schedule.

(Ord. No. 263 eff. April 28, 2015; Amend. by Ord. 271 eff. Oct. 3, 2017)

Appendix F

ARTICLE XV
ENVIRONMENTAL PROVISIONS

Section 15.01 PURPOSE.

The purpose of this Article is to promote the conservation or wise use of important unrenewable natural resources and to protect the desirable qualities of the natural environment which may involve the saving of important vegetation, wildlife cover, watersheds, areas which periodically flood, features controlling wind or water erosion, wetlands, and areas of topographical, archeological, geological, historical or agricultural significance for present and future generations.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 15.02 NATURAL ENVIRONMENT.

It is the general requirement of this Article to conserve and wisely use the natural environment in the most careful and well-planned manner possible. Under this Article where it is the judgment of the Planning Commission that the natural environment is seriously in jeopardy of being used unwisely, based upon an appraisal by the Planning Commission and their written reasons, the Planning Commission may require the submittal of an Environmental Impact Statement. For actions to be taken for violations of provisions to protect the environment, reference is made to the Michigan Natural Resources and Environmental Protection Act being MCL 324.1701–324.1706, in part.

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(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 97 eff. Feb. 23, 2000; further amend by Ord. No. 265 eff. April 28, 2015)

Section 15.03 NATURAL RESOURCES.

In order to properly conserve and provide future access to such natural resources as sand, gravel, oil, gas, coal, minerals and other economically important unrenewable resources, the Planning Commission may require the applicant desiring to develop such property to prepare a survey or map indicating the type character and location of known surface and subsurface natural resources and the method proposed to preserve future access, development and extraction of such natural resources for future use.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 15.04 AGRICULTURAL LAND.

In order to properly preserve agricultural land on the basis of either its present use or its potential use, based upon the adaptability of its soil types and elevation to future agricultural development and use, the Planning Commission may require the applicant desiring to develop such property to prepare a survey or map indicating the type, character, and location of agricultural soil types and elevation and use areas, and the method proposed to preserve future development and use of such soil types and use area. In the making of such plans and surveys an applicant desiring to develop agricultural soil types and use areas shall be encouraged to develop only those

portions of a property which are the least adaptable for present and future agricultural purposes.

(Ord. No. 1 eff Jan. 8 1983)

Section 15.05 LAKES, PONDS, RIVERS, STREAMS, WATER COURSES AND DRAINAGE WAYS.

In order to conserve or wisely use the lakes, ponds, rivers, streams, water courses and drainage ways in the Township, no such feature shall be altered, changed, transformed or otherwise be varied from its present existing condition except as follows:

A. In all Zoning Districts no river, stream, water course or drainage way, whether partly filled with water or dry in certain seasons, shall be obstructed or altered in any way at any time by any person, except when done in conformance with Michigan State and Federal laws, regulations and standards.

B. In all Zoning Districts the edge, bank, or shore of any lake, pond, river or stream shall not be altered, changed, transformed or otherwise be varied from its present condition except in conformance with the provisions of (1) Public Act 291 of 1965, "The Inland Lakes and Streams Act", (2) Public Act 245 of 1970, "The Shorelands Protection and Management Act", (3) Public Act 231 of 1970, "The Natural River Act", and (4) Public Act 347 of 1976, "Soil Erosion and Sedimentation Control Act".

C. In accordance with the provisions of Public Act 231 of 1970, "The Natural River Act" and "State Administrative Rules" adopted by the Michigan Department of Environmental Quality are hereby made a part of this Ordinance.

D. See Sections 14.13B and 14.16.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 15.06 FLOOD PLAINS.

A. Notwithstanding any other provisions of this Ordinance, land subject to periodic flooding shall be used only for agriculture and recreation uses, provided no structures are located within the area subject to flooding, except as provided in Section 16.06.

B. The location and boundaries of land subject to periodic flooding shall be determined by reference to the U.S. Army Corps of Engineers, the U.S. Soil Conservation Service or other official U.S. or Michigan public agency responsible for defining and determining flood plain areas.

C. No building shall be located within a designated flood way. The Township Planning Commission may, upon special approval, permit bridges, dams, other public facilities, piers, wharves, or boat houses. Before any such structure is built within the flood way, it shall be shown that such structure will not form a significant

obstruction or retard the movement of flood waters, except as part of a plan for flood control.

D. Restrictions in the flood plain shall be as follows:

1) No buildings shall be built in the flood plain of a water body unless the lowest floor and the heating and electrical systems are located four (4) feet above the level of the established flood level. Such elevation may not be achieved through the use of the fill. The uses of stilts, lifts, pilings, or other similar means of elevation are permissible so long as such means are in accordance with other applicable regulations, and so long as they do not form a significant obstruction to the flow of flood waters.

2) The construction of any on-site sewage disposal system or the dumping of waste materials of any type in the flood plain is prohibited.

3) The storage of buoyant, flammable, explosive or toxic materials in the flood plain is prohibited.

4) The digging or drilling of wells or other means of providing domestic water supply sources in the flood plain is prohibited.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 97 eff. Feb. 23, 2000)

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Section 15.07 WETLANDS.

In addition to other areas that exhibit wetland characteristics, the Wetlands designated on Map No. 6 in the Howell Township Master Plan are hereby declared to be potential wetlands and shall be subject to field determination to verify the existence of wetlands. If wetlands do exist, they shall be subject to the following provisions:

A. All wetlands in Howell Township are hereby subject to the provisions of Public Act 203 of Public Act 451 of 1994, "The Natural Resources and Environmental Protection Act", Part 303 "Wetlands Protection" in order to encourage the proper use and development of the wetlands.

B. No buildings or structures shall be built in the Wetland Areas except those that are normally accessory to the uses which are permitted in such areas.

C. Uses permitted in Wetland Areas are only those generally classified as open land uses such as for (1) recreation, including hunting and fishing, hiking, outdoor camping and related activities, (2) education, including nature study and related outdoor education activities, (3) conservation, including the preservation or wise use of natural resources such as minerals, sand and gravel, organic materials, wildlife, trees, plants, topsoil and other natural elements, (4) agricultural activities and (5) forestry activities.

D. All of the above uses are permitted without requiring a zoning permit, except when any building or structure is proposed to be built as accessory to a permitted use or when the physical characteristics of the natural environment are significantly changed or the natural resources are to be extracted and removed from the area, including the removal of topsoil, organic material, wildlife, minerals, sand and gravel and vegetation. Such changes, extractions and removals require the submission of a plan for such purposes in conformance with the permitted uses to the Planning Commission for its approval or disapproval based upon its judgment as to whether or not the plan will result in carrying out the intent of these regulations to preserve and wisely use the Wetland in which the use is to be located. In making this judgment the Planning Commission shall use the criteria and standards relevant to such uses in Wetland Areas as prescribed in Public Act 203 of 1979, "The Wetlands Act".

E. The applicant for any such proposed use in a wetland must secure approval from the Michigan Department of Environmental Quality prior to the approval of a zoning permit by the Planning Commission.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 97 eff. Feb. 23, 2000; further amend by Ord. No. 265 eff. April 28, 2015)

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Section 15.08 SHORELINE AREAS.

A. These shoreline areas shall be defined as those areas lying within 150 feet of a stream, river, pond, lake or wetland area, or the designated flood plain of these water bodies, whichever is the greater. For the purposes of this Ordinance, the measurement shall be taken as follows:

1) For any stream or part thereof, which is generally less than fifteen (15) feet in width, from the center of the channel.

2) For any stream or part thereof, which is generally greater than fifteen (15) feet in width, and for any pond, lake or wetland: the line of the mean high water level, as indicated by eroded streambanks, changes in vegetation, or other reliable indicators.

3) See Sections 14.13B and 14.16.

B. SITE IMPROVEMENT.

1) Sewage disposal systems in a shoreline area shall have a setback of at least one-hundred (100) feet from the mean high water mark and a vertical limitation of twenty-five (25) percent grade from the established lake level high waterline, and shall be designed so that the effluent will not degrade the quality of either ground or surface water.

2) The base of a septic facility tile field shall not be less than four (4) feet above the established lake level or high waterline.

3) The filling, grading or other alteration of natural drainage in a shoreline area shall be reviewed by the Planning Commission.

C. SETBACKS.

1) Sewage disposal systems shall be regulated as in B.1. and B.2. above, except that the setback of such facilities from all shorelines shall be 100 feet.

2) Structures with inside plumbing shall be set back at least fifty (50) feet from the established high lake level or high waterline.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 97 eff. Feb. 23, 2000)

Section 15.09 ENVIRONMENTALLY SENSITIVE AREAS.

A. Areas may be designated by the Township Board upon favorable recommendation of the Planning Commission as Areas of Environmental Sensitivity, including, but not limited to:

1) Rare or valuable ecosystems.

2) Significant undeveloped agricultural, grazing or watershed areas.

3) Forests and related land which require long stability for continuing renewal.

4) Scenic or historical roads/areas, including burial grounds.

5) Such additional areas as may be determined by the Federal Government, the State of Michigan or Livingston County.

B. General requirements for environmentally sensitive areas. All zoning permit applications in Environmentally Sensitive Areas, regardless of size, and in addition to (or as part of) any other applicable portions of this Section shall demonstrate that the proposed development will not adversely affect the environmental quality of the property and the surrounding area by means of the following:

1) The applicant shall provide written evidence that the proposed development of the property will conform to the provisions of such Soil Erosion and Sedimentation Control Ordinance as may be in effect in the County.

2) The applicant shall provide written evidence that a sewage treatment or disposal system has been approved by the Livingston County Health Officer or Wastewater Division of the

Department of Environmental Quality and is in conformance with any additional provisions set forth in this Ordinance pertaining to setbacks from water bodies, height above water level, etc.

3) The applicant shall provide evidence that the cutting and removing of trees and other native vegetation will be performed according to the following standards: (1) The clear cutting of woodlands and the removal of shrubbery and undergrowth shall be restricted to removal of dead, diseased or dying trees. (2) Selective cutting which removes not more than forty (40) percent of the trees and which leaves a well distributed stand of tree foliage shall be required. (3) More than forty (40) percent of the tree coverage may be removed only as such action is recommended by a state forester, or a private forester registered by the state and approved by the Planning Commission. (4) Cutting shall be done in such a manner as to avoid erosion, to preserve rare species of trees or greenery, to preserve scenic qualities, and to preserve desirable screening.

C. Have as a portion of the application a site plan for review by the Planning Commission that provides such data concerning the physical development and extent of disruption to the site as may be required by the Planning Commission. The Planning Commission or Zoning Administrator may require any of the

following as part of the information of the site plan: maps, description of earth changes, soil borings, soil surveys, well logs, description of vegetation changes, percolation test, description of development, topographic surveys, and other environmental impact information. The review of the site plan will be made in such a manner as to:

1) Determine whether the regulations of this Ordinance have been observed regarding cutting of trees and other vegetation, sewage disposal, erosion and sedimentation control, etc.

2) Determine whether the true intent of State and Township regulations, including this Ordinance, shall be served by this development in safeguarding against adverse effects on air and water quality, the natural resources of the area, and the natural vegetation of the area. The Planning Commission shall recommend alterations as are required by existing Ordinance or Statute, or such reasonable requirements as it deems necessary to minimize such adverse effects.

D. In special cases where in the judgment of the Township Planning Commission a development proposal, because of its extensiveness, complexity, exceptional cost of development or significant impact on both the existing development pattern and the natural environment, cannot be properly processed under the limited provisions of this Article, may be

required to conform to the provisions of both this Article and those of Article XX, "Site Plan Review".

Section 15.10 OPEN SPACE PRESERVATION.

As prescribed in Section 125.3506 of Public Act 110 of 2006, a developer of property having desirable natural features which need to be protected and preserved for the future, shall be permitted under this Zoning Ordinance, providing that the developer shall set aside at least 50% of the total area of a lot or a parcel of land for this purpose while being permitted to develop the remaining 50% or less of the lot or parcel, with the same number of housing units as would be possible under the provisions of the Zoning District in which the development is to be located on the total (100%) of the area of the lot or parcel of land. This provision shall apply in all Zoning Districts which permit single and multiple family housing as a principal use in them. Land set aside under this provision may be, but is not required to be, dedicated to the use of the general public.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. By Ord. No. 139 eff. May 26, 2002)

Appendix F

ARTICLE XVI
SPECIAL USES

Section 16.01 PURPOSE.

The formulation and enactment of this Zoning Ordinance is based upon the division of the Township into zoning districts, each of which include permitted uses which are mutually compatible. In addition to such permitted uses in districts, however, it is recognized that there are certain specific or unique uses which may be necessary or desirable to allow in definable locations in certain districts; but, which on account of their actual or potential impact on neighboring uses or public facilities, need to be carefully regulated with respect to their location for the protection of the permitted uses in a district. Such uses, on account of their peculiar locational need or the nature of the service offered, may have to be established in a district in which they cannot be reasonably allowed as an unrestricted permitted use.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 16.02 AUTHORITY TO GRANT PERMITS.

The Township Board, after review and recommendation by the Planning Commission, shall have the authority to grant special use permits, subject to such conditions of design and operations, safeguards and time limitations as it may determine for all special uses conditionally allowed in the various district provisions of this Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983)

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Section 16.03 APPLICATION AND FEE.

All applications and fees for special uses shall meet the requirements of Article XX, "Site Plan Review Procedures".

Section 16.04 DATA, EXHIBITS AND INFORMATION REQUIRED IN APPLICATIONS.

All data, exhibits and information required in applications for Special Uses shall meet the requirements of Article XX, "Site Plan Review Procedures".

Section 16.05 PUBLIC HEARING.

A. NOTICE REQUIREMENTS

1) The Planning Commission must hold a public hearing on the application for a special use permit and give notice as set forth below.

2) Notice must be given as follows:

a) The Township must publish notice in a newspaper of general circulation in the Township; and

b) The Township must also send notice by mail or personal delivery to the owners of property for which approval is being considered; and

c) The Township must also send notice to all persons to whom real property is assessed within 300 feet of the property, and to the occupant of all structures within 300 feet of the property regardless of whether the property or occupant is located in the Township.

3) The notice must be given not less than 15 days before the date the applicant will be considered for approval. If the name of the occupant is not known, the term "occupant" may be used in making notification.

B. CONTENTS OF NOTICE. The notice must do all the following:

1) Describe the nature of the special use permit request.

2) Indicate the property that is the subject of the request. The notice must include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.

3) State when and where the request will be considered;

4) Indicate when and where written comments will be received considering the request.

Ord. No. 1 eff. Jan. 8, 1983; amend. By Ord. No. 11 eff. Apr. 4, 1986 and further amended by Ord. No. 202 eff. Dec. 21, 2006)

Section 16.06 REQUIRED STANDARDS AND FINDINGS FOR MAKING DETERMINATIONS.

The Township Board shall review the particular circumstances and facts of each proposed special use in terms of the following standards and required findings, and shall find and record adequate data, information and evidence showing that such a special use on the proposed site, lot, or parcel:

A. Will be harmonious with and in accordance with the general objectives, intent and purposes of this Ordinance in terms of their uses, activities, processes, materials, equipment and conditions of operation, that will be detrimental to any persons, property, or the general welfare of the surrounding area in which it is located due to excessive production of traffic, noise, smoke, fumes, glare, or odors.

B. Will be designed, constructed, operated, maintained and managed so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity.

C. Will be served adequately by essential public facilities and services; such as, highways, roads, water supply

systems, wastewater disposal systems, police and fire protection, storm water drainage systems, refuse disposal, or that the persons or agencies responsible for the establishment of the proposed special use shall be able to provide adequately any such service.

D. Will not be hazardous or disturbing to existing or future neighboring uses.

E. Will not create excessive additional requirements at public cost for public facilities, utilities and services.

F. Will not have a substantial adverse impact upon the natural resources and environment of the lot or parcel upon which it is to be located and adjacent areas, including, but not limited to prime agricultural areas, forest and woodlot areas, lakes, rivers, streams, watersheds, water recharge areas, flood ways, and wildlife areas.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 11 eff. Apr. 4, 1986; further amend. by Ord. No. 97 eff. Feb. 23, 2000)

Section 16.07 SITE PLAN REVIEW.

If a site plan is disapproved, the applicant is required to wait one (1) year before resubmittal of the same or similar site plan for review and approval consideration by the Planning Commission on the same or approximately the same parcel of land. The applicant has the right to request the review of a disapproved site plan on matters of

interpretation of the provisions of this zoning Ordinance, but not of land, building or structural use. Also, refer to Section 22.06.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 16.08 JUNK YARDS

In addition to and as an integral part of development, the following provisions shall apply:

A. Junk yards shall be established and maintained in accordance with all applicable Statutes of the State of Michigan, and are only permitted in the I District, and shall be located on sites which are completely screened by opaque fences, walls or screen plantings from adjacent properties and public view.

B. An opaque fence or wall at least seven (7) feet in height and not less in height than the height of the junk or salvageable materials, equipment, parts or supplies located within the fenced or walled area of the lots or parcel on which the junk yard is located shall screen the salvage or junk yard from public view. The fence or wall shall be located no closer to the property lines of the lot or parcel than the required yard setbacks for buildings. All gates, doors and access ways through said fence or wall shall be solid, like the fence or wall, and closed when not in use as an access way. No junk or salvageable materials, equipment, parts or supplies shall be located outside the fence or wall between the property line and the fence or wall.

1) Salvage and Junk Yards shall meet the landscaping requirements specified in Section 28.03A and other appropriate Sections of Article XXVIII, Landscaping Requirements.

C. All traffic ingress or egress shall be on major roads, as defined in Section 14.15, 14.16, 14.18, 14.20 and 14.24, and there shall be not more than one (1) entrance way to the lot on which a junk yard shall be operated from each public road on which said lot abuts.

D. On the lot on which a junkyard shall be operated, all roads, driveways, parking lots, and loading and unloading areas within any yard shall have their surfaces paved or treated so as to limit on adjoining lots and public roads the nuisance caused by windborne dust.

E. Refer to Ordinance No. 4. Litter and Junk for additional regulations.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 97 eff. Feb. 23, 2000, further amend. by Ord. No. 107 eff. May 24, 2000)

Section 16.08.1 INOPERATIVE VEHICLES AND EQUIPMENT.

Inoperative vehicles and equipment, except for usable agricultural vehicles and equipment or parts of same, shall be considered as a junk yard, if located in the open, and

if not completely contained within an enclosed structure or an area enclosed by an opaque fence or wall when located on a lot or parcel of land in any zoning district. Refer to Ordinance No. 4 Litter and Junk for additional regulations.

Ord. No. 107 eff. May 24, 2000)

Section 16.09 TEMPORARY LOCATIONS OF MOBILE HOMES.

A. Mobile homes shall be permitted when lawfully located within a licensed mobile home park.

B. Mobile homes shall be permitted when located on a farm having eighty (80) acres or more with a minimum of sixty (60) acres being contiguous, under a "Temporary Permit" for the occupancy of farm workers. The farm owner or lessee shall first make written application to the Zoning Administrator, who shall issue the permit for one (1) or more mobile home units if they meet the following conditions:

    1) The location of each unit is not to be less than 200 feet from any public highway and/or boundary of adjoining property.

    2) An adequate pure water supply and sanitary facilities are conveniently nearby and available to meet all public health and safety requirements of the occupants of each mobile home. This permit shall be valid only for a period of up

to sixty (60) days. The mobile home is to be removed from the property at the expiration of the "Temporary Permit".

C. Mobile homes shall be permitted for construction contractor purposes when located on a construction site approved by the Zoning Administrator. The applicant must furnish all pertinent data, including description of land to be used, number of mobile home units involved, and the expected length of construction time. The Zoning Administrator must verify that (a) the location of units will be not less than 200 feet from any public highway and/or boundary of adjoining property, and (b) adequate fresh water supply and sanitary facilities are available on the site. A Temporary Permit shall be issued covering the period of the specific construction job, not to exceed one (1) year; subject to an extension approved by the Township Board for good cause which shall not exceed one (1) year.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 10 eff. May 3, 1984; further amend. by Ord. No. 11 eff. Apr. 4, 1986)

Section 16.10 TEMPORARY TRANSIENT AMUSEMENT ENTERPRISES.

The following provisions shall apply in addition to all applicable regulations in the District in which they are to be located:

A. All Temporary Transient Amusement uses shall be located on sites large enough so as not

to occupy or cover more than fifty (50) percent of the area of a lot or parcel upon which it is located.

B. All fenced-in areas shall be set back at least 100 feet from any front road or property line.

C. Side or rear yards shall be at least 100 feet in depth from all adjacent lots or parcels.

D. All traffic ingress or egress shall be on major roads and all local traffic movement shall be accommodated within the site so that entering and exiting vehicles will make normal and uncomplicated movements onto or off from public roads. All points of entrance or exit for motor vehicles shall be located no closer than 200 feet from the intersection of any two (2) roads or highways.(Ord. No. 1 eff. Jan. 8, 1983)

E. Refer to Ordinance No. 6 Assembly Ordinance for additional regulations.

Section 16.11 GASOLINE SERVICE STATIONS.

All gasoline service stations or filling stations shall conform to the following regulations in addition to all applicable regulations in effect in the District in which they are to be located:

A. Frontage and area. Every gasoline service station shall have a minimum frontage of 200 feet and a minimum area of 30,000 square feet.

B. Setbacks. Every structure, including gasoline pumps and other equipment, erected or installed for use as a gasoline service station shall have a minimum setback from the road right-of-way as required by the regulations in the zone in which they are to be located, and a minimum setback from all property lines of twenty-five (25) feet.

C. Construction standards. All vehicle service areas shall be constructed to conform to the following standards:

1) Suitable separation shall be made between the pedestrian sidewalk and vehicular parking or moving area with the use of appropriate bumper, wheel guards or traffic islands.

2) The entire area used for vehicle service shall be paved with a hard surface, except for such unpaved area as is landscaped and protected from vehicle use by a low barrier.

3) Hydraulic hoist, lubricating, greasing, washing, and repair equipment shall be entirely within a building. Tire and battery service and minor automobile repair, excluding automobile body repair and painting, are permitted if conducted entirely within a building.

4) The maximum widths of all driveways at the public sidewalk crossing or street line shall be no more than twenty-four (24) feet.

5) Minimum angle or driveway intersection with the roadway from the curb line to lot line shall be no less than sixty (60) degrees.

6) The minimum distance of any driveway from any property line shall be at least twenty (20) feet.

7) The minimum distance between roadway curb cuts shall be no less than forty (40) feet.

8) No gasoline service station shall be permitted within three hundred (300) feet of a wellhead protection area.

D. Lighting. All lighting shall be installed in a manner so that no illumination source is visible beyond all property lines. See Section 14.22.

E. The following accessory uses are permitted:

1) Car washes.

2) Sale of retail convenience store items.

3) Sale of food for stand-up or take-out consumption, but not including sit-down dining tables and chairs for the purpose of serving to or consuming food by customers.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 76 eff. Sept. 30, 1998)

Appendix F

Section 16.12 SANITARY LANDFILLS.

Sanitary landfills shall (1) only be located in the AR District, (2) only if planned to be located in Livingston County, including Howell Township, in accordance with Public Act 641 of 1978, "The Solid Waste Management Act" and (3) with access only permitted from a hard surface paved all-weather year-around road as defined by the Livingston County Road Commission, "Road Standards".

(Ord. No. 1 eff. Jan. 8, 1983)

Section 16.13 EXTRACTION OF NATURAL RESOURCES.

A. Permitted uses. The following special uses will be permitted only in the AR District

1) The excavation or mining of sand and gravel.

2) The processing, storage, loading, and transportation of sand and gravel, incidental to its marketing.

3) The mining of clay.

4) The extraction of peat or marl.

5) The quarrying of stone.

6) The operation of transit-mix concrete plant or an asphalt, oil, or tar-macadam batching plant.

7) The operation of a concrete products plant.

8) The excavation of topsoil, excluding soil attached to sod harvesting, the latter of which shall not be considered mining.

B. Permitted accessory uses. Any use customarily incidental to the permitted Principal Special Use.

C. Extractive mining area, bulk and equipment location requirements.

1) Limits of excavation. Sufficient setback shall be provided from all property lines and public highways, to assure adequate, lateral support. Minimum allowable setback shall be fifty (50) feet from any property line and seventy-five (75) feet from any public highway.

2) Placement of processing plants. The permanent processing plant and its accessory structures shall not be closer than 250 feet from any property line or public highway.

3) Elevation of plant site. Wherever practicable, the permanent processing plant shall be located within the excavation area, at a point lower than the general level of the surrounding terrain, in order to reduce the visual impact of the plant structure.

4) Management of storage piles and overburden. Storage piles of processed material and overburden

stripped from mining areas shall not be located closer than fifty (50) feet from any property line, or one hundred (100) feet from any public highway.

5) Minimum site area for natural resource extraction sites under this Ordinance shall be forty (40) acres.

D. General requirements. Natural resource extraction operations shall be carried out under the conditions of a Mining Permit, issued and maintained under the following requirements:

1) Before commencement of mining operations, the operating company shall file an operational plan with the Township Planning Commission, which plan shall be approved by the Commission, setting forth the area or areas to be mined, the location of permanent structures, the points of access upon public highways, and the highway routes to be followed in the transportation of finished materials. This plan, and any necessary subsequent revisions, shall be filed with the Zoning Administrator.

2) The operational plan, which shall be submitted to and approved by the Planning Commission, shall include a determination of the net operational areas, i.e., the area stripped of overburden, the area being mined, the area used for structures and storage piles, and worked-out areas which have not been reclaimed. Performance bonds, hereinafter considered in relation to the reclamation of the area, shall be calculated on the basis of the net

excavation and operational area as measured in acres.

3) Upon commencement of mining operations, perimeter controls shall be established for the mining area:

   a) The mining area shall be enclosed within a six (6) foot high solid wall or fence or by a screen planting or hedge fence of similar capability.

   b) The property shall be posted against trespass, with conventional signs placed not more than 100 feet apart.

4) Sight barriers shall be provided along all boundaries which lack natural vegetative or terrain conditions which provide effective screening of mining operations. Sight barriers shall consist of one (1) or more of the following:

   a) Earth berms, which shall be constructed to a height of six (6) feet above the mean elevation of the center line of the public highway adjacent to the mining property, or six (6) feet above the general level of terrain along property lines. These berms shall have slopes not in excess of one (1) foot vertical to four (4) feet horizontal, and shall be planted with grass, trees, and shrubs.

   b) Screen plantings of coniferous or other suitable species at least six (6) feet in height, in rows

parallel to the boundary of the property, with the spacing of rows and the spacing of trees within rows which shall be sufficient to provide effective screening.

c) Masonry walls or solid fences which shall be constructed to a height of six (6) feet, and colored so as to blend into the surroundings.

5) Noise and vibration shall be minimized in their effect on adjacent properties by the proper use of berms, walls, and screen plantings. In addition, all equipment used for the production of sand and gravel shall be constructed, maintained, and operated in such a manner as to eliminate, as far as is practicable, noises and vibrations which are injurious or substantially annoying to persons living in the vicinity.

6) Air pollution in the form of dust and dirt shall be kept at a minimum. All equipment used for production of sand and gravel shall be operated in such a manner as to minimize, insofar as is practicable, dust conditions which are injurious or substantially annoying to persons living in the vicinity. Interior roads serving the mining operation shall be paved, treated, or watered, insofar as is practicable, to minimize dust conditions.

7) No mining operation shall interfere with the natural established flow of surface waters from adjoining lands. In particular, no mining operation

shall result in the diversion of waters from one watershed to another without express permission from the Michigan Water Resources Commission, Department of Environmental Quality.

8) No mining of sand or gravel shall take place within one hundred (100) feet of the margin of any stream or waterway without express permission of the Michigan Water Resources Commission, Department of Environmental Quality.

E. Reclamation of mined areas.

1) All natural resource extraction areas shall be reclaimed and rehabilitated as soon as may be practicable after each mining phase has been completed in accordance with the plan approved by the Planning Commission. Wherever the operational plan shall permit, reclamation shall be accomplished concurrently with phased mining operations, i.e., a mined-out phase section of the area may be undergoing rehabilitation while a second phase may be undergoing active mining, and a third phase area may be being stripped of overburden. Substantial completion of reclamation shall be effected for one phase of the three (3) permitted to be opened at any one time for extraction purposes prior to the proceeding with the next approved phase. After all extraction operations are completed, the final phases of extraction shall be reclaimed in accordance with the approved final reclamation plan within one (1) year after all extraction has been completed.

2) Before commencement of mining operations, the operating company shall submit a generalized reclamation plan to the Planning Commission, setting forth the intended disposition of all land and water areas, the proposed configuration of the terrain as shown on a topographic map, a plat of any proposed streets or other improvements to be made upon the property, and a general statement of the intended final utilization of the mined property. This plan, and any subsequent revisions, shall be approved by the Planning Commission before any zoning permit is issued by the Zoning Administrator.

3) Rehabilitation and Reclamation of natural resource extraction areas shall be in accordance with the following standards:

    a) All excavation shall have either a water depth of not less than ten (10) feet below the average summer level of water in the excavation, or shall be graded or backfilled with non-noxious, nonflammable, and noncombustible solids in accordance with the approved Reclamation Plan in order to insure:

        i) that the excavated area shall not collect and retain stagnant water, or

        ii) that the surface of such area which is not permanently submerged is graded or backfilled as necessary to produce gently

rolling surfaces that will minimize wind and water erosion, and which will be generally compatible with the adjoining land area.

b) The finished grade of all slopes resulting from excavations shall not be steeper than one (1) foot vertical to three (3) feet horizontal.

c) Top soil of a quality equal to that occurring naturally in the surrounding area shall be replaced on all excavated areas not covered by water, except those areas where streets, beaches, or other planned improvements are planned. Top soil shall be applied to a depth of at least four (4) inches.

d) Vegetation shall be restored by the appropriate planting of grass, trees and shrubs, in order to establish a permanent vegetative cover on the land surface, and to minimize erosion.

e) Upon cessation of mining operations by abandonment or otherwise, the operating company, within a reasonable period of time not to exceed twelve (12) months thereafter, shall remove all plant structures, buildings, stockpiles, and equipment.

4) The operating company shall post a minimum financial guarantee in the amount of $5,000.00 for the first five (5) net operational acres. The financial guarantee shall be increased on the yearly

anniversary date of the mining permit at the rate of $1,000.00 per each additional operational acre which exceeds the first five (5) net operational acres. The guarantee shall be provided in one of the following forms: (1) cash, (2) certified check, or (3) an irrevocable bank letter of credit, acceptable to the Township Board. Upon rehabilitation of mined acreage and reduction of net operational area, the security shall be released in accordance with the amount of security required per acre.

F. Administration of mining districts.

1) The following procedures shall be followed before establishing a mining operation:

a) The operating company shall file an operational plan, in accordance with the requirements of Section 16.13E of this Ordinance. This plan may be in the form of a written statement and maps, and shall carry evidence of review and approval, if required, by any County or State agency of competent jurisdiction, in addition to the required approval of the Township Planning Commission. On the basis of this plan, the operating company shall file a statement of net area to be excavated as measured in acres.

b) The operating company shall file a reclamation and rehabilitation plan, subject to the requirements of Section 16.13F.2 and shall provide a financial guarantee in accordance

with the requirements of Section 16.13E.4 of this Ordinance.

c) The Township Planning Commission shall review the Operations and Reclamation plans and make its recommendation to the Township Board.

d) The Township Board will review the recommendation and accept or reject the plan. Upon acceptance of the plans, the Township Board will receive the financial guarantee of reclamation in accordance with Section 16.13E.4 of this Ordinance.

2) Before commencement of mining operations, a Mining Permit shall be issued by the Zoning Administrator upon payment of an annual fee in accordance with the established Howell Township "Fee Schedule". This fee shall defray any administrative expense rising out of the mining operation.

3) Inspections and conformance.

a) Inspections shall be made of the mining site, not less often than twice in each calendar year by the Zoning Administrator in order to insure conformance with the requirements of the approved Special Use Permits.

b) Any violations shall be reported in writing by the Zoning Administrator. The report shall

be forwarded with a request for compliance, to the operating company by the Zoning Administrator.

c) Failure on the part of the operating company to correct a reported violation within thirty (30) days after such request is made by the Zoning Administrator shall be reason for revocation of the permit. Additional time for correction of the cited violation may be allowed upon submission to the Zoning Administrator of proof of good and sufficient cause by the operating company, otherwise the operating company shall be declared to be in violation of this Ordinance and subject to the penalties of both the Ordinance and the Special Use Permit approved for the natural resource extraction operation.

G. Special requirements.

1) Waiver of excavation limits. The Township Zoning Board of Appeals may approve a reduction of the setback limits required for excavations in Section 16.13C.1 under the following conditions:

a) The operating company shall have provided the Zoning Board of Appeals with acceptable proof that lateral support shall not be endangered.

b) Adjacent property owner or owners shall have given written consent to the waiver of limits for excavation.

c) All other requirements of this Ordinance have been met and maintained at the time of applying for and receiving approval of any waiver.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 97 eff. Feb. 23, 2000)

Section 16.14 SINGLE FAMILY EARTH HOMES.

Single-family earth homes are permitted in the AR, and SFR Districts as long as they meet all of the requirements of the District in which they are located and the bottom edge of the earth berms surrounding the building or structure meet the height and yard setback requirements for all yards.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 16.15 WIND ENERGY SYSTEMS.

A. Definitions

1) Wind Energy Systems means an accessory land use for generating electrical power by the use of wind by means of a wind turbine generator and windmill blades mounted on a tower and their related wind measuring and electrical equipment located on a parcel of land having a principal use planned to be part of a submitted Site Plan or has a principal land use already located upon a parcel of land.

2) Wind Site Assessment means a written assessment report to determine the specific wind speeds at a specific site and the feasibility of using that site for construction and use of a wind energy system.

3) Sound Level means the measurement of sound in decibels (dB (A)'s), which are the units of measure used to express the magnitude of sound pressure and intensity.

4) Shadow Flicker means the moving shadow of the windmill blades which are cast on the ground or against structures located on the sire or on adjacent parcels of land.

B. Wind Energy Systems shall be permitted as Special Use Accessory Uses under the following conditions:

1) Designed to serve the electric power needs of a home, farm or commercial or industrial business.

2) Towers to be designed by a licensed structural engineer with the following requirements:

a. Tower to be designed to collapse only on the parcel upon which it is located.

b. Tower to be designed to prevent climbing except for those persons required to do so.

3) Maximum Permitted Height of All Parts of the Structures: 70 feet, as measured from the ground level of the Tower to the highest tip of the windmill blade, when revolving.

4) Required Minimum Clearance of Exposed Moving Parts: The minimum elevation above ground level or any pedestrian level of human access for all exposed moving parts shall be at least 20 feet above such levels.

5) Required Minimum Setbacks from all Property Lines: The windmill system, including the wind generator tower and a wind measuring tower, the latter if constructed, shall be setback at least the distance as measured from the ground level to the highest tip of their windmill blades when revolving. All other on site structures shall be setback at least 20 feet, including guy wire anchors, if used to support the tower.

6) Sound Level: the maximum level of sound permitted in the operation of the tower, as measured in decibels (dB (A)'s), shall be 55.

7) Shadow Flicker: No shadow flicker shall be cast on the windows of any principal structure located on adjacent parcels at any time.

8) Safety requirements: Windmill generator and wind measuring towers shall have automatic braking, governing or feathering systems to

prevent uncontrolled rotation or speeding of their windmills and other moving parts.

9) Construction Requirements: All windmill systems shall meet all of the construction requirements governing them by the Federal, State and Local Construction Requirements, including those governing the lighting on and height of a Tower affecting airport operations.

10) At the discretion of the planning Commission a Wind Site Assessment Report may be required if it is possible that a Tower might adversely affect existing or planned land use developments for the area adjacent to the Wind Energy System. (Ord. No 1 eff. Jan. 8, 1983; Amend. by Ord. No. 227 eff. July 2, 2009)

Section 16.16 NOT FOR PROFIT SHELTERS FOR SMALL ANIMALS.

Non-profit shelters for the temporary housing of small animals shall be allowed in an NSC Neighborhood Service Commercial District provided they conform to the following regulations and conditions in addition to all applicable regulations in effect in the district in which they are to be located:

A. All animals shall be housed within the principal building, which building shall be constructed in such a manner that it is sound proof to prevent

the noise of the animals being heard outside the building.

B. The minimum lot size shall be two (2) acres and all setbacks of the principal structure shall be fifty (50) feet from all boundary lines.

C. Any exercise area shall only be located in the rear yard area, but not within the rear setback and in compliance with the setback requirements set forth herein. Wastes shall not be allowed to accumulate and shall be disposed of as in (D) below.

D. The disposal of all waste shall be in a manner approved by the Livingston County Health Department.

E. Any outdoor exercise area shall be constructed in such a manner to insure that no animal can escape therefrom and shall be screened from public view in a manner approved by the Planning Commission.

F. The facility shall be operated in accordance with all applicable local and state regulations.

G. The facility shall be operated so as not to generate objectionable noise or odors beyond the property limits.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 31 eff. Oct. 3, 1991)

Appendix F

Section 16.17 PUBLIC, SEMI-PUBLIC AND PRIVATE BUILDINGS AND RELATED STRUCTURES AND OUTDOOR ACTIVITY AREAS

A. Township and other government buildings, except schools and pre-schools.

1) Located within one-half (2) mile of the M-59–Grand River Road or the Grand River Road–Burkhart Road intersections, except the existing Township Hall site located at 3525 Byron Road.

2) Permitted in all zoning districts located within one-half (2) mile of the intersections, as specified in 1) above.

3) Located on at least a ten (10) acre site and have 660 feet of frontage on the road right-of-way on the roads and highways included in 1) above.

4) All access drives shall be provided from M-59, Grand River Road or Burkhart Road.

5) Off-street parking shall meet the requirements of Section 18.02A–F and G17 or G19, whichever is applicable to the type of building.

6) When located adjacent to land currently used or zoned for residential purposes, all buildings, other structures and outdoor activity areas shall provide a greenbelt buffer at least twenty (20) feet wide and provide a setback, including the greenbelt

buffer area, at least fifty (50) feet in depth from all residential property lines.

B. Public and private educational and training schools and facilities

1) Permitted in all zoning districts which permit any type of residential use as a principal use, except that professional, business and technical training schools and facilities shall only be permitted in the RSC and I zoning districts as either a principal or accessory use.

2) Shall be located with frontage on a state highway or county primary road when located in a residential zoning district.

3) Located on lots, parcels or sites according to the following:

a) Preschools on at least five (5) acres.

b) Elementary schools on at least ten (10) acres.

c) Middle schools on at least twenty (20) acres.

d) High schools on at least forty (40) acres.

e) Universities, Colleges, Professional, Business or Technical Training and Trade Schools.

i) Without outdoor athletic fields and other outdoor activity areas on at least five (5) acres.

ii) With outdoor athletic fields and other outdoor activity areas on at least forty (40) acres.

C. Convalescent and Nursing Homes

1) Permitted in all Residential Zoning Districts.

2) Minimum lot size shall be five (5) acres.

3) The lot location shall be such that at least one (1) property line abuts a paved major road or highway as designated in the Master Plan for Roads and Highways. The access for off-street parking areas for guests and patients shall be directly from said major road or highway.

4) The principal and all accessory buildings shall be set back at least seventy-five (75) feet from all property lines.

5) The facility shall be designed to provide a minimum of fifteen hundred (1,500) square feet of lot area open space for each of the designed number of beds to be provided in the facility. This open space shall be landscaped and may not include off-street parking areas, driveways, and accessory uses or areas.

6) Off-street parking shall meet the requirements of Section 18.02A–F and G8.

7) When located adjacent to residences or land zoned for residential purposes, all buildings and structures and outdoor activity areas shall provide a greenbelt buffer at least twenty (20) feet wide and provide a setback including the greenbelt buffer area at least fifty (50) feet in depth from all residential property lines.

D. Child Day Care Centers and Nurseries and Nursery Schools

1) Permitted as a principal use and accessory use in the MFR, OS, NSC, RSC, and I zoning districts and as a Special Use in all zoning districts permitting single family residential uses.

2) Nursery schools and day care centers and nurseries for children shall be licensed by the State of Michigan and meet all of the requirements of the Michigan Department of Social Services, including site size and development requirements.

3) Off-street parking shall meet the requirements of Section 18.02A–F, and shall provide one (1) space for each employee working during the maximum employment hours, plus one (1) parking space for each five (5) students attending during the maximum attendance hours and additionally provide at least ten (10) queuing spaces for

dropping off and picking up children at or near the entrance to the facility.

4) The lot location shall be such that at least one (1) property line abuts a state highway or a county primary road. The access for off-street parking facilities for guests and patients shall be directly from said road or highway.

5) See Section 14.31.

E. Hospitals, Clinics and Emergency Care facilities

1) Permitted in all zoning districts.

2) Located with frontage on M-59, Grand River Road, Oak Grove Road or Burkhart Road.

3) Minimum lot areas shall be twenty (20) acres for hospitals and one (1) acre for clinics and emergency care facilities and have a minimum lot width of three hundred thirty (300) feet as the road right-of-way line for hospitals and one hundred (100) feet for clinics and emergency care facilities.

4) The lot location shall be such that at least one (1) property line abuts a paved major road or highway as designated in the Master Plan for roads and highways. The access for off-street parking facilities for guests and patients shall be directly from said major road or highway.

5) Minimum setback for all hospitals and related structures shall be one hundred (100) feet from any property line, and for clinics and emergency care facilities, shall be the requirements for the zoning district in which they are located.

6) Off-street parking for hospitals shall meet the requirements of Section 18.02A–F and G17, and for clinics and emergency care facilities the requirements of Section 18.02A–F and G7.

Sections 16.24, 16.27, 4.03K, 6.03B.3, 7.03a.3, 8.02B, 8.02J., 8.03B, 9.03G, 10.03E, 12.03 E, 13.05–12 as currently included in the Howell Township Zoning Ordinance are hereby repealed.

(Ordinance #103 eff. March 26, 2000)

Section 16.18 Nonprofit public, semi-public and private park and recreation facilities

A. The following public and private park and recreation land uses shall be permitted in the zoning districts prescribed as follows and their minimum size parcels of contiguous land areas:

1) Neighborhood parks for active and passive recreation in the AR, SFR and MFR zoning districts on at least five (5) acres.

2) Community parks, serving two (2) or more neighborhoods for active and passive recreation

in the AR, SFR and MFR zoning districts on at least twenty (20) acres.

3) Playgrounds for outdoor and indoor activities in the AR, SFR and MFR zoning districts on at least ten (10) acres, except when located in conjunction with a K–8 school on at least five (5) acres.

4) Tot lots serving children up to five (5) years old in all residential zoning districts on at least one-half (2) acre.

5) Beaches, located in conjunction with the waterfront of lakes or rivers on at least ten (10) acres of land.

6) Indoor court game and sport facilities for swimming, soccer, ice skating, handball, squash, batting cages, etc. in the RSC and I zoning districts on at least two (2) acres.

7) Golf courses in the AR, SFR, and MFR zoning districts on at least forty (40) acres per nine (9) holes of golf.

8) Golf driving ranges in the AR zoning district on at least ten (10) acres or as an accessory use to a golf course on at least an additional five (5) acres to the minimum acreage for a nine (9) hole golf course.

9) Nature study areas, in the AR and SFR zoning districts on at least ten (10) acres.

10) Wildlife refuges in the AR and SFR zoning districts on at least ten (10) acres.

11) Forest and woodlot preserves in the AR and SFR zoning districts on at least ten (10) acres.

12) Passive recreation areas and facilities related to the natural environment in the AR, SFR, and MFR zoning districts on at least five (5) acres.

13) Areas to preserve natural open space, vistas, geological features, archeological sites and historical buildings, sites and areas in all zoning districts on sites of appropriate land area to fulfill the purpose of each of the previous. Conditions, in addition to those required by Section 16.01 to 16.06, are as follows:

14) Off-street parking shall be determined by mutual agreement between the applicant and the Planning Commission, but parking shall not be less than two (2) off-street parking.

(Ord. No. 103 eff. March 26, 2000)

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Section 16.19 Onsite Solar Energy Systems and Solar Energy Farms

A. Definitions

1) Onsite Solar Energy Systems means an accessory use on a lot for the purpose of generating electricity by means of a solar collector or other solar energy device or a structural design feature mounted on a building or on the ground with the primary purpose of collecting, storage and distribution of the electricity produced to be used for space heating or cooling, water heating and other electrical purposes with the system mounted on a building or on the ground and is not the primary use of the property.

2) Solar Energy Farms means a principal use of a property as a system to produce electrical energy for sale back into an electrical energy grid system and not primarily consumed on site.

3) Solar Energy means direct, diffused and reflected radiant energy received from the sun.

4) Solar Panels means a structure containing one or more solar energy receptive cells designed to receive and convert solar energy into useable electrical energy by way of a Solar Energy System.

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B. ONSITE SOLAR ENERGY SYSTEMS shall be permitted as an Accessory Use to an existing or planed in conjunction with a proposed Principal Use and located on a lot or parcel of land in any Zoning District.

1) Designed and constructed to provide and limited to the primary or supplemental electric power needs of a home, farm, commercial or industrial business and public or semi-public use located on a lot or parcel of land.

2) Construction plans for the installation of roof and wall mounted solar panels shall be presented as an amendment to an existing site development or as part of a proposed site plan development.

3) Solar Panels shall not exceed twenty (20) feet in height when ground level installed and shall be located in the rear and side yards of the lot or parcel upon which they are located.

4) Solar panels may be attached to the roof or walls of a building provided they are attached directly to the contour of the roof or wall of the building. Solar Panels shall not extend more than three (3) feet above the roof line of the building upon which they are located.

5) All solar panels shall be located on the ground or on a building, so that the reflection from any

solar panel will be directed away from or is properly buffered from adjoining property.

6) Any earth disturbed by construction of the Solar Energy System shall be properly landscaped according to the requirements of this Zoning Ordinance.

7) All structural elements of the Solar Energy System shall meet all of the applicable requirements of the Zoning District in which they are located.

8) To the extent applicable the requirements of the Livingston County Construction Code shall be met.

9) The Applicant shall inform the Utility Company supplying electric power to the site upon which the Solar Energy System is to be located and furnish the Township with written evidence of the Applicant's submittal to the Utility Company of this information and the Utility Company's written response to the Applicant's proposed Solar Energy System.

10) Should the Applicant be a non-owner of the property, an agreement between the owner and non-owner to permit the installation of the Solar Energy System shall be submitted as a part of the Applicant's requested installation of a Solar Energy System on the site.

11) All electric power generated by a Solar Energy System on the lot or parcel upon which it is located shall be utilized only by the developments located on the lot or parcel, and shall not be extended to adjacent lot and parcel uses and developments and beyond, unless adjacent lots or parcels are in the same ownership, except that any surplus electric power energy produced on a lot or parcel may be mutual written agreement between the owner of the lot or parcel producing the surplus electric power energy and the public utility company providing electric power to the area in which their lot or parcel is located may be transferred and/ or sold only to that public utility company.

12) The manufacturer's or installer's identification and appropriate warning signage shall be posted on or near the solar panels in a clearly visible manner.

C. SOLAR ENERGY FARMS shall be permitted as a Special Principal Use on a parcel of land located only in the AR Agricultural—Residential Zoning District.

1) The Applicant shall submit a Site Plan showing the design of all elements to be erected or constructed as a part of the Solar Energy Farm, and a Site Plan which meets all of the requirements of the Township Zoning

Ordinance and those of the Michigan Public Service Commission.

2) Solar Energy Farms shall be completely enclosed by a lock gated perimeter fence at least eight (8) feet in height and in accordance with the other relevant Fencing and Protective Screening language of Section 14.26, 14.27, 28.08 and 28.09 of the Township Zoning Ordinance.

3) A Solar Energy Farm shall meet the requirements of Article XVI "Special Uses" of the Township Zoning Ordinance.

4) No Solar Energy Farms shall be installed until written evidence has been submitted to the township that the Electric Utility Company has been informed and the Solar Energy Farm has the approval of the Michigan Public Service Commission of the Applicant's intent to install a Solar Energy Farm which will generate electric power for distribution by interconnection to the Electric Power Grid of the Electric Utility Company serving the area in which the Solar Energy Farm is located.

5) A Solar Energy Farm which becomes inactive in its generation and distribution of electricity for a continuous service period of one (1) year shall be completely removed from the site at the owner's or operator's expense, and the

site shall be restored to as natural a condition as is possible within six (6) months from the determined one (1) year ending date of inactivity.

(Ord. No. 243 eff. Nov. 21, 2010)

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ARTICLE XVII
NONCONFORMING LAND, BUILDING AND STRUCTURAL USES AND DIMENSIONAL REQUIREMENTS

Section 17.01 PURPOSE.

It is the purpose of this Article to recognize that zoning cannot be retroactive upon any nonconformity of the uses of lands, buildings and structures in respect to the provisions of this Ordinance if they legally existed at the time of their enactment. It is the further purpose of this Article to assure owners and users of existing legal nonconforming uses of land, buildings and structures that such uses can continue as legal nonconforming uses which cannot be terminated by the provisions of this Ordinance, but may have limitations placed upon their future expansion, or if terminated for extended periods of time may not be able to be reinstated and continued as a nonconforming use, but will be required to conform to the provisions of the District in which they are located.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 17.02 CONTINUANCE OF NONCONFORMING USES.

A. A nonconforming use existing at the time this Ordinance takes effect may be continued, except that if it is discontinued for one (1) year or more, it shall be deemed abandoned and any further use must be in conformity with the uses permitted in such District.

B. Any building arranged, intended or designed for a nonconforming use, the construction of which has been started at the time of the passage of this Ordinance, but not completed may be completed and put to such nonconforming uses, providing it is done within one (1) year after this Ordinance takes effect.

C. Any building or structure, existing as a nonconforming use at the time this Ordinance takes effect, which is destroyed by fire or the elements, may be reconstructed and restored providing the same is done within one (1) year from the date of said destruction.

D. Nonconforming uses, if rebuilt, may not be expanded, but must be rebuilt to no more than the total square foot area of the original structure. Plans for the rebuilding of a nonconforming use, if destroyed, are required to be reviewed by the Planning Commission under the provisions of the Site Plan Review Procedures of Article XX.

E. Where there are practical difficulties, unnecessary hardships or the need for interpretation of any of its provisions in the way of carrying out the strict letter of any of the provisions of this Ordinance, the Board of Appeals shall have power in passing upon appeals to interpret, vary or modify any of its rules, regulations or provisions and specifically including structural changes, alterations, modernization, enlargements, reconstruction, extension, substitution and the moving in part or whole of the nonconforming use upon the finding of facts which support the

conclusion that the structural changes, alterations, modernizations, enlargements, reconstruction, extension, substitution and movement of the use is necessary to implement the spirit of the Ordinance to ensure public safety or to accomplish substantial justice. The applicant for a variance of a nonconforming use and the Board of Appeals in making its determination are subject to and governed by the provisions of Article XXI I entitled "Zoning Board of Appeals."

F. The Township Planning Commission may authorize a replacement, modernization, alteration, enlargement, or substitution of one structure for another provided that such nonconforming use is not increased, and that such replacement, modernization, alteration, enlargement, or substitution creates a structure that would be in more conformance to the Zoning Ordinance than the existing structure. Nothing herein shall be construed as permitting the Planning Commission to expand the use itself. The Township Planning Commission may prescribe appropriate conditions and safeguards in order to ensure the change will be in conformance with this Ordinance as much as reasonably possible. The violation of such conditions and safeguards, when made a part of the terms under which modification was made, shall be deemed a violation of this Ordinance and subject to the provision of Section 21.06 of this Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 8 eff. Dec. 7, 1983; further amend. by Ord. No. 12 eff. Sept. 5, 1986)

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Section 17.03 CONFORMANCE OF REBUILT NONCONFORMING USES.

Any nonconforming use, if totally or partially destroyed and if rebuilt, must meet all of the requirements of this Zoning Ordinance, including those prescribed for the District in which the nonconforming use is located to the extent possible.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 17.04 CHANGE TO A LESS NONCONFORMING USE.

Any legal nonconforming use existing at the time of adoption of this Ordinance may be changed to another use which is less nonconforming in relation to the permitted uses in the District in which it is located, as determined by the Zoning Board of Appeals. Such nonconforming use once changed may not revert to the original use upon commencing the less nonconforming use.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 17.05 NONCONFORMING LOTS AND PARCELS.

A. Notwithstanding limitations imposed by other provisions of this Ordinance, any permitted use in a District and its customary, accessory uses may be erected on any lot of record subsequent to the effective date of adoption or amendment to

this Ordinance. This provision shall apply even though such lot fails to meet any of the dimensional requirements for the District in which such lot is located. It is the intent to permit only minimum variances which may be granted by the Zoning Board of Appeals upon application by a property owner or a representative of the owner.

B. If two (2) or more lots, combination of lots, or portions of lots are contiguous and have continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or parts of the lots do not meet the requirements for lot width and area as established by this Ordinance, the lands involved shall be considered to be an undivided parcel for the purposes of this Article, and no portion of said lots or parcels shall be used or occupied which does not meet lot width and area requirements established by this Ordinance, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 17.06 ILLEGAL NONCONFORMING USES.

Those alleged nonconforming uses of land, buildings and structures which cannot be proved conclusively to have been existing prior to the effective date of this Ordinance, or any amendment thereto, shall be declared

illegal nonconforming uses and shall be discontinued upon written notification from the Zoning Administrator.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 17.07 USES AND CONSTRUCTION MADE PRIOR TO VARIANCE DETERMINATION.

Any use made of property or construction completed on any property which is in need of an interpretation or variance, but completed prior to such interpretation or granting of a variance by the Zoning Board of Appeals, shall require the owner of the property to apply for the needed interpretation or variance which shall be processed by the Zoning Board of Appeals for its decision in accordance with the provisions of this Article and other provisions of this Ordinance.

(Ord. No. 97 eff. Feb. 23, 2000)

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ARTICLE XVIII
OFF-STREET PARKING, LOADING AND UNLOADING REQUIREMENTS

Section 18.01 PURPOSE.

It is the purpose of this Article to improve and maintain the safety of the roads and highways in the Township by requiring off-street parking, loading and unloading spaces for all uses permitted by this Ordinance in order to provide for the proper function and safety in the use of roads and highways as traffic ways which are intended to be limited to moving automotive vehicles.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 18.02 OFF-STREET PARKING REQUIREMENTS.

In all Districts, except those AR District uses relating to Agriculture, but not including Agribusinesses, there shall be provided at the time any building or structure is erected, or uses established, enlarged or increased in capacity, off-street parking spaces for automotive and motorized vehicles with the requirements specified as follows: (Ord. No. 171 eff. April 25, 2004)

A. Plans and specifications showing required off-street parking spaces shall be submitted to the Zoning Administrator for review at the time of application for a zoning permit. Required off-street parking facilities shall be located

on the same lot as the principal building or on a lot within three hundred (300) feet thereof, except that this distance shall not exceed one hundred (150) feet for single family and two-family dwellings.

B. Parking spaces may be provided for all types of vehicles in garages, other completely enclosed structures, covered structures or designated outdoor parking areas, provided all such off-street parking shall meet all requirements of this Ordinance, including Article XVIII Off-Street Parking and Section 14.24 "Outdoor Parking or Storage of Recreation Vehicles, Commercial Vehicles and Trucks on Residential Lots and Parcels."

C. Each off-street parking space for automobiles shall not be less than 200 square feet in area, exclusive of access drives or parking space access aisles, and shall be of usable shape and condition. There shall be provided a minimum access drive of ten (10) feet in width for one-way traffic and eighteen (18) feet for two-way traffic, and where a turning radius is necessary, it will be of such an arc as to reasonably allow an unobstructed flow of vehicles. Parking space access aisles for automobiles shall be of sufficient width to allow a minimum turning movement in and out of a parking space. The minimum width of such aisles shall be:

1) For 90 degree or perpendicular parking the aisle shall not be less than 22 feet in width.

2) For 60 degree parking the aisle shall not be less than 18 feet in width.

3) For 45 degree parking the aisle shall not be less than 13 feet in width.

D. Required off-street parking facilities for churches located in nonresidential districts may be reduced by an equivalent number of off-street parking spaces located within 300 feet, if they are directly accessible and usable, as off-street parking spaces.

E. Every parcel of land hereafter used as a public or private off-street parking area shall be developed and maintained in accordance with the following requirements:

1) All off-street parking spaces shall not be closer than the required front, side and rear yard setbacks in the zoning district in which they are located to any property line.

2) All driveways accessing parking areas and all parking areas shall be hard surfaced with asphalt, or concrete and planting islands and walkways in parking areas shall be edged with curb and gutter.

3) Under certain conditions, the Planning Commission shall have the discretion of waiving certain hard surface paving requirements where:

   a) Driveways, loading or turnaround or storage areas receive only limited use and are not used for employee parking, customer parking, or primary access.

   b) Gravel surfacing and potential problems arising from dust or scattered gravel will not impact neighboring properties.

   c) Hard surfacing will significantly increase stormwater runoff and create a potential for flooding and/or soil erosion. (Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. 250)

4) Any lighting fixtures used to illuminate any off-street parking area shall be so installed as to divert the light away from any adjoining premises and public roads, and no source of light shall be observable beyond the lot lines of the property upon which it is located. Refer to Section 14.22 for additional lighting requirements.

5) All off-street parking areas providing more than five (5) parking spaces shall be lighted and landscaped in accordance with Section 28.02C and other appropriate Sections of Article XXVIII, Landscaping Requirements, and Section 14.26, Fences.

6) All off-street parking areas that make it necessary for vehicles to back out directly onto a public road are prohibited, except for single family and duplex residential driveways.

7) Combined parking facilities are allowed when two (2) or more uses occur on one property or when a building on one property contain two (2) or more uses, provided that the permanent allocation of the required number of parking spaces shall be the sum of the requirements for all the uses computed in accordance with this Ordinance. Parking facilities for one use shall not be considered as providing the required parking facilities for any other use, except churches.

F. For the purposes of determining off-street parking requirements, the following units of measurement shall apply:

1) Floor area. In the case of uses where floor area is the unit for determining the required number of off-street parking

spaces, said unit shall mean the gross floor area, except that such floor area need not include any area used for incidental service, storage installations of mechanical equipment, penthouses, housing ventilators and heating systems, and similar uses.

2) Places of assembly. In stadiums, sport arenas, churches, and other places of assembly in which those in attendance occupy benches, pews, or other similar seating facilities; each eighteen (18) inches of such seating facilities shall be counted as one (1) seat. In cases where a place of assembly has open assembly area, requirements shall be on the basis of one (1) seat being equal to three (3) square feet of the floor area of the place of assembly.

G. Off-street parking space requirements. The minimum required off-street parking spaces are set forth as follows:

Use	Parking Space Requirements
1) Automobile or Machinery Sales and Services Garages	One (1) space for each 200 square feet of showroom floor area, plus two (2) spaces for each service bay, plus one (1) space for each employee working during maximum employment hours.

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2) Banks, Business, and Professional Offices	Two (2) parking spaces for each 200 square feet of floor are, plus one (1) parking space for each employee working during maximum employment hours.
3) Barber Shops and Beauty Parlors	Two (2) spaces for each chair, plus one (1) space for each employee working during maximum employment hours.
4) Boarding and Lodging Houses	One (1) parking space for each bed.
5) Bowling Alleys	Five (5) parking spaces for each alley, plus one (1) space for each employee working during maximum employment hours.
6) Churches, Auditoriums, Stadiums, Sports Arenas, Theaters, Dance Halls, Assembly Hall other than Schools	One (1) space for each three (3) seats, or for each three (3) persons permitted in such buildings as determined by the State Fire Marshall. Refer to Section 18.02D.
7) Clinic	Four (4) spaces for each doctor, plus one (1) space for each employee working during maximum employment hours.

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8) Convalescent or Nursing Home, Orphanage, or Similar Use	One (1) parking space for each two (2) beds, plus one (1) space for each employee, including nurses, working during Maximum employment hours.
9) Drive-In Banks, Cleaners, and Similar Businesses	Five (5) parking spaces, plus one (1) parking space for each employee working during maximum employment hours.
10) Drive-In Eating Establishments	Ten (10) parking spaces, plus one (1) parking space for each twenty (20) square feet of floor area and one (1) parking space for each employee working during maximum employment hours.
11) Dwelling (Single and Two-Family)	Two (2) parking spaces for each family dwelling unit.
12) Dwelling (Multiple Family and Mobile Home Parks)	Two (2) parking spaces per dwelling unit, plus one (1) additional space for each four (4) dwelling units and one (1) space for each employee working during maximum employment hours.

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13) Funeral Homes and Mortuaries	Four (4) spaces for each slumber room or one (1) space for each fifty (50) square feet of gross floor area, whichever is greater, plus (1) space for each employee working during maximum employment hours.
14) Furniture, Appliance Stores, Household Equipment, and Furniture Repair Shops	One (1) space for each 400 square feet of floor area, plus one (1) space for each employees working during maximum employment hours.
15) Gasoline Filling and Service Stations	One (1) parking space for each repair and service stall, plus one (1) space for each employee working during maximum employment hours.
16) General Office Building	One (1) parking space for each 400 square feet of gross floor area, plus one (1) parking space for each employee working during maximum employment hours.
17) Hospitals	One (1) space for each bed, plus one (1) space for each employee working during maximum employment hours.

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18) Hotels, Motels, Lodging Houses, Tourist and Boarding Homes	One (1) space for each living unit, plus one (1) space for each employee working during maximum employment hours.
19) Libraries, Museums, Post Offices	One (1) parking space for each 800 square feet of floor area, plus one (1) parking space for each employee working during maximum employment hours.
20) Livestock Auction	One (1) parking space for each 100 square feet of building, pens, and all enclosed areas on the premises of the auction facility.
21) Manufacturing, Fabricating, Processing and Bottling Plants, Research and Testing Laboratories, or other related, permitted Industrial Uses	One (1) space for each employee working during the largest working shift or one (1) space for every 550 square feet of total floor space, whichever is greater.
22) Restaurants, beer Parlors, Taverns, Cocktail Lounges, Night Clubs, and Private Clubs	One (1) parking space for each four (4) customer seats, plus one (1) parking space for each employee working during maximum employment hours.

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23) Retail Stores	One (1) parking space for each 150 square feet of floor area, plus one (1) space for each employee working during maximum employment hours.
24) Roadside Stands	Five (5) parking spaces, plus one (1) for each twenty-five (25) square feet of floor area.
25) Schools; Private or Public, Elementary and Junior High Schools	One (1) space for each employee working during the mini-mum employment hours in the building and on the grounds, plus one (1) space for each thirty (30) students of maximum enrollment capacity.
26) Senior High School and Institutions of Higher Learning, Private or Public	One (1) parking space for each employee plus one (1) for each five (5) students, plus the parking requirements for an auditorium, gymnasium, and an athletic field if they are included.
27) Self-Service Laundry or Dry Cleaning Stores	One (1) space for each two (2) washing and drying machines, plus one (1) space for each employee working during maximum employment hours.

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28) Supermarket, Self-Service Food and Discount Stores	Two (2) spaces for each 200 square feet of floor area, plus one (1) space for each employee working during maximum employment hours.
29) Warehouse and Distribution Centers	Five (5) spaces plus one (1) space for each employee in the largest working shift or one (1) space for every 1,500 square feet of total floor area plus five (5) spaces, whichever is greater.
30) Mini Warehouses	Five (5) parking spaces shall be provided adjacent to the office, in addition to any parking which may be required for other permitted uses on the same site.

If a use is not specifically listed, the parking requirements of a similar or related use shall apply as determined by the Planning Commission.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 39 eff. June 3, 1993; Ord. No. 61 eff. Oct. 8, 1997; Ord. No. 97 eff. Feb. 23, 2000, further amend by Ord. No. 107 eff. May 24, 2000, further amend by Ord. No. 124 eff. May 6, 2001, further amend by Ord. No. 171)

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Section 18.03 OFF-STREET LOADING AND UNLOADING REQUIREMENTS.

In connection with every use, except single family, two family and multiple family dwelling unit structures, there shall be provided on the same lot with such buildings, off-street loading and unloading spaces for permitted or special uses which customarily receive or distribute material or merchandise or provide services by vehicle as follows:

A. Plans and specifications showing required loading and unloading spaces, including the means of ingress and egress and interior circulation, shall be submitted to the Zoning Administrator for review at the time of application for a Zoning Permit for the establishment or enlargement of a use of land, building or structure.

B. Each off-street loading-unloading space shall not be less than ten (10) feet in width, fifty-five (55) feet in length, and, if a roofed space, be not less than fifteen (15) feet in height.

C. A loading-unloading space may occupy all or any part of any required side or rear yard; except the side yard adjacent to a public road in the case of a corner lot. No part of a required front yard may be occupied by a loading space.

D. A loading-unloading space shall not be located closer than fifty (50) feet to any residential lot or parcel

unless wholly within a completely enclosed building, or unless enclosed on all sides by a wall, fence or compact planting not less than six (6) feet in height.

E. When two (2) or more uses are located on a lot or parcel, the total requirements for off-street loading-unloading facilities shall be the sum of all the uses computed separately.

F. All off-street loading-unloading facilities that make it necessary to back out directly into a public road shall be prohibited.

G. Off-street loading space and access drives shall be paved, drained, lighted and shall have appropriate bumper or wheel guards where needed.

H. All lights used for illumination shall be so arranged as to reflect the light away from the adjoining premises and roads, and no light source shall be visible beyond the property lines of a lot or parcel upon which they are located.

I. Off-street loading-unloading requirements for motels, hospitals, mortuaries, public assembly, offices, retail, wholesale, industrial or other uses similarly involving the receipt or distribution by trucks, having over 5,000 square feet of gross floor area, shall be provided with at least one (1) off-street loading-unloading space, and for every additional 20,000 square feet of gross floor space or fraction

thereof shall provide one (1) additional loading-unloading space.

J. If a use is not specifically listed, the requirements of a similar or related use shall apply, as determined by the Planning Commission.

(Ord. No. 1 eff. Jan. 8, 1983)

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ARTICLE XIX
SIGN REGULATIONS

Section 19.01 PURPOSE.

The purpose of this Article is to regulate signs and advertising so as to protect the health, safety and general welfare, to protect property values, and to protect the character of the various neighborhoods in Howell Township. Additional objectives, above and beyond those found within this Article, are as follows:

A. Recognize that the principal intent of commercial signs is to serve the public interest, for providing accurate information to the public, not for creating visual blight, and not for compromising traffic safety.

B. Recognize that the proliferation of signs is unduly distracting to motorists and non-motorized travelers, reduces the effectiveness of signs directing and warning the public, causes confusion, reduces desired uniform traffic flow, and creates potential for accidents.

C. Prevent signs that are potentially dangerous to the public due to structural deficiencies or disrepair.

D. Enable the public to locate goods, services, and facilities without excessive difficulty and confusion by restricting the placement of signs.

E. Prevent placement of signs which will conceal or obscure signs of adjacent uses.

F. Preserve and improve the aesthetics and character of the township by encouraging signs of consistent size which are compatible with and complementary to related buildings and uses, and harmonious with their surroundings.

G. Provide a regulation that focuses on the time, place, manner, and physical characteristics of signs, but not the content of signs in accordance with the First Amendment of the United States Constitution.

(Ord. No. 1 eff. Jan. 8, 1983; further amend. eff. Mar. 31, 2019)

Section 19.02 DEFINITIONS.

A. ***Abandoned Sign.*** A sign that has ceased to be used, and the owner intends no longer to have used it for the display of sign copy, or any sign not repaired or maintained properly, after notice pursuant to the terms of this Article.

B. ***Billboard.*** Meaning any free standing sign on a parcel of land which does not include another principal structure. Such sign shall be established as a principal use.

C. ***Candela per meter squared.*** A unit of measure of the intensity of light radiating from a surface equal to one candela per square meter of surface.

D. ***Canopy, Awning or Marquee Sign.*** Any sign attached to or constructed within or on a canopy, awning or marquee.

F. ***Electronic Message Sign/LED.*** A sign with a fixed or changing message composed of a series of lights or light-emitting diodes (LED) that may be changed through electronic means.

G. ***Flag.*** A sign consisting of a piece of cloth, fabric or other non-rigid material.

H. ***Foot Candle.*** A unit of measure of the intensity of light falling on a surface equal to one (1) foot from a given surface.

I. ***Freestanding or Ground Sign.*** A sign supported from the ground by one or more poles, posts, or similar uprights, with or without braces.

J. ***Height of Sign.*** The vertical distance to the top edge of the copy area or structure, whichever is higher, as measured from the adjacent street grade.

K. ***Shopping Center.*** A group of two (2) or more stores, offices, research or manufacturing facilities which collectively have a name different from the name of any of the individual establishments and which have common off-street parking and entrance facilities.

L. ***Sign.*** Any structure or part thereof, or device attached thereto or painted or represented thereon,

or any material or thing, illuminated or otherwise, which displays or includes any numeral, letter, word, model, banner, emblem, insignia, device, code mark or other representation used as, or in the nature of, an announcement, advertisement, direction or designation, of any person, firm, organization, place, commodity, service, business, profession, or industry, which is located upon any land or in any building, in such manner as to attract attention from outside the premises. Placards not exceeding one (1) square foot in area bearing only property numbers, post box numbers or names of occupants of premises shall not be considered signs.

M. ***Temporary Sign.*** A sign that is intended to be displayed for a limited period of time.

N. ***Wall Sign.*** A sign attached to or erected against the wall of a building with the face in a plane parallel to the plane of the building wall.

O. ***Window Sign.*** A sign installed on or in a window for purposes of viewing from outside the premises. This term does not include merchandise located in a window.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. Ord. No. 97 eff. Feb. 23, 2000: Amend. Ord. 251 eff. June 22, 2012; further amend. eff. Nov. 22, 2018; further amend. eff. Mar. 31, 2019)

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Section 19.03 GENERAL SIGN REGULATIONS.

The following regulations shall apply to all signs in Howell Township:

A. Illuminated Signs.

1) AR, SFR and MFR Districts—only indirectly illuminated signs shall be allowed provided such sign is so shielded as to prevent direct light rays from being visible from the public right-of-way or any adjacent residential property.

2) OS, NSC, RSC, RT, HSC, HC, and I Districts—indirectly or internally illuminated signs are permitted providing such sign is so shielded as to prevent direct light rays from being visible from the public right-of-way or any adjacent residential property.

3) No sign shall have blinking, flashing or fluttering lights or other illuminating devices which have a changing light intensity, brightness, or color, or which are so constructed and operating as to create an appearance of writing or printing. Nothing contained in this Ordinance shall be construed as preventing use of lights or decorations related to public or private celebrations. Beacon lights or search lights shall not be permitted as a sign for advertising purposes except as provided in Section 19.10 "Temporary Signs."

B. Measurement of Sign Area. The area of a sign shall be computed as including the entire area within a regular geometric form or combination of such forms comprising all the display area of the sign and including all of the elements of the matter displayed. Frames and structural members not bearing copy or display material shall not be included in computation of sign area. Where a sign has two (2) or more faces, the area of all faces shall be included in determining the area of the sign, except that where two (2) such faces are placed back to back, parallel to one another, and less than twenty-four (24) inches apart, the area of the sign shall be the area of one face.

C. Height of Signs. No free standing sign shall exceed a height of ten (10) feet, except a sign shall not exceed twenty-five (25) feet in height which meets the requirements of Section 19.08B. Where, because of topography of the location or other obstruction in relation to the primary road accessing a business, the visibility of its sign cannot be seen from its primary road of access, the Planning Commission may give consideration to increasing the permitted maximum height of a free standing sign provided that the following information is presented as part of a Site Plan submission:

1) A map showing both existing and proposed topography of the area between and around the proposed location of the proposed sign and its primary road access.

2) A topographical profile showing the difference in elevation between the permitted height of the sign at its proposed location and the points along the primary road accessing the property from which the sign can be most reasonably seen.

3) An indication on the topographical profile of the obstructions which prevent the sign from being reasonably seen from the primary road of access.

4) A primary road of access shall be determined by the Planning Commission as that road which in its judgment will most reasonably provide visibility of the sign on the property.

D. Setback Requirements for Signs. Except where specified otherwise in this Ordinance, all signs shall be set back a minimum of ten (10) feet as measured from the road right-of-way line.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 97 eff. Feb. 23, 2000, Amend. by Ord. No. 189 eff. June 29, 2005; further amend. eff. Mar. 31, 2019)

Section 19.04 SIGNS PERMITTED IN ALL DISTRICTS.

Subject to the other conditions of this Ordinance, the following signs shall be permitted anywhere within the Howell Township:

A. Flagpoles and Flags

In all districts, up to three flagpoles not exceeding fifty (50) feet in height may be installed, and up to two (2) flags may be displayed per flagpole. No permit shall be required for a flag or flag pole.

B. Signs which direct traffic movement onto or within a property and which do not contain any advertising copy or logo, and which do not exceed eight (8) square feet in area for each sign. Horizontal directional signs, on and flush with paved areas may exceed eight (8) square feet. A directional sign shall be located on the property to which it is directing traffic and shall be located on the lot or parcel behind the road right-of-way line.

(Ord. No. 1 eff. Jan. 8, 1983; further amend. eff. Mar. 31, 2019)

Section 19.05 PROHIBITED SIGNS.

A. Miscellaneous Signs and Posters. Tacking, pasting, or otherwise affixing of signs or posters visible from a public way located on the walls of buildings, barns, sheds, on trees, poles, posts, or fences is prohibited except "no trespassing", "no hunting", "beware of animal", warning or danger signs, and other legal postings as required by law or as provided in this Article.

B. Banners. Pennants, banners, search lights, twirling signs, sandwich board signs, sidewalk or curb signs, balloons, or other gas-filled figures are prohibited

except as provided in Section 19.10G "Temporary Signs". National, State and Organizational flags may be displayed, provided they are attached to the wall of a building or a flagpole and meet the setback requirements of signs.

C. Swinging Signs. Signs which swing or otherwise noticeably move as a result of wind pressure because of the manner of suspension or attachment are prohibited.

D. Moving Signs. Except as otherwise provided in this Article, no sign or any portion thereof which moves or assumes any motion constituting a non-stationary or fixed condition shall be permitted.

E. Parking of Advertising Vehicles. No person shall park any vehicle or trailer on a public right-of-way, public property, or on private property so as to be visible from a public right-of-way, which has attached thereto or located thereon any sign except for currently licensed vehicles and trailers which are engaged in the regular activity of service or delivery for a business.

F. Abandoned Signs. Abandoned Signs shall be removed within thirty (30) days of the abandonment of the use of the premises, the time that the sign lapses into disrepair, or the time when the owner no longer intends to use the sign.

G. Unclassified Signs. The following signs are prohibited:

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1) Signs which imitate an official traffic sign or signal which contains the words "stop", "go slow", "caution", "danger", "warning", or similar words except as otherwise provided in this Article.

2) Signs which are of a size, location, content, coloring, or manner of illumination which may be confused with or construed as a traffic control device or which hide from view any traffic or street sign or signal or which obstruct the view in any direction at a street or road intersection.

3) Signs which contain obscenity according to state or federal law.

4) Signs which are painted directly onto the wall, or any other structural part of a building except as permitted in Section 19.11 D and 19.11E.

5) Signs which are painted on or attached to any fence or any wall which is not structurally a part of a building, except to provide for the street addresses of the lot or parcel.

6) Signs which emit audible sound, or odor.

7) Roof signs.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. Ord. No. 97 eff. Feb. 23, 2000; further amend. eff. Mar. 31, 2019)

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Section 19.06 PERMITTED SIGNS IN AR DISTRICTS.

A. One sign on an active farm premises which is being used for a farm operation. Such sign shall not exceed sixteen (16) square feet in area.

B. One sign shall be permitted for each vehicle entrance from public road frontage for a school, church building or other authorized special use except a home occupation. Each sign shall not exceed eighteen (18) square feet in area or eight (8) feet in height.

(Ord. No. 1 eff. Jan. 8, 1983; further amend. eff. Mar. 31, 2019)

Section 19.07 PERMITTED SIGNS AR, SFR, OS AND MFR DISTRICTS.

A. One sign shall be permitted for each vehicle entrance from a public road frontage for a subdivision, multiple-family, office building development or mobile home park. Each sign shall not exceed eighteen (18) square feet in area.

B. One sign shall be permitted for each vehicle entrance from public road frontage for a school, church or public building. Each sign shall not exceed eighteen (18) square feet in area or eight (8) feet in height.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. Ord. No. 97 eff. Feb. 23, 2000; further amend. eff. Mar. 31, 2019)

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Section 19.08 PERMITTED SIGNS IN NSC, RSC, RT, HSC, HC AND I DISTRICTS.

On-site canopy or marquee signs, wall signs, and free standing signs are allowed subject to the following conditions:

A. Signs permitted for single buildings on developed lot or group of lots developed as one lot, not in a shopping center subject to Section 19.08B.

1) Area. Each developed lot or parcel shall be permitted at least eighty (80) square feet of sign area for all exterior on-site signs. Thearea of signs permitted for each lot or parcel shall be determined as two (2) square feet of sign area for each one (1) linear foot of building length which faces on a public street. The maximum area for all signs for each developed lot or parcel shall be two hundred (200) square feet. No freestanding sign shall exceed one hundred (100) square feet in area. No wall sign for businesses without a ground floor frontage shall exceed twenty-four (24) square feet in area.

2) Number. Each developed lot or parcel shall be permitted two (2) signs. For every developed lot or parcel which is located at the intersection of two (2) collector or arterial roads or highways, three (3) exterior on-site signs shall be permitted. Only one (1) freestanding sign shall be permitted on any single road.

All businesses without ground floor frontages shall be permitted one (1) combined wall sign, in addition to the number of signs allocated to the developed lot or parcel. The total area of all signs shall not exceed the total sign area permitted in Section 19.08A.1).

B. Signs permitted for a shopping center or other integrated group of stores, commercial buildings, office buildings or industrial buildings, not subject to Section 19.08A:

1) Free-Standing Signs. Each shopping center, commercial district or a lot which has at least two (2) separate businesses located upon it and which has at least 200 feet of road frontage on each of the roads upon which it fronts shall be permitted one (1) freestanding sign for each collector or arterial road that it faces. The sign area shall be determined as one (1) square foot for each one (1) linear foot of building which faces one (1) public road. The maximum area for each freestanding sign shall be two hundred (200) square feet. Tenants of a shopping center shall not be permitted individual freestanding signs. Such signs shall not exceed twenty-five (25) feet in height.

2) Wall Signs. Each business in a shopping or commercial district with ground floor frontage shall be permitted one wall sign. The area for such a wall sign shall be computed as one

(1) square foot for each one (1) linear foot of building frontage occupied by the business. All businesses without ground floor frontage shall be permitted one (1) combined wall sign not more than twenty-four (24) square feet in area.

C. Window signs shall be permitted and shall not be included in total sign area computation if said signs do not occupy more than twenty-five (25) percent of the total window area of the floor level on which displayed or exceed a total of two hundred (200) square feet for any one building. If window signs occupy more than twenty-five (25) percent of said window area or exceed a total of two hundred (200) square feet for any one building, they shall be treated as exterior signs and shall conform to Section 19.08A.1) and 19.08B.2).

(Ord. No. 1 eff. Jan. 8, 1983; Amend. Ord. No. 97 eff. Feb. 23, 2000, further amend. Ord. 119, eff. Dec. 27, 2000; further amend. eff. Mar. 31, 2019)

Section 19.09 BILLBOARDS.

A. ***Approval.*** All applications for billboards are subject to the site plan approval procedures in Article XX and shall be approved by the Planning Commission.

B. ***Districts.*** Subject to the provisions of Section 14.06, billboards shall only be allowed as a principle use on property in the RSC, HSC, HC, IZ, and I Districts. Such property must share a property line with the M-59 or I-96 right of way.

C. ***Area.*** The total sign area of any billboard shall not exceed six hundred and seventy-two (672) square feet per face. A triangular or "V"-shaped billboard shall not have more than two (2) sign faces.

D. ***Design.*** Billboard shall be square or rectangle. 3-D billboard extensions, embellishments, amplified design, or any relief projecting from the sign surface or projecting beyond the sign edge is prohibited. No billboard design shall involve motion or rotation of any part of the structure, running animation or displays, or flashing or moving lights.

E. ***Setback.*** No portion of a billboard shall be located closer than twenty-five (25) feet to any right of way property line. No billboard shall be located closer than twenty-five (25) feet to any other property line. Billboard signs shall be located no closer than one thousand (1,000) feet to any adjacent district which permits or is occupied by a residential use. Except that the residential setback shall not extend across the I-96 right-of-way.

F. ***Site area.*** The minimum lot area required for a billboard shall be the minimum area required for a lot in the zoning district in which it is located.

G. ***Distance from Other Signs.*** Billboards shall be spaced no closer than one thousand (1,000) feet from other billboard signs on either side of an interstate highway or freeway right-of-way line.

H. ***Distance from Interchange or intersection.*** A sign structure shall not be permitted adjacent to or within five hundred (500) feet of an interchange, or any highway pull off including MDOT facilities along I-96 and shall not be permitted adjacent to or within one thousand (1,000) feet of an interchange, an intersection at grade, or any highway pull off including MDOT facilities along M-59. The distance shall be measured from the point of beginning or ending of pavement widening at the exit from or entrance to the main traveled way.

I. ***Height.*** The top of any billboard shall not be higher than twenty-five (25) feet above the average normal grade beneath any portion of the structure. Normal grade is considered the preexisting grade at the time of application. Grades shall not be altered in order to increase the height of the billboard.

J. ***Illumination.*** A billboard may be either externally or internally illuminated. In addition, billboards which are located along I-96 only, may use digital technology subject to the following:

1) A billboard shall not display light of such intensity or brilliance to cause glare, impair the vision of an ordinary driver, or constitute a nuisance. In order to reduce glare, no design shall have a white or near white background.

2) The digital billboard sign shall operate at a brightness level not to exceed 6000 cd/m2

(candela per meter squared) between sunrise and sunset, and a maximum brightness of300 cd/m2 between sunset and sunrise. Sunrise and sunset times shall be determined according to the National Institute of Standards and Technology (NIST "http://www.nist.gov"). In addition to the above maximum day/night brightness thresholds, the digital billboard sign shall be equipped with ambient light sensors that automatically adjust the brightness levels to no more than 0.3 foot candles above ambient light conditions.

3) Sign owner shall provide written certification from the sign manufacturer or company furnishing the sign display system, that the above requirements have been pre-set at the factory or other facility. The sign owner shall separately certify that the above requirements setting will not be adjusted.

4) The brightness of the sign shall be measured by a certified individual, other than the sign owner or an employee of the sign owner, who is qualified to make such measurement using a handheld luminance meter e.g., "nit gun." The required operation/ level of ambient light sensors shall be measured using a handheld illuminance meter. The timing for each message change shall be verified by use of a stop watch, video camera or other appropriate measuring device. The sign owner shall certify in writing

to the Township Planning Commission and Zoning Administrator before final construction inspection, and twice annually from the sign owner's initial certification date thereafter, that the sign has been field tested by a certified individual, other than the sign owner or employee of the sign owner, and the sign is operating in compliance with the requirements in this section. The cost of all certification shall be the responsibility of the sign owner.

5) The digital billboard sign display system shall be configured with a self-diagnostics program that will notify the sign owner's technical support team in the event of a malfunction of the sign. In the event of a display failure resulting in a flashing or intermittent light change, or a failure resulting in the display exceeding the brightness level or image dwell standard stated in subsection (j)(2) above, the display shall be automatically shut-off or steps shall be taken immediately by the sign owner's technical support team to shut-off the sign remotely. Additionally, should more than one individual display panel comprising the total sign display area not function as engineered, the display shall be immediately shut-off remotely.

6) All displayed images must be static.

7) No flashing, animation, scrolling, blinking, or intermittent lights, or lights with changing

colors or levels of light intensity shall be permitted.

8) The use of video on signs is expressly prohibited.

9) The transition time between images shall be instantaneous (less than one second), with no transition effects between images.

10) The minimum dwell time (time an image is displayed) of each and any image will be exactly nine (9) seconds. Emergency messages may exceed this dwell time if deemed appropriate.

11) Sequential images or messages (e.g. back-to-back, nine (9) second images that form one continual advertisement), are prohibited.

12) The digital billboard screen shall be allowed to operate 24 hours per day, seven days per week, unless a malfunction occurs.

K. ***Conversion.*** No existing static billboard may be converted to one using digital technology without first submitting site plan application for review by the Planning Commission that demonstrates that the proposed sign will meet all of the requirements of this ordinance.

L. ***Construction and Maintenance.*** Any billboard shall be self-supported and pole-mounted.

1) All plans for billboards shall be certified by a licensed engineer registered in Michigan;

2) All billboards shall be self-supported and pole-mounted;

3) All billboards shall be constructed in accordance with industry-wide standards established by the Outdoor Advertising Association of America and the Institute of Outdoor Advertising, or their successor organizations. All billboards shall be structurally sound and maintained in good condition and in compliance with all applicable Michigan Building Codes;

4) The rear face of a single-face, billboard shall be painted and maintained with a single neutral color as approved by the township; and

5) Every three years, the owner of the billboard shall have a structural inspection made of the billboard by a licensed engineer registered in Michigan and shall provide to the Township a certificate certifying that the billboard is structurally sound.

6) No billboard shall be permitted to fall into a state of disrepair in accordance with Section 19.14 of this ordinance.

M. ***Landscaping.*** A landscape plan shall be submitted in conjunction with the sign permit application for a

billboard. A landscape buffer a minimum of 15 feet wide shall be provided at the base of all billboards. Such landscaped area should be enhanced with a decorative wall. Trees and shrubbery, including evergreen and flowering trees, of sufficient size and quantity shall be used to achieve the effect of making the base of the structure blend with the surroundings. An irrigation system shall be installed for the landscaping area. Billboards along I-96 shall be exempt from this landscaping requirement.

N. ***Guarantee.*** An irrevocable, automatically renewing letter of credit from a bank chartered and located in the United States of America in an amount and form satisfactory to the Township Board shall be required for continued maintenance. In the event that a billboard is vacated, the cost of removal, if that burden is placed on the Township, shall be assessed to the property owner.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 30 eff. Aug. 8, 1991; further amend. by Ord. No. 97 eff. Feb. 23, 2000, amend by Ord. 254 eff. Feb. 10, 2013, amend. by Ord. No. eff.; further amend. eff. Nov. 22, 2018; further amend. eff. Mar. 31, 2019)

Section 19.10 TEMPORARY SIGNS.

Un-illuminated on-site temporary exterior signs may be erected in accordance with the regulations of this Article, except that no permit shall be required.

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A. Temporary Wall or Window Signs.

1) In all districts, the Zoning Administrator may allow two (2) temporary wall or window signs for up to a forty-five (45) day period, not more than three (3) times per year. All temporary signs permitted under this provision shall otherwise comply with all requirements pertaining to height and area for the zoning district in which the sign is located.

2) All temporary wall or window signs which are not properly maintained shall be removed at the order of the Zoning Administrator.

B. Temporary Ground Signs.

1) In all districts, up to three (3) non-illuminated temporary ground signs shall be permitted per parcel, provided that the combined sign area does not exced forty (40) square feet. One additional non-illuminated temporary ground sign may be permitted per each twenty (20) feet that a parcel exceeds one hundred (100) feet of road frontage. For each additional sign, the parcel shall be permitted an additional four (4) square feet added to the total combined sign area. The minimum setback for any temporary ground sign from any property line or public right of way shall be ten (10) feet.

2) All permitted temporary ground signs may be displayed for no more than one hundred and eighty (180) days per year. Following the expiration of

the one hundred and eighty (180) day period, the landowner shall remove the temporary ground sign. Failure to timely remove a temporary ground sign constitutes a violation of this Article.

C. Banners, pennants, search lights, balloons, or other gas filled figures are permitted at the discretion of the Zoning Administrator for the opening of a new business in a commercial or industrial district for a single period not to exceed fourteen (14) consecutive days. Such signs shall not obstruct pedestrian or vehicular view.

D. In all districts, all types of temporary signs shall comply with the following:

1) Temporary signs not be attached to any utility pole or be located within any public right-of-way.

2) Temporary signs shall not be located closer than ten (10) feet from the edge of the traveled portion of the roadway, nor shall they be located within any dedicated right-of-way.

3) Temporary signs shall not be erected in such a manner than they will or may reasonably be expected to interfere with, obstruct, confuse or mislead traffic, or to create a hazard of any kind.

4) No temporary sign may be displayed without the consent of the legal owner of the property on which the sign is mounted or displayed.

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(Ord. No. 1 eff. Jan. 8, 1983; Amend. Ord. No. 97 eff. Feb. 23, 2000; further amend. eff. Mar. 31, 2019)

Section 19.11 EXEMPTED SIGNS.

The following types of signs are exempted from all provisions of this Article, except for construction and safety regulations and the following standards:

A. Signs of a noncommercial nature and in the public interest, erected by, or on the order of a public officer, in the performance of a public duty, such as directional signs, regulatory signs, warning signs, and informational signs.

B. Signs painted on farm buildings located on farms upon which the principal use is for agricultural purposes as defined in Section 2.02(3), Agriculture.

C. Notices indicating "no trespassing", "no hunting", "beware of animal", warning or danger signs, and other similar notices which don't exceed a size of 10 inches by 14 inches.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 97 eff. Feb.23, 2000; further amend. eff. Mar. 31, 2019)

Section 19.12 NONCONFORMING SIGNS.

Nonconforming signs shall not:

A. Be reestablished after being abandoned for ninety (90) days or longer.

B. Be structurally altered so as to prolong the life of the sign or so as to change the shape, size, type or design of the sign.

C. Be reestablished after damage or destruction, if the estimated expense of reconstruction exceeds fifty (50) percent of the replacement cost as determined by the Zoning Administrator.

(Ord. No. 1 eff. Jan. 8, 1983; further amend. eff. Mar. 31, 2019)

Section 19.13 PERMITS AND FEES.

A. Application for a permit to erect or replace a sign, or to change copy thereon, shall be made by the owner of the property, or his authorized agent, to the Zoning Administrator by submitting the required forms, fees, exhibits and information. Fees for sign permits for all signs erected pursuant to Sections 19.06, 19.07, 19.08, and 19.09, shall be established by resolution of the Township Board and shall bear a reasonable relationship to the cost and expense of administering this permit requirement. The Township Board shall further have the right to amend the aforementioned resolution from time to time within the foregoing limits or reasonableness.

No person, firm or corporation shall erect or commence construction upon a sign within Howell Township without first applying for and obtaining a permit from the Howell Township Zoning Administrator, except as required herein,

which permit shall be granted upon a showing of compliance with the provisions of this Ordinance and payment of a fee therefore, which fee shall be payable annually upon renewal of the permit in accordance with the terms and conditions hereof. Permits shall be issued for a period of one (1) year, but shall be renewable annually upon inspection of the sign by the Zoning Administrator confirming continued compliance with this Ordinance and payment of the sign permit fee.

B. An application for a sign permit shall contain the following:

1) The applicant's name and address in full, and a complete description of his relationship to the property owner.

2) If the applicant is other than the property owner, the signature of the property owner concurring in submittal of said application is required.

3) The address of the property.

4) An accurate scale drawing of the property showing location of all buildings and structures and their uses, and location of the proposed sign.

5) A complete description and scale drawings of the sign, including all dimensions and the area in square feet.

C. All proposed sign locations or relocations shall be inspected on the site by the Township Zoning Administrator for conformance to this Ordinance prior to placement on the site. Foundations shall be inspected by the Zoning Administrator on the site prior to pouring of the concrete for the sign support structure.

D. A sign permit shall become null and void if the work for which the permit was issued has not been completed within a period of six (6) months after the date of the permit. Said sign permit may be extended for a period of thirty (30) days upon request by the applicant and approval of the Zoning Administrator.

E. Painting, repainting, cleaning and other normal maintenance and repair of a sign or a sign structure, unless a structural or size change is made, shall not require a sign permit.

F. Signs for which a permit is required shall be inspected periodically during construction by the Zoning Administrator for compliance with this Ordinance and other laws of Howell Township.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 30 eff. Aug. 8, 1991; further amend. eff. Mar. 31, 2019)

Section 19.14 REMOVAL OF SIGNS.

A. The Zoning Administrator shall order the removal of any sign erected or maintained in violation of this

Ordinance except for legal nonconforming signs. Thirty (30) days notice in writing shall be given to the owner of such sign or of the building, structure, or premises on which said sign is located, to remove the sign or to bring it into compliance with the Ordinance. Upon failure to remove the sign or to comply with this notice, the Township may remove the sign. The Township may also remove any sign immediately and without notice if it reasonably appears that the condition of the sign is such as to present an immediate threat to the safety of the public. Any cost of removal incurred by the Township shall be assessed to the owner of the property on which said sign is located and may be collected in the manner of ordinary debt or in the manner of taxes and such charge will be a lien on the property.

B. A sign shall be removed by the owner or lessee of the premises upon which the sign is located within thirty (30) days after the sign has been abandoned. If the owner or lessee fails to remove the sign, the Township may remove it in accordance with the provisions stated in Section 19.13A preceding. These removal provisions shall not apply where a subsequent owner or lessee occupies the premise and agrees to maintain the signs provided the signs comply with the other provisions of this Ordinance.

C. All signs shall be maintained in good condition. Any sign that has been allowed to fade peal, crack, or otherwise show signs of neglect or disrepair shall be considered a violation of this ordinance and is

subject to removal provisions stated in Section 19.14A preceding.

(Ord. No. 1 eff. Jan. 8, 1983; further amend. eff. Nov. 22, 2018; further amend. eff. Mar. 31, 2019)

Section 19.15 ELECTRONIC MESSAGE SIGNS.

Electronic message signs/LED shall be permitted subject to the sign regulations for each zoning district as permitted within Sections 19.06 through 19.08 and further subject to the following additional regulations:

A. The frequency of the message change of an Electronic Message Sign shall be restricted to no less than once every nine (9) seconds.

B. An electronic message board shall be considered a part of a wall sign or freestanding sign and shall be located below the main sign. Such electronic message board signs shall not exceed fifty (50%) percent of the total sign area as allowed per Zoning District and sign regulations of Article XIX.

C. The maximum height of an electronic message board shall conform to the height regulations for signs allowed I each Zoning District as specified in Article XIX.

D. The electronic message sign may not display light or such intensity or brilliance to cause glare, impair the vision of an ordinary driver, or constitute

a nuisance. Maximum sign luminance shall not exceed 0.3 foot-candles above ambient light measurement based upon the area of the sign (in square feet) and distance measured perpendicular to the sign face in accordance with the following table (Table 19-1):

Table 19-1
Maximum Light Levels of Electronic Message Signs

Maximum Allowed Ambient Light Level	Area of Sign (sq. ft.)	Measurement of Distance (ft)*
0.3 foot-candles	10	32
0.3 foot-candles	15	39
0.3 foot-candles	20	45
0.3 foot-candles	25	50
0.3 foot-candles	30	55
0.3 foot-candles	35	59
0.3 foot-candles	40	63
0.3 foot-candles	45	67
0.3 foot-candles	50	71
0.3 foot-candles	55	74
0.3 foot-candles	60	77

Source: Model Code, Illuminating Engineering Society of North America

* Measured in feet, perpendicular to the face of the sign.

E. Prior to the issuance of a sign permit, the applicant shall provide written certification from the sign manufacturer that the light intensity has been factory-programmed not to exceed the above listed light levels, and that the intensity level is protected from end-user manipulation by password-protected software or other method satisfactory to the Howell Township Zoning Administrator.

(Amend. eff. Mar. 31, 2019)

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ARTICLE XX
SITE PLAN REVIEW PROCEDURES

Section 20.01 PURPOSE.

The purpose of this Article is to establish uniform requirements of procedure for all developments in Howell Township so that the provisions of this Zoning Ordinance can be equitably and fairly applied to all persons seeking to add to the existing development; so that both those developing property and the responsible Township officials can be assured that compliance with the Zoning Ordinance is both possible and correct prior to the issuance of a Zoning Permit and the starting of construction.

(Ord. No. 1 eff. Jan. 8, 1983; Ord. No. 64 eff. Jan. 12, 1998)

Section 20.02 DEVELOPMENTS REQUIRING SITE PLAN APPROVAL.

The following land, building and structural uses require "Site Plan Approval":

A. All principal and special uses and their accessory uses in the MFR, OS, NSC, RSC, HSC, HC, and I Districts.

B. All special uses and their accessory uses in all Districts.

C. Projects consisting of multiple principal buildings upon a parcel of land.

D. Projects under Article XXVI entitled "Roads, Driveways and Related Land Use Developments."

E. All Planned Unit Development (PUD) projects.

F. All Condominium projects including condominium subdivisions permitted under the provisions of Public Act 59 of 1978, "The Condominium Act."

G. All agribusiness principal and accessory uses.

H. All uses in the AR and SFR zoning districts, except for those not requiring site plans listed in Section 20.03.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 64 eff. Jan. 12, 1998; Ord. No. 70 eff. Aug. 12, 1998; Amend. by Ord. No. 97 eff. Feb. 23, 2000)

Section 20.03 DEVELOPMENTS NOT REQUIRING SITE PLAN APPROVAL.

A. Single-family homes and their accessory uses in the AR, and SFR Districts.

B. General or specialized farming and their accessory uses, except roadside stands, involving crops and livestock, in the AR and SFR Districts but not including all other principal and special uses and their accessory uses permitted in the AR and SFR Districts.

Appendix F

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 64 eff. Jan. 12, 1998; further amend. by Ord. No. 97 eff. Feb. 23, 2000)

Section 20.04 ROLE OF THE ZONING ADMINISTRATOR.

The Zoning Administrator shall inspect all parts of the set of plans comprising the required site plan submittal for completeness prior to referring the site plan to the Planning Commission for its review and action. The Zoning Administrator shall not issue a Zoning Permit for construction of or addition to any use until a final site plan requiring the Planning Commission's or Township Board's approval has been approved by the Planning Commission or Township Board and is in effect.

(Ord. No. 1 eff. Jan. 8, 1983; Ord. No. 64 eff. Jan. 12, 1998)

Section 20.05 SITE PLAN APPROVAL REQUIRED PRIOR TO STARTING CONSTRUCTION OR USE OF LAND.

No grading, removal of trees or other vegetation, land filling, or construction of improvements shall commence for any development which requires site plan approval, until a final site plan is approved and is in effect, except as provided in this Article.

(Ord. No. 1 eff. Jan. 8, 1983; Ord. No. 64 eff. Jan. 12, 1998)

Appendix F

Section 20.06 SITE PLAN REQUIREMENTS.

A. Application. All applicants shall comply with the"AInformational and Procedural Check List for Site Plan Review" of current adoption by the Township Planning Commission and the Township Board. Any person may file a request for preliminary site plan approval by filing required forms with the Township Clerk, payment of the review fee, and at least thirteen (13) copies of a preliminary site plan drawing(s). Upon receipt of such application, the Clerk shall transmit the preliminary site plan drawing(s) to the Planning Commission prior to its next regular meeting.

B. Information required for review. Every preliminary site plan submitted under this Article shall contain information required in the "Informational and Procedural Check List for Site Plan Review" and the following:

Stage 1—Preliminary Information:

1) Cover sheet shall include the name of the project, the names and addresses of the owners, the firm or persons preparing the plans and their addresses, the location of the project on a vicinity map and the date the plans were prepared.

2) A plot or survey of the property prepared by a licensed land surveyor showing all property lines, easements, adjacent roads, topographical contour

lines at two (2) foot intervals, location of all trees having a diameter at breast height of six (6) inches or more, boundaries of woodlots and shrub masses, existing buildings and structures located above and below the ground surface, potential wetlands and flood areas, connecting property lines and land uses of adjacent properties and utilities available to serve the project site.

3) A conceptual plan showing all proposed developments to be built upon the property prepared by a licensed/ registered Engineer, Architect or Landscape Architect of the entire project showing all buildings and structures, including roads, drives, parking areas, walks, signs, outdoor lighting, open space uses, fencing, walls, buffer area and screen plantings, berms, outdoor storage areas, trash receptacle storage areas and any other development feature proposed to be developed on the site for the project.

4) The Planning Commission may conditionally approve a conceptual plan at this stage.

5) All Preliminary Site Plans, when on and off-site improvements are included on the site plan which needs to be reviewed and reported upon by the following agencies and officials, shall be reviewed and reported upon by such agencies and officials and the Applicant shall secure copies of their reviews and reports and submit them to the Planning Commission as a part of the Preliminary Site Plan submittal:

County Road Commission
County Drain Commissioner
County District Health Department
Township Sewer and Water Authority
State Department of Transportation (MDOT)
State Department of Environmental Quality (DEQ)
State Department of Public Health
Howell or other school districts
Applicable Federal Agencies
Local Fire Marshall.

And additionally each Applicant shall comply with the procedures and requirements outlined in the adopted "Informational and Procedural Check List for Site Plan Review" of current adoption by the Planning Commission, and Township Board.

Stage 2—Detailed Information:

1) A grading plan prepared by a licensed/registered Engineer, Architect or Landscape Architect showing all existing and proposed grading changes at two (2) foot contour intervals and including detailed cost estimates for each item of construction.

2) Construction drawings of all utility systems, prepared by a licensed Engineer, including water supply, wastewater disposal, storm drainage, electric power, natural gas, telephone and TV cable and off-site connections to them, and including detailed cost estimates for each item of construction.

3) Construction details of all improvements including, but not limited to roads, drives, curb and gutter parking areas, walks, fences, berms, drains, water mains or wells, sanitary sewers or septic tanks and tile fields, manholes, pumping stations, force mains and other related appurtenances to each utility system prepared by a licensed or registered Engineer, Architect or Landscape Architect, and including detailed cost estimates for each item of construction.

4) Landscape planting plans prepared by a registered Landscape Architect showing the location, name and size of trees, shrubs, vines and ground covers to be planted on-site, including plantings related to buildings and structures, buffer areas and screenings, including detailed cost estimates for each item of construction.

Stage 1 and Stage 2—Site Plan Information:

1) Scales of Plans:

   a) For projects of up to forty (40) acres the scale of each plan shall be at one (1) inch equals 100 feet.

   b) For projects of more than forty (40) acres the scale of each plan shall be at one (1) inch equals 200 feet.

2) Other Requirements:

   a) Each plan shall have a graphic and numerical scale represented on it.

   b) Each plan shall have a date the plan was made and the dates of any revisions made of it.

   c) Each plan shall have the signature and stamp of the profession in which they are licensed or registered in the State of Michigan.

3) In order to properly and adequately analyze a Conceptual and/or Preliminary Site Plan, the Planning Commission may require an Applicant to have prepared the following informational studies:

   a) Market Feasibility by a recognized Professional Market Analyst

   b) Environmental Impact Assessments by a Professional Environmentalist experienced in environmental impact studies in the State of Michigan.

   c) Traffic Impact Assessment by a Experienced Professional Traffic Engineer, Licensed by the State of Michigan, which shall be used as a guide.

   d) Public Facility, Utility and Service Impact Assessment by a Licensed Professional Engineer, State of Michigan.

Appendix F

4) The Types of Site Development Projects which in the judgment of the Planning Commission may require any one or all of the above Studies including the following:

a) Planned Unit Development Projects

b) Condominium Projects

c) Single Family Residential Housing Projects of 30 acres or more in area

d) Multiple Family Residential Housing Projects of 10 acres or more in area

e) Commercial Office Projects of 5 acres or more in area

f) Commercial Retail Projects of 5 acres or more in area

g) Industrial Manufacturing Projects of 5 acres or more in area

h) Private or Semi-Private Institutional Projects of 5 acres or more in area

i) Private or Semi-Private Recreational Area Projects of 5 acres or more in area

In making its determination as to the need and therefore the requirements for an Applicant to

complete any of the above Studies the Planning Commission shall use the criteria listed in Section 16.06 "Required Standards and Findings for Making Determinations" of this Zoning Ordinance.

C. Planning Commission action. The Planning Commission shall study the site plan and shall, within sixty (60) days of the filing date, approve or deny the preliminary site plan. If denied, the Planning Commission shall prepare a report setting forth the conclusions of its study and the reasons for its denial. The time limit may be extended upon a written request by the applicant and approved by the Planning Commission, or by mutual written agreement between the Planning Commission and the applicant.

In addition to the above, a PUD Site Plan shall be recommended to the Township Board for its approval, approval with conditions, or denial.

D. Effect of approval. Approval of a preliminary site plan by the Township Planning Commission and PUD Site Plans by the Township Board shall indicate its acceptance of the proposed layout of buildings, roads and drives, parking areas, and other facilities and areas, and of the general character of the proposed development. The Planning Commission or Township Board in the case of a PUD Site Plan, may, with appropriate conditions attached, authorize issuance of a grading permit by the Zoning Administrator on the basis of an approved preliminary site plan.

The conditions to be attached to a permit issued for grading and foundation work may include, but not necessarily be limited to, provisions for control of possible erosion, for excluding the Township from any liability if an acceptable plan is not provided, and for furnishing a financial guarantee for restoration of the site if work does not proceed.

E. Expiration and extension of approvals. Approval of a preliminary site plan shall be valid for a period of one (1) year from the date of approval and shall expire and be of no effect unless an application for final site plan approval is filed with the Township Clerk within that time period. A one (1) year extension may be granted upon written request of the applicant and approval of the Township Planning Commission. The approval of the preliminary site plan shall also expire and be of no effect one (1) year after approval of a final site plan, unless an extension or a Zoning Permit has been obtained for development shown on the approved final site plan within that time period.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 64 eff. Jan. 12, 1998; further amend. by Ord. No. 97 eff. Feb. 23, 2000; further amended by Ord. No. 138 eff. May 26, 2002, further amended by Ord. No. 194 eff. March 1, 2006)

Section 20.07 FINAL SITE PLAN REQUIREMENTS.

A. Application. Following approval of a preliminary site plan, the applicant shall submit thirteen (13) copies of a final site plan as well as other data and

exhibits hereinafter required to the Township Clerk, the review fee, and a completed application form. The Clerk, upon receipt of the application, shall promptly transmit the final site plan to the Planning Commission.

B. Information required for review. Every final site plan submitted for review under this Article shall contain information as required by Township regulations for site plan review contained in Section 20.06 above. Additional information required for PUD shall be submitted in accordance with Section 27.07.

C. Planning Commission action. The Planning Commission shall study the final site plan and shall within sixty (60) days of the date of the Planning Commission meeting at which the plan was received, approve or disapprove the final site plan. This time limit may be extended upon written request by the applicant and approval by the Planning Commission, or by mutual written agreement between the Planning Commission and the applicant. The Planning Commission may suggest and/or require changes in the plan as are needed to comply with the Zoning Ordinance.

Upon Planning Commission approval of the final site plan, the applicant and owner(s) of record, and the Chairperson of the Planning Commission or his designated replacement, shall sign the approved plan. The Planning Commission shall transmit one (1) signed copy of the approved final site plan each

to the Zoning Administrator, Township Clerk, and to the applicant. One (1) copy shall be retained in the Planning Commission files. In the case of PUD Site Plans, the Township Clerk shall sign the approved site plan and its action transmitted to the applicant and the Planning Commission.

If the final site plan is disapproved, the Planning Commission shall notify the Township Clerk, in writing, of such action and reasons who in turn shall notify the applicant. In the case of PUD Site Plans, the action of the Township Board shall be transmitted to the applicant and the Planning Commission.

D. Effect of approval. Approval of a final site plan authorizes issuance of a Zoning Permit. Approval shall expire and be of no effect after six (6) months following approval by the Planning Commission or Township Board, whichever has the final approval, unless a Zoning Permit is applied for and granted within that time period. Approval shall expire and be of no effect one (1) year following the date of approval unless authorized construction has begun on the property in conformance with the approved final site plan. (Ord. No. 216 eff. May 1, 2009)

E. Appeal by applicant. The applicant may appeal the decision of the Planning Commission or Township Board on all matters pertaining to the provisions of this Zoning Ordinance, but not to the use of land, buildings or structures, to the Zoning Board of Appeals within ten (10) days of the date of the

decision of the Planning Commission or Township Board, whichever has the final approval, on the final site plan. (Ord. No. 1 eff. Jan. 8, 1983; Ord. No. 64 eff. Jan. 12, 1998)

F. Extension of the Time for the Purpose of Keeping Approved Preliminary and Final Site Plans Effective Beyond the Required and Approved Time Limits. If in the judgment of the Planning Commission or the Township Board, whichever has preliminary or final site plan approval, any of the following conditions prevail during the time limitations placed upon an approved preliminary or final site plan, a maximum of up to four (4) successive one (1)year extensions for any of the time limitations included in Section 20.06 E., 20.07 D., and 20.08 J.2), J.2)b) and J.2)d) may be approved under the following conditions:

1) An applicant's submittal of a written statement with supporting proof that economic or other stated conditions are currently prevailing that preclude the continuance under current conditions and it is not currently feasible to proceed toward the construction of the proposed developments affected by the time limitations placed upon an approved preliminary or final site plan.

2) An applicant's submittal of a written statement with supporting proof that planned construction of public sewer or water utilities planned to serve the planned development have been

delayed and are therefore not made available in order to be able to proceed toward the construction of the project in accordance with the time limitations placed upon an approved preliminary or final site plan.

3) An applicant's submittal of a written statement with supporting proof that the seeking of drainage easements and the construction of connections to the County drain system in order to meet the requirements of the County Drain Commissioner are not made available within the required time limitations placed upon an approved preliminary or final site plan in order to be able to proceed toward the construction of the applicant's project as planned.

4) An applicant's submittal of a written statement with supporting proof of any one or more conditions that are determined to be beyond the control of the applicant and therefore precludes the applicant's ability to continue toward the construction of the project in accordance with the time limitations placed upon an approved preliminary or final site plan. (Ord. No. 216 eff. May 1, 2009)

Section 20.08 CRITERIA FOR SITE PLAN REVIEW.

In reviewing a preliminary or final site plan, the Planning Commission or Township Board shall ascertain whether

the proposed site plan is consistent with the regulations and objectives of this Ordinance and shall endeavor to assure that they conform to the following criteria:

A. Preservation of natural environment. Existing conditions of the natural environment shall be preserved in their natural state, insofar as practicable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of adjacent and surrounding uses and development. If the Planning Commission or Township Board determines that an Environmental Impact Statement is needed, the applicant shall have such Statement prepared by a professional Environmental Consultant.

B. Relations of proposed land, building and structural uses to environment. Proposed uses and structures shall be related harmoniously to the natural environment and to existing uses and structures in the vicinity that have a visual relationship to the proposed development. The achievement of such relationship may include the use of visual and noise barrier, buffer, or screening areas or structures, the enclosure of space in conjunction with existing uses and structures or other proposed uses and structures and the creation of special arrangements and focal points with respect to functional areas, avenues of approach, terrain features or other structures.

C. Drives, parking and circulation. Vehicular and pedestrian circulation, including walkways, interior

drives and parking, special attention shall be given to location and number of access points, general interior circulation, separation of pedestrian and vehicular traffic, and arrangement of parking areas that are safe and convenient and, insofar as practicable, do not adversely affect the design of proposed land, buildings and structures and that of adjacent and surrounding development areas.

D. Surface water drainage. Special attention shall be given to proper site surface drainage so that the flow of surface waters will not adversely affect adjacent and surrounding properties or to public storm drainage system. Storm water drainage off-site shall not exceed that which normally flowed off-site prior to any development of the site. Impoundment retention or detention basins shall be required to retain or detain surplus storm water drainage over that which was normal prior to development of the site. If practical, storm water shall be removed from all roofs, canopies and paved areas and carried away in an underground piped drainage system. Surface water in all paved areas shall be collected at intervals so that it will not obstruct the flow of vehicular or pedestrian traffic, and will not create impounded water on the paved areas.

E. Utility service. Electric power and telephone distribution lines shall be underground. Any utility installations remaining above ground shall be located so as to have a harmonious relation to adjacent properties and the site. The proposed method of

sanitary sewage disposal from all buildings shall be indicated. All utility installation shall be carried out in accordance with the Standard Rules and Regulations of current adoption of the Michigan Public Service Commission or the responsible State, County, Authority or other public, semi-public or private agency or organization.

F. Advertising features. The size, location and lighting of all permanent signs and outdoor advertising structures or features shall be consistent with the requirements of Article XIX, "Sign Regulations."

G. Special features. Replaced by Article XXVIII—Landscaping Requirements.

H. Landscaping requirements. Refer to Article XXVIII, Landscaping Requirements and Section 14.26, Fences.

I. Additional requirements. All other standards and requirements of this Ordinance shall be met by site plans presented for review under the provisions of Article XX, "Site Plan Review Procedures."

J. Special requirements for PUDs.

1) Preliminary Plan Review. The purpose of the preliminary plan review and approval process of a PUD is to provide a mechanism whereby the applicant can obtain a substantial review of the proposed project and the necessary commitments,

in order to prepare final site development plans including those for engineering, architecture and landscaping, and to execute whatever agreements are necessary between the applicant and the Township. A comprehensive presentation shall be made to the Planning Commission for review and recommendation to the Township Board and shall at least include the Criteria for Site Plan Review listed in Section 20.08.

2) Preliminary Approval. Approval of the preliminary PUD plan by the Township Board upon the recommendation by the Planning Commission shall be effective in accordance with the regulations stated in Section 20.06E, for Preliminary Site Plans and Section 20.07 D for Final Site Plans In reviewing and approving the preliminary plan, the following conditions shall be set forth: (Amended by Ord #228 eff. June 19, 2009)

    a) Approval under this Section is based on a PUD plan having been submitted and approved in accordance with Article XXVII, "Planned Unit Developments." Once a PUD has been granted preliminary approval, no development nor use may be made of any part thereof, except in accordance with the PUD plan as originally approved or in accordance with any amendments thereto approved by the Township Board upon recommendation by the Planning Commission.

b) (Deleted by Ord. #228 eff June 19, 2009)

c) Final Review. The purpose of the final review is to approve the site plan for the entire PUD, including final plans for items listed and all other required conditions, and to approve the appropriate final plan for each specific land use area. If the entire PUD is to be built in phases, then plans for specific land use areas may be submitted as long as each phase of development is in conformance with all requirements of this Ordinance. No land use permit(s) shall be issued for any or all phases of development until a PUD final site plan is in conformance with all requirements of this Ordinance, and no land use permits for any or all phases of development shall be issued until plans for the entire PUD, including those for the specific land use areas, have received final approval by the Township Board upon recommendation of the Planning Commission. A presentation shall be made by the applicant to the Planning Commission for review and recommendations to the Township Board, of the following:

   i) A final overall site plan for the entire PUD area, showing roads and specified zoning districts and their included uses, densities and lot coverage. Such site plans shall be in conformance with appropriate density and lot coverage requirements for the total

acreage of each district. Included open space may be used to compute said density and lot coverage on a district by district basis. Open spaces shall be assigned to each land use as planned and approved.

ii) Approval of each PUD land use area shall be based on each area meeting the standards of the Zoning District as to uses, density and lot coverage. To accomplish this standard, as open space of adequate size shall be shown with each land use area being presented. This total land area shall then be used to compute density and lot coverage. Land under water, including swamps, bogs, lakes and streams, public roads and nonresidential use areas shall be excluded in computing the area of a parcel for purposes of determining the density or lot coverage for PUD purposes, except as otherwise provided in this Ordinance.

d) Final approval. In reviewing and approving the final plans the following conditions shall be set forth: (Ord. No. 216, eff. May 1, 2009, amended by Ord. No 228 eff. June19, 2009)

i) Approval shall only be granted by the Township Board after review and recommendation by the Planning Commission.

ii) Proceeding with a PUD shall only be permitted when a mutual agreement has been reached between the Township Board and the applicant upon recommendation of the Planning Commission.

e) All construction specified on a final site plan shall meet the requirements of the agencies and officials listed in Section 20.06B. Stage 1–#5 for the following on and off-site improvements:

i) Surface and subsurface storm water drainage systems.

ii) Roads, highways, right-of-ways and easements.

iii) Sanitary sewer and water supply systems or on-site water supply and wastewater disposal systems.

iv) Public utilities, including electric power, gas, telephone and cable television systems.

v) Environmental protection devices and facilities.

vi) Signs, including street name signs.

vii) Property survey monuments delineating boundaries of a lot or parcel of land.

K. Required documentation for each project shall include the following:

1) General requirements. The developer and/or proprietor of the project shall furnish the Planning Commission for its review and approval copies of all documents establishing easements for ingress, egress, public utilities, etc., as well as those documents creating maintenance agreements or other contracts between property owners and/or residents in the project pertaining to roads, drives, parking areas or common areas, any restrictive covenants and deed restrictions pertaining to the property and, if applicable, a Master Deed and exhibits.

2) Requirements for condominium projects. If the proposed project is a condominium project, the information to be provided to the Planning Commission shall be the condominium site or subdivision plan prepared in compliance with P.A. 59 of 1978 The Condominium Act in addition to 1 above. After submittal of the condominium plan and bylaws for recording as part of the Master Deed, the proprietor shall furnish to the Township and the County Register of Deeds a copy of the condominium site or a subdivision plan prepared in compliance with P.A. 59 of 1978, "The Condominium Act" and

this Ordinance on a photographic hard copy, laminated photo static copy or a Mylar sheet of at least thirteen by sixteen (13 x 16) inches with an image not to exceed ten and one-half by fourteen (102 x 14) inches.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 64 eff. Jan. 12, 1998; further amended by Ord. No. 74 eff. Sept. 30, 1998; Ord. No. 97 eff. Feb 23 2000)

Section 20.09 MODIFICATION OF PROCEDURE.

An applicant may, except for PUDs, at his discretion and risk, combine a preliminary and final site plan in application for approval. In such a situation, the portion of the review process concerning preliminary site plan application and review may be waived by the Planning Commission. The Commission shall have the authority to require submittal of a preliminary site plan separate from a final site plan where, in its opinion, the complexities and/or scale of the site of the proposed development so warrants.

(Ord. No. 1 eff. Jan. 8, 1983; Ord. No. 64 eff. Jan. 12, 1998)

Section 20.10 AMENDMENT OF AN APPROVED SITE PLAN.

A site plan may be amended upon application and in accordance with the procedure provided in Section 20.06, herein, for a preliminary site plan, and Section 20.07, herein, for a final site plan. Minor changes in a preliminary

site plan may be incorporated in a final site plan without amendment to the approved preliminary site plan at the discretion of the Planning Commission. The Planning Commission shall have the authority to determine if a proposed change requires an amendment to the approved site plan.

A. Major changes which shall be considered by the Planning Commission include the following:

1) Changes in general concept or design of the general development plan referred by the Zoning Administrator to the Planning Commission.

2) Changes in the original approved use(s) for the development.

3) Changes in the type and design of residential, commercial, industrial, public, institutional or organizational buildings.

4) Increases in the number of residential dwelling units or number of nonresidential buildings on the site.

5) Increases in residential or nonresidential building floor area of more than ten (10) percent.

6) Rearrangement of building locations, lots, blocks or building sites.

7) Changes in function and character of roads or highways.

8) Changes in the location, character of use or amount of land planned as common open space.

9) Variations in the development represented on the approved site plan involving the deletion, relocation or addition of on-site improvements, including drives, parking areas, structures on, above and below the ground surface, berms, curbs and gutters, screen plantings and other landscaping, fencing, water supply, wastewater disposal or storm water drainage systems.

10) Relocation of any surface or subsurface structures or improvement, except essential public utilities and services, by twenty (20) feet or more from their planned location.

11) Any increase or decrease of the minor changes listed below.

12) Hear an appeal of an applicant whose request for a minor change in an approved final site plan has been disapproved by the Zoning Administrator, and decides whether to approve, approve with conditions or disapprove the applicant's requested change.

13) See Section 14.32.

B. Minor changes which may be made by the Zoning Administrator including the following:

1) Minor variations in concept of design of the development which are not major changes, as determined by the Zoning Administrator.

2) Increases or decreases of residential or nonresidential floor areas by ten (10) percent or less.

3) Relocation of any surface or subsurface structure or improvement by less than twenty (20) feet from its planned location.

4) Increases or decreases in planned finished grading or heights of berms which do not exceed two (2) feet or more.

5) Changes in the types of finished surfaces or roads, drives, parking areas, walks and loading and unloading areas.

6) Changes in height of buildings or structures.

7) Increases or decreases or changes in the type, height or length of walks, fencing, berms or screen plantings.

8) Additions or deletions of permitted accessory uses to the approved principal uses permitted by the approved site plan.

9) Changes in the location of essential public utilities and services from those approved on the site plan in order to accommodate their installation in accordance with the Township Engineer.

10) Changes in the species, sizes of specimens or spacing of planned and required landscaping and screen plantings, including trees, shrubs, vines and ground covers.

11) Changes due to unforeseen natural or environmental conditions or natural or constructed features, e.g. wetlands, flood plains, groundwater, geological features, existing structures and improvements or man-made or natural features and other significant features located on the site.

12) If an applicant decides to appeal the disapproval of a minor change by the Zoning Administrator, the applicant's file shall be forwarded by the Zoning Administrator with the Zoning Administrator's reasons for disapproval to the Planning Commission for its review and decision as to whether to approve, approve with conditions or disapprove the requested minor change.

13) See Section 14.32.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 64 eff. Jan. 12, 1998; further amend by Ord. No. 96 eff. Feb. 23, 2000)

Appendix F

Section 20.11 MODIFICATION DURING CONSTRUCTION.

All improvements shall conform to the approval final site plan. If the applicant chooses to make any changes in the development in relation to the approved final site plan, he shall do so at his own risk, without any assurance that the Township Planning Commission or Township Board will approve the changes. It shall be the responsibility of the applicant to notify the Zoning Administrator, the Planning Commission and Township Board of any such changes. The Zoning Administrator, the Planning Commission or Township Board may require the applicant to correct the changes so as to conform to the approved final site plan.

The Applicant upon completion of all construction, and prior to receiving a Certificate of Compliance, shall as the project was finally built, have prepared a set of as-built site plan drawings by a State of Michigan registered/licensed professional architect, civil engineer, landscape architect or land surveyor who shall upon preparing such a set of as-built plans present a written statement certifying the set of plans accurately represent the completed construction of the project as actually and finally constructed as-built on the site. This set of plans shall be labeled "as-built site plans" for the entitled project. The "as-built site plan" shall be submitted to the Township in the form of one (1) Mylar as-built tracing and three (3) sets of as-built prints acceptable to the Township. The as-built site plan shall show the exact location of all improvements, including building locations, elevations, grades, paved areas, sewer lines or on site wastewater disposal systems, water mains

or onsite water supply systems, manholes, drain inlets, fire hydrants, signs, outdoor lighting, utility locations for electric power, gas, telephone and cable television, landscaping, property lines, easements and any other improvement located above, on or below ground grade.

In addition to the above requirements the Applicant must submit a compact disk compatible with the computer program installed at the Township which can, through the use of the compact disk and the Township computer program, bring up the Applicant's project as-built drawings of the site plan.

(Ord. No. 1 eff. Jan. 8, 1983; Ord. No. 64 eff. Jan. 12, 1998; Ord. No. 130 eff. Nov. 28, 2001)

Section 20.12 PHASING OF DEVELOPMENT.

The applicant may, at his discretion, divide the proposed development into two (2) or more phases. In such case, the preliminary site plan shall clearly indicate the location, size, and character of each phase. A final site plan for each phase may be submitted for approval.

(Ord. No. 1 eff. Jan. 8, 1983; Ord. No. 64 eff. Jan. 12, 1998)

Section 20.13 INSPECTION.

All subgrade improvements, such as utilities, subbase and base installations for drives and parking lots, and similar improvements shall be inspected by the Zoning Administrator and approved prior to covering. The Zoning

Administrator shall be responsible for the inspection of all improvements for conformance to the approved final site plan. The applicant shall be responsible for requesting the necessary inspections. The Zoning Administrator shall notify the Planning Commission and the Township Board, in writing, when a development for which a final site plan was approved has passed inspection with respect to the approved final site plan. The Zoning Administrator shall notify the Planning Commission and Township Board, in writing, of any development for which a final site plan was approved which does not pass inspection with respect to the approved final site plan, and shall advise the Planning Commission and Township Board of steps taken to achieve compliance. In such case, the Zoning Administrator shall periodically notify the Planning Commission and Township Board of progress toward compliance with the approved final site plan, and when compliance is achieved.

(Ord. No. 1 eff. Jan. 8, 1983; Ord. No. 64 eff. Jan. 12, 1998)

Section 20.14 FEES.

Fees for the review of site plans and inspections as required by this Article shall be established, and may be amended, by resolution of the Township Board.

(Ord. No. 1 eff. Jan. 8, 1983; Ord. No. 64 eff. Jan. 12, 1998)

Section 20.15 PERFORMANCE GUARANTEES.

A. To ensure compliance with the zoning ordinance and any conditions imposed under the zoning ordinance,

the Township may require a cash deposit, certified check, or irrevocable letter of credit, acceptable to the Township covering the estimated costs of improvements be deposited with the Township Clerk to insure faithful completion of the improvements. The performance guarantee shall be deposited at the time of issuance of the permit authorizing the activity or project.

B. The Township shall prepare a schedule for rebate or reduction of performance guarantees in reasonable proportions to the ratio of work completed on the required improvements as work progresses. Such performance guarantees may only be reduced upon written verification provided by the project engineer that improvements are completed as required under the site plan, and the remaining security is sufficient to insure completion of all remaining improvements.

C. In the event that the applicant shall fail to provide improvements according to the approved final site plan, or shall fail to maintain or renew the performance guarantee until all work required under the site plan is completed and a certificate of compliance, verifying compliance with the approved site plan, is issued for the entire project, the Township shall have the authority to take any of the following actions in its discretion:

    1. Appropriate funds from the deposited security, and therefore apply the funds toward completion

of the improvements in accordance with the site plan.

2. Issue a stop work order for the project.

3. Commence an action against the applicant in a court of competent jurisdiction and seek penalties and injunctive relief.

D. The Township shall be entitled to deduct reasonable administrative costs, including attorney and consultant fees, from the performance guarantees in the event the applicant fails to complete improvements under this section.

(Ord. No. 1 eff. Jan. 8, 1983; Ord. No. 64 eff. Jan. 12, 1998, Ord. No. 205 eff. May 3, 2007)

Section 20.16 VIOLATIONS.

The approved final site plan shall regulate development of the property. Any violation of this Article, including any improvement not in conformance with an approved final site plan, shall be deemed a violation of this Article, and shall be subject to the penalties of this Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983; Ord. No. 64 eff. Jan. 12, 1998)

Section 20.17 ADMINISTRATIVE REVIEW OF MINOR SITE PLANS.

A. Administrative Review for Site Plans Involving Minor Modifications. Administrative review, in

accordance with the procedures outlined below, shall be required instead of Planning Commission review for site plans that involve minor modifications, as defined herein.

B. Minor Modifications. For the purpose of this section, minor modifications shall include proposed alterations to a building or site that do not substantially affect the character or intensity of the use, vehicular or pedestrian traffic circulation, drainage patterns, the demand for public services, or the vulnerability to hazards. Examples of minor modifications include:

1) Changes to building height that do not add an additional floor.

2) Additions or alterations to the landscape plan or landscape materials.

3) Relocation of the trash receptacle.

4) Alterations to the internal parking layout of an off-street lot.

5) An increase in total floor area of ten percent (10%) of the existing total floor area up to a maximum of two thousand (2,000) square feet.

6) Alterations that would result in a decrease of total floor area.

7) Accessory uses incidental to a conforming existing use, where such use does not require any variance or site modification.

8) Provision for additional loading/unloading spaces and landscape improvements.

The Zoning Administrator shall determine if the proposed modifications on a site plan are minor in accordance with these guidelines. If the modifications are not deemed minor by the Zoning Administrator, then review and approval by the Planning Commission shall be required. Planning Commission review shall be required for all site plans as required by Section 20.02.

C. Application Requirements and Procedures. The application requirements and procedures for administrative review of site plans shall be the same as for Planning Commission review, as outlined in Section 20.06.

D. Submission to Review Agencies. The Zoning Administrator may request review from other agencies or professionals, including Fire, Water, and Sewer Authorities, Building Department, Planner, and Engineer.

E. Recording of Planning Commission Action. Each action taken with reference to a site plan review shall be duly recorded, and copies of the site plan shall

be distributed in accordance with the provisions set forth in Section 20.07.C.

F. Effect of Approval. After completion of administrative review and approval of the site plan, a building permit may be obtained, subject to review and approval of any required engineering plans by the Township Engineer or review of the construction plans by the Building Department. All other requirements for completion of site design as set forth in Section 20.07.D must be complied with.

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ARTICLE XXI
ADMINISTRATION AND ENFORCEMENT

Section 21.01 PURPOSE.

The purpose of this Article is to provide for the organization of personnel and procedures for the administration of the Ordinance, including the submittal and review of land use and development plans, issuance of land and structural use zoning permits, inspection of properties for compliance with the zoning map and regulations, establishment and collection of permit fees, handling of violators and enforcement of the provisions of this Ordinance and any amendments to it.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 21.02 ADMINISTRATION.

The provisions of this Ordinance shall be administered by the Township Board, the Township Planning Commission and such personnel as designated by the Township Board in accordance with P. A. 33 of 2006 as amended, "Michigan Planning Enabling Act", and P.A. 110 of 2006, "Zoning Enabling Act" and this Zoning Ordinance.

The Township Board shall employ a Zoning Administrator who shall be administered by the Planning Commission to act as the officer to carry out the proper administration and enforcement of this Ordinance. The person selected, the terms of employment and the rate of compensation shall be established by the Township Board. For the

purpose of this Ordinance, the Zoning Administrator shall have the powers of a police officer or municipal code enforcement officer.

(Ord. No. 1 eff. Jan. 8, 1983, amended by Ord. No. 201 eff. Dec. 21, 2006)

Section 21.03 DUTIES OF ZONING ADMINISTRATOR.

A. Receive and review all applications for Zoning Permits and approve or disapprove such applications based on compliance with the provisions of this Ordinance and shall approve issuance of the permit if the use and the requirements of this Ordinance are met. Issue Certificates of Compliance when the use and development of properties are completed and in compliance with the provisions of this Ordinance, including any required provisions resulting from site plan review procedures.

B. The Zoning Administrator shall assist the Township Board, the Planning Commission and the Zoning Board of Appeals in the processing and administering of all zoning appeals and variances, special use permits and amendments to the Zoning Ordinance by conducting the necessary field inspections, surveys and investigations, preparation of maps, charts and other graphic materials as requested by the Township Board, Planning Commission and Zoning Board of Appeals and process all applications, including site plans, and formulate recommendations relative to all applications, including site plans, required under the provisions of this Zoning Ordinance.

C. The Zoning Administrator shall be responsible for updating the Township Zoning Map and keep it current.

D. The Zoning Administrator shall prepare and submit to the Township Board and Planning Commission a written record of all zoning permits issued during each month. The record shall state the owner's name, location of property, intended use and estimate cost of construction for each permit.

E. Maintain written records of all actions taken by the Zoning Administrator.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 97 eff. Feb. 23, 2000)

Section 21.04 ZONING PERMIT.

A. Zoning permit requirements. A zoning permit is required for and shall be obtained after the effective date of this Ordinance from the office of the Zoning Administrator or his agent by the owner or his agent for the following conditions:

1) The administrative coordination of Zoning Permits issued by Howell Township and Building Permits by the Livingston County Building Inspector shall be in accordance with Section 3.09 of this Ordinance.

2) The construction, enlargement, alteration or moving of any dwelling, building or structure or

any part thereof, being used or to be used for agricultural, residential, commercial, industrial, public or semi-public purposes.

3) Repairs of a minor nature or minor alterations which do not change the use, occupancy, area, structural strength, fire hazard, fire protection, exits, light, and ventilation of a building shall not require a Zoning Permit.

4) No zoning permit shall be issued until all of the following have been paid in full:

   a) All previously billed and past due property taxes;

   b) All past due special assessment installments;

   c) All water or sewer bills outstanding

   d) All charges levied by the Township against the property for mowing, cleanup, weed or debris removal and similar charges; and

   e) All fees, fines, penalties and costs levied by the Township with respect to the property in connection with the enforcement of any Township ordinance.

   f) Certificate of Compliance and Occupancy. Upon determination of all construction in accordance with the final approved Site Plan and to all

requirements of the provisions of the Zoning Ordinance and all other requirements of officials, boards and agencies of the Township or other levels of government by the Zoning Administrator a Certificate of Compliance and Occupancy shall be issued in written published form over the signature of the Zoning Administrator to the Applicant.

B. Application for a zoning permit. Application for a Zoning Permit shall be made in writing upon a form furnished by the Zoning Administrator, including the following information:

1) The location, shape, area and dimensions for the parcel(s), lot(s) or acreage.

2) The location of the proposed construction, upon the parcel(s), lot(s) or acreage affected.

3) The dimensions, height and bulk of structures.

4) The nature of the proposed construction, alteration, or repair and the intended use.

5) The proposed number of sleeping rooms, occupants, employees, customers, and other uses.

6) The present uses of any structure affected by the construction or alteration.

7) The yard, open area and parking space dimensions, if applicable.

8) The proposed plan and specifications of off-street parking spaces, if applicable.

9) The proposed plan and specifications of off-street loading and unloading spaces provided, if applicable.

10) Any other information deemed necessary by the Zoning Administrator to determine and provide for the enforcement of this Ordinance.

If the information included in and with the application is in compliance with the above requirements and all other provisions of this Ordinance, the Zoning Administrator shall issue a Zoning Permit upon payment of the required Zoning Permit fee.

C. Voiding of permit. Any Zoning Permit granted under this Section shall be null and void unless the development proposed shall have its first inspection within one (1) year from the date of granting the permit. The Zoning Administrator shall make every effort to notify the holder of a Permit that is liable for voiding action before voidance is actually declared. The Zoning Administrator may suspend or revoke a Permit issued in error or on a basis of incorrect information supplied by the applicant or his agent or in violation of any of the ordinances or regulations of the Township.

D. Fee, charges, and expenses. The Township Board shall establish a schedule of fees, charges, and expenses, and a collection procedure for Zoning Permits, appeals

and other matters pertaining to this Ordinance. The schedule of fees shall be posted in the office of the Zoning Administrator and may be altered or amended only by the Township Board. No permit, certificate, special use approval, or variance shall be issued until such costs, charges, fees or expenses listed in this Ordinance have been paid in full, nor shall any action be taken on proceedings before the Board of Appeals until preliminary charges and fees have been paid in full.

E. Inspection. The construction or usage affected by any Zoning Permit shall be subject to the following inspections:

1) At time of staking out a building foundation or location of structure.

2) Upon completion of the construction authorized by the permit.

3) It shall be the duty of the holder of every permit to notify the Zoning Administrator when construction is ready for inspection. Upon receipt of such notification for the first inspection, the Zoning Administrator shall determine whether the location of the proposed building, as indicated by corner stakes, is in accordance with yard setbacks and other requirements of the Ordinance. The Zoning Administrator shall issue his written approval at the time of inspection if the building or proposed construction meets the requirements of this Ordinance.

4) Should the Zoning Administrator determine that the building or structure is not located according to the site and construction plans filed, or is in violation of any provision of this Ordinance, or any other applicable law, he shall so notify the holder of the permit or his agent. Further construction shall be stayed until correction of the defects set forth has been accomplished and approved upon notice and request for reinspection by the applicant and those inspections completed and compliance certified by the Zoning Administrator.

5) Should a Zoning Permit holder fail to comply with the requirements of the Zoning Administrator at any inspection stage, the Zoning Administrator shall cause notice of such permit cancellation to be securely and conspicuously posted upon or affixed to the construction not conforming to the Ordinance requirements and such posting shall be considered as service upon the notice to the permit holder of cancellation thereof and no further work upon said construction shall be undertaken or permitted until such time as the requirements of this Ordinance have been met. Failure of the permit holder to make proper notification of the time for inspection shall automatically cancel the permit, requiring issuance of a new permit before construction may proceed.

F. Procedures and penalties for failure to acquire a zoning permit prior to construction.

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1) If a property owner and/or contractor/developer proceeds to construct any land, building or other structural improvement requiring a Zoning Permit on a lot or parcel of land in Howell Township without a Zoning Permit, upon such determination and notification by the Zoning Administrator the property owner and/or contractor/developer shall cease all further construction, apply for a Zoning Permit according to this Section and other applicable provisions of this Ordinance and be assessed a penalty in the amount determined by the Township Board in the ASchedule of Fees for failure to acquire a Zoning Permit.

2) If the Site Plan accompanying the Application for a Zoning Permit is required to be approved by either the Planning Commission or Zoning Administrator, and it is determined by either that the completed construction is found to be in noncompliance with the requirements of this Zoning Ordinance, the Zoning Administrator shall notify the property owner and/or contractor/developer to either remove or bring the noncomplying construction into compliance with the requirements of this Zoning Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 73 eff. Aug. 12, 1998; amend. by Ord. No. 173 eff. May 23, 2004; further amend. by Ord. No. 182 eff. March 15, 2005; further amended by Ord. 202 eff. Dec. 21, 2006)

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Section 21.05 VIOLATIONS.

Any building or structure including mobile homes, which are erected, constructed, reconstructed, altered, converted, maintained or used, or any use of land or premise which is begun, maintained, or changed in violation of any provision of this Ordinance, is hereby declared to be a nuisance, a violation of this Ordinance and subject to the penalties of it. Refer to Ordinance No. 132, Civil Infractions for additional regulations, Refer to Ordinance No. 134 Municipal Ordinance Violations Bureau for additional regulations and refer to Ordinance No. 135 Enforcement Officer Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 21.06 PENALTIES.

Any person or the agent in charge of such building or land who violates, disobeys, omits, neglects or refuses to comply with, or resists the enforcement of any provision of this Ordinance or any amendment thereof, shall be fined upon conviction not more than five hundred

dollars ($500.00), together with the cost of prosecution, or shall be punished by imprisonment in the County jail and not more than ninety (90) days for each offense, or may be both fined and imprisoned as provided herein. Persons, firms, corporations or entities in violation of a provision of this Ordinance designated as a municipal civil infraction shall be deemed responsible for a municipal civil

infraction and subject to a fine not to exceed five hundred dollars ($500.00) plus court costs and abatement costs and all other remedies pursuant to MCL 600.8701 et. seq. Each and every day during which any illegal erection, construction, reconstruction, alteration, maintenance or use continues shall be deemed a separate offense. The Township Board, or any owner or owners of real estate within the district in which such buildings, structures or land use is situated may institute injunction, mandamus abatement or any other appropriate action, actions or proceedings to prevent, enjoin, abate, or remove any said unlawful erection, construction, maintenance or use of land, buildings or structures. The rights and remedies provided herein are cumulative and in addition to all other remedies provided by law.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 11 eff. Apr. 4, 1986; further amended by Ord. No. 202 eff. Dec. 21, 2006)

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ARTICLE XXII
ZONING BOARD OF APPEALS

Section 22.01 ESTABLISHMENT OF BOARD OF APPEALS.

There is hereby established a Board of Appeals, which shall perform its duties and exercise its powers as provided by Article VI: Zoning Board of Appeals (Section 125.3601-125.3607), P.A. 110 of 2006, "Michigan Zoning Enabling Act" and as provided in this Ordinance in such a way that the objectives of this Ordinance shall be enforced, the public health and safety secured, and substantial justice done.

(Ord. No. 1 eff. Jan. 8, 1983.)

Section 22.02 MEMBERSHIP AND TERMS OF OFFICE.

A. The Zoning Board of Appeals ("ZBA") must consist of 5 members appointed by the Township Board. The first member of the ZBA must be a member of the Township Planning Commission. The remaining regular members, and any alternate members, must be selected from the electors of the Township residing in the unincorporated portions of the Township. The members selected must be representative of the population distribution and of the various interests present in the Township.

B. One regular member of the ZBA may be a member of the Township Board, but that member may not

serve as chairperson of the ZBA. An employee or contractor of the Township may not serve as a member of the ZBA.

C. The Township Board may appoint not more than 2 alternate members for the same term as the regular members to the ZBA. An alternate member may be called to serve as a member of the ZBA in the absence of a regular member if the regular member will be unable to attend 1 or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member has abstained for reasons of conflict of interest; in such a case, the alternate member appointed must serve in the case until a final decision is made. In all instances, the alternate member has the same voting rights as a regular member of the ZBA.

D. The term of office of each ZBA member is for 3 years, except for members serving because of their membership on the Planning Commission or Township Board, whose terms are limited to the time they are members of those bodies. A successor must be appointed not more than 1 month after the term of the preceding member has expired. Vacancies for unexpired terms must be filled for the remainder of the term.

E. A member of the ZBA may be removed by the Township Board for misfeasance, malfeasance, or nonfeasance in office upon written charges and after

public hearing. A member must disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 24 eff. Dec. 7, 1989; further amend. by Ord. eff. May 7, 1992 further amended by Ord. No. 201 eff. Dec. 21, 2006)

Section 22.03 RULES OF PROCEDURE; MAJORITY VOTE.

The Board of Appeals shall adopt its own bylaws of rules and procedures as may be necessary to properly conduct its meetings and activities. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator, Planning Commission or Township Board or to decide in favor of the applicant any matter upon which they are required to pass under this Ordinance or to affect any variation in this Ordinance. All proposed actions on the part of the Board of Appeals shall be subject to the review and recommendation of the Planning Commission upon the request of the Planning Commission to review a specific appeal brought before the Board of Appeals. Upon receiving such a request, the Board shall delay any decision upon the appeal until it has received the written recommendations of the Planning Commission on those appeals requested to be reviewed by the Commission.

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(Ord. No. 1 eff. Jan. 8, 1983)

Section 22.04 MEETINGS.

Meeting of the Board of Appeals shall be held at the call of the Chairperson and at such other times as the Board in its bylaws may specify.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 22.05 PUBLIC MEETINGS AND MINUTES.

A. The ZBA must hold a public hearing and give notice as set forth below on each question submitted to it for decision. The ZBA Chairman must fix a reasonable time and date for the hearing.

B. Notice Requirements.

1) Variance Requests. Following receipt of a written request for a variance, the ZBA must fix a reasonable time for the hearing of the request and give notice as set forth below.

a) The Township must publish notice in a newspaper of general circulation in the Township.

b) The Township must also send notice by mail or personal delivery to the owners of property for which approval is being considered.

c) The Township must also send notice to all persons to whom real property is assessed within 300 feet of the property, and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the Township.

d) The notice must be given not less than 15 days before the date the variance request will be considered for approval. If the name of the occupant is not known, the term occupant may be used in making notification.

e) Contents of Notice. The notice must do all the following:

   i) Describe the nature of the variance request;

   ii) Indicate the property that is the subject of the request. The notice must include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used;

   iii) State when and where the request will be considered; and

   iv) Indicate when and where written comments will be received concerning the request.

2) Interpretations, Appeals, or other Matters. Upon receipt of a written request seeking an interpretation of this Zoning Ordinance or an appeal of an administrative decision, or any other matter properly presented to the ZBA for consideration, the Township must provide notice as follows:

   a) The Township must publish in a newspaper of general circulation within the Township a notice stating the time, date, and place of the public hearing, and send the notice to the person requesting the interpretation, appeal, etc., not less than 15 days before the public hearing.

   b) In addition, if the request for an interpretation or appeal of an administrative decision involves a specific parcel, the Township must send written notice stating the nature of the interpretation request and the time, date, and place of the public hearing on the interpretation request by first-class mail or personal delivery, to all persons to whom real property is assessed within 300 feet of the boundary of the property in question and to the occupants of all structures within 2300 feet of the boundary of the property in question. If a tenant's name is not known, the term "occupant" may be used.

(Ord. No. 1 eff. Jan. 8, 1983 amended by Ord. No. 202 eff. Dec. 21, 2006)

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Section 22.06 POWERS AND DUTIES.

A. The ZBA must perform its duties and exercise its powers as provided in the Michigan Zoning Enabling Act, 2006 PA 110, as amended, so that the objectives of this Ordinance are attained, the public health, safety, and welfare secured, and substantial justice done.

B. The ZBA must hear and decide the following: (1) questions that arise in the administration of this Zoning Ordinance, including the interpretation of zoning maps; (2) matters referred to the ZBA or upon which the ZBA is required to pass under this Ordinance; (3) appeals from and review of any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of this Ordinance; (4) variances; and (5) matters related to non-conforming uses and structures as stated in this Ordinance.

C. The ZBA may not change the zoning district classification of any property, may not change any of the terms of the Ordinance, and may not take any actions that result in the making of legislative changes to this Ordinance. The ZBA may not hear an appeal from a Township decision regarding a special land use or PUD.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 97 eff. Feb. 23, 2000, further amended by Ord. No. 201 eff. Dec. 21, 2006)

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Section 22.07 VARIANCES.

A variance from the terms of this Ordinance shall not be granted by the Board of Appeals unless and until:

A. A written application for a variance is submitted, demonstrating:

1) That special conditions and circumstances exist which are peculiar to the land use, land, structure or building in the same zoning district.

2) That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the provisions of this Ordinance.

3) That granting of the variance requested will not confer on the applicant any special privilege that is denied by the provisions of this Ordinance to other lands, structures, or buildings in the same zoning district.

4) That no nonconforming uses of other lands, structures, or buildings in the same zoning district, and not permitted use of lands, structures or buildings in other zoning districts, shall be considered grounds for the issuance of a variance.

5) Applicants shall also follow the outline of requirements prescribed by the Zoning Board of Appeals when applying for an appeal for an interpretation of or a variance from the provisions or requirements of this Zoning Ordinance.

B. The Board of Appeals shall make findings that the requirements of this Ordinance have been met in the zoning district in which it is located by the applicant for the variance requested.

C. The Board of Appeals shall further make a finding that the reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure in the zoning district in which it is located.

D. The Board of Appeals shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious or otherwise detrimental to the public welfare of the zoning district in which it is to be located.

E. In granting any variance, the Board of Appeals may prescribe appropriate conditions and safeguards in order for the variance to be in conformance with this Ordinance as much as reasonably possible. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted,

shall be deemed a violation of this Ordinance, and punishable under Section 21.06 of this Ordinance.

F. Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the zoning district in which the variance is to be located.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 97 eff. Feb. 23, 2000)

Section 22.08 VOIDING OF AND REAPPLICATION FOR VARIANCES.

A. Each variance granted under the provisions of this Ordinance shall become null and void unless the use and construction authorized by such variance or permit has been commenced within one year after the granting of such variance.

B. No application for a variance which has been denied wholly or in part by the Board of Appeals shall be resubmitted for a period of one (1) year from such denial, except on grounds of new evidence or proof of changed conditions found by the Board of Appeals to be valid.

(Ord. No. 1 eff. Jan. 8, 1983)

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Section 22.09 PROCEDURE FOR APPEALING TO THE BOARD OF APPEALS.

A. An appeal to the ZBA must be filed within 60 days of the date of the decision in question, and be filed with the Township Clerk, officer from whom the appeal is taken, and with the ZBA. The appeal must include a written statement describing the order, requirements, decision, or determination from which the appeal is taken and specify the grounds of the appeal. The appellant may be required to submit additional information to clarify the appeal. The appellant must also submit the required fee for the appeal. The Clerk must notify the body or officer from whom the appeal is taken of the appeal, and the body or officer from whom the appeal is taken must immediately transmit to the ZBA all of the papers constituting the record upon which the action appealed from was taken. The Clerk must also transmit a copy of the appeal and all related information to each of the ZBA members within a reasonable time after the appeal is filed.

B. Who may appeal. Appeals to the Board of Appeals may be taken by any person aggrieved or by an officer, department, board, agency or bureau of the Township, County, State, Federal or other legally constituted form of government.

C. Fee for appeal. A fee schedule prescribed by the Township Board shall be submitted to the Township Clerk at the time of filing an application for an appeal.

The appeals fee shall immediately be placed in the Township General Fund.

D. Effect of appeal. An appeal to the ZBA stays all proceedings in furtherance of the action appealed from unless the body or officer from whom the appeal is taken certifies to the ZBA after the notice of appeal is filed, that, by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life and property. If such a certificate is filed, proceedings may be stayed only by a restraining order issued by the ZBA or a circuit court on notice to the body or officer from whom the appeal is taken and on due cause shown.

E. So long as such action conforms with this Zoning Ordinance, the ZBA may affirm or reverse (in whole or in part), or modify the order, requirements, decision, or determination appealed from; the ZBA may also issue such order, requirement, decision or determination as it deems appropriate (as if the ZBA has the powers of the public official from whom the appeal is taken), including issuance of a permit. The ZBA must state the grounds of any determination it makes.

F. The ZBA's decision must be in the form of a roll call vote, approved by the ZBA and filed with the ZBA's meeting minutes. However, no zoning permit, building permit, or certificate of occupancy, or other permit or certificate may issue until 30 days after the ZBA certifies its decision in writing or approves

the minutes of its decision. The ZBA's decision is final. A party aggrieved by the decision of the ZBA may appeal to the circuit court as provided by law. Notwithstanding the provisions of this section, the applicant is entitled to receive a zoning permit, building permit, certificate of occupancy, or other permit or certificate if the applicant submits to the ZBA a written agreement to indemnify the ZBA, Township, its officers, officials, and employees from any and all liability for claims, damages, costs (including attorney fees and litigation threatened or asserted concerning the decision of the ZBA, together with sureties (individual or corporate), in amount to be determined by the ZBA in a form approved by the Township's attorneys. If the applicant requests a waiver of the 30 day stay as part of the applicant's appeal to the ZBA, the ZBA in its resolution must establish the amount of security to be given. Upon filing of the security that the ZBA sets, the requested permit or certificate must issue. In no case may the security amount be less than $4,000 in the form of cash, irrevocable letter of credit from a commercial bank, or corporate bond. If litigation is instituted within the 30 day period, the form of security must provide that the security continues until the litigation is determined by final judgment. If litigation is instituted after an amount of security is determined, the ZBA may re-determine and increase the security amount as it believes necessary to protect the Township's interests.

G. Any party aggrieved by a decision of the ZBA may appeal from the ZBA's decision to the circuit court. Such an appeal must be filed within 30 days after the ZBA certifies its decision in writing or approves the minutes of its decision. A party aggrieved by an order, determination, or decision of the Township ZBA regarding non-conforming uses or structures may obtain review in the circuit court as per 2006 AP 110, as amended.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 11 eff. Apr. 4, 1986; further amended by Ord. 202, eff. Dec. 21, 2006;further amend. Ord. No. 226 eff July 2, 2009)

Appendix F

ARTICLE XXIII
AMENDING THE ZONING ORDINANCE AND MAP

Section 23.01 INITIATING AMENDMENTS.

The Township Board may from time to time, on recommendation from the Planning Commission, amend, modify, supplement or revise the district boundaries or the provisions and regulations herein established whenever the interests of the public health, safety, convenience and other aspects of the general welfare require such amendment. Said amendment may be initiated by resolution of the Township Board, the Planning Commission, or by petition of one or more owners of property to be affected by the proposed amendment.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 23.02 AMENDMENT PROCEDURES.

A. This Ordinance may be amended in accordance with the procedures in the Michigan Zoning Enabling Act, 2006 PA 110, as amended, and this Ordinance.

B. Upon the Township Clerk's receipt of a petition requesting an amendment to this Ordinance, the Township Clerk must transmit the petition to the Township Planning Commission for review and report to the Township Board.

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C. Planning Commission Procedures.

1) The Planning Commission must hold at least 1 public hearing on the petition, and establish a date for a public hearing on the petition.

2) Notice of the time and place of the Planning Commission's public hearing must be given as follows:

a) If an individual property of 10 or fewer adjacent properties are the subject of the petition for rezoning, the Planning Commission must give notice of the petition as follows:

i) The Township must publish notice in a newspaper of general circulation in the Township; and

ii) The Township must also send notice by mail or personal delivery to the owners of property for which approval is being considered; and

iii) The Township must also send notice to all persons to whom real property is assessed within 300 feet of the property, and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the Township.

iv) The notice must be given not less than 15 days before the date the application will be considered for approval. If the name of the occupant is not known, the term occupant may be used in making notification.

v) Contents of Notice. The notice must do all of the following:

(1) Describe the nature of the amendment request.

(2) Indicate the property that is the subject of the request. The notice must include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.

(3) State when and where the request will be considered.

(4) Indicate when and where written comments will be received concerning the request.

b) If 11 or more adjacent properties are proposed for rezoning, the Planning Commission must give notice of the petition

proposing rezoning as in the same manner as required under the preceding paragraph (15.903 Sec. 59.03 (C)(2) except that

i) the notice need not be sent by mail or personal delivery to the owners of property for which approval is being considered,

ii) the notice need not be sent to all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is in the Township, and

iii) no individual addresses of properties are required to be listed in the notice.

iv) Notice of the time and place of the meeting must also be given by mail to each electric, gas, and pipeline public utility company, each telecommunication service provider, each railroad operating within the district or zone effected, and the airport manager of each airport that registered its name and mailing address with the Township Clerk for the purpose of receiving the notice of public hearing.

3) All notices under this section must include the place and time at which the proposed text and any maps of this Ordinance may be examined.

4) Following the required public hearing (and within 125 days of the petition's filing date), the Planning Commission must transmit a summary of comments received at the hearing and its proposed recommendations for disposition of the petition to the Township Board. The 125 day time limit may be extended by agreement of the petitioner and Planning Commission.

D. Township Board Procedures

1) After receiving the Planning Commission's summary of comments and recommendations regarding the petition, the Township may hold a public hearing if it considers it necessary or if otherwise required by law. If the Township Board opts to hold a public hearing, the Township must give notice of it in the same manner as the Township Planning Commission was required to give notice of its public hearing regarding the petition.

2) The Township must grant a hearing on a proposed ordinance amendment to a property owner who requests a hearing by certified mail, addressed to the Township Clerk.

3) If the Township Board deems it advisable to make changes to the proposed amendment forwarded to it by the Planning Commission, the Township Board may refer such to the Township Planning Commission for consideration and comment within a time specified by the Township Board.

4) The Township Board must consider and vote upon the petition. Any amendment to this Ordinance requires a majority vote by the Township Board.

5) In reviewing an application for the rezoning of land, whether the application be made with or without an offer of conditions, factors that should be considered by the Planning Commission and the Township Board include, but are not limited to, the following:

   a) Whether the rezoning is consistent with the policies and uses proposed for that area in the Township's Master Land Use Plan;

   b) Whether all of the uses allowed under the proposed rezoning would be compatible with other zones and uses in the surrounding area;

   c) Whether any public services and facilities would be significantly adversely impacted by a development or use allowed under the requested rezoning; and

   d) Whether the uses allowed under the proposed rezoning would be equally or better suited to the area than uses allowed under the current zoning of the land.

(Ord. No. 1 eff. Jan. 8, 1983 amended by Ord. No. 201 eff. Dec. 21, 2006)

Appendix F

Section 23.03 CONDITIONAL REZONING.

A. Intent. It is recognized that there are certain instances where it would be in the best interests of the Township, as well as advantageous to property owners seeking a change in zoning boundaries, if certain conditions could be proposed by property owners as part of a request for a rezoning. It is the intent of this Section to provide a process consistent with the provisions of Section 405 of the Michigan Zoning Enabling Act (MCL 3405) by which an owner seeking a rezoning may voluntarily propose conditions regarding the use and/or development of land as part of the zoning request.

B. Application and Offer of Conditions.

1) An owner of land may voluntarily offer in writing conditions relating to the use and/or development of land for which a rezoning is requested. This offer must be made either at the time the application for rezoning is filed or by an amendment to the application for conditional rezoning made at a later time during the rezoning process.

2) The required application and process for considering a rezoning request with conditions shall be the same as that for considering rezoning requests made without any offer or conditions, except as modified by the requirements of this Section.

3) The owner's offer of conditions may not purport to authorize uses or developments not permitted in the requested new zoning district.

4) The owner's offer of conditions shall bear a reasonable and rational relationship to the property for which rezoning is requested.

5) Any use or development proposed as part of an offer of conditions that would require a special land use permit under the terms of this Ordinance may only be commenced if a special land use permit for such use or development is ultimately granted in accordance with the provisions of this Ordinance.

6) Any use or development proposed as part of an offer of conditions that would require a variance under the terms of this Ordinance may only be commenced if a variance for such use or development is ultimately granted by the Zoning Board of Appeals in accordance with the provisions of this Ordinance.

7) Any use or development proposed as part of an offer of conditions that would require site plan approval under the terms of this Ordinance may only be commenced if site plan approval for such use or development is ultimately granted in accordance with the provisions of this Ordinance.

8) The offer of conditions may be amended during the process of rezoning consideration provided that any amended or additional conditions are entered voluntarily by the owner. An owner may withdraw all or part of its offer of conditions any time prior to final rezoning action of the Township

Board provided that, if such withdrawal occurs subsequent to the Planning Commission's public hearing on the original rezoning request, then the rezoning application shall be referred to the Planning Commission for a new public hearing with appropriate notice and a new recommendation.

C. Planning Commission Review. The Planning Commission, after public hearing and consideration of the factors for rezoning set forth in Section 23.02 of this Ordinance, may recommend approval, approval with recommended changes or denial of the rezoning; provided, however, that any recommended changes to the offer of conditions are acceptable to and thereafter offered by the owner. The Applicant shall pay for any additional administrative costs incurred by the Township in reviewing the application for conditional rezoning.

D. Township Board Review. After receipt of the Planning Commission's recommendation, the Township Board shall deliberate upon the requested rezoning and may approve or deny the conditional rezoning request. The Township Board's deliberations shall include, but not be limited to, a consideration of the factors for rezoning set forth in Section 23.02 of this Ordinance. Should the Township Board consider amendments to the proposed conditional rezoning advisable and if such contemplated amendments to the offer of conditions are acceptable to and thereafter offered by the owner, then the Township Board shall refer such amendments to the Planning Commission for a report thereon within a time specified by the Township Board

and proceed thereafter in accordance with Sec. 23.02 to deny or approve the conditional rezoning with or without amendments.

E. Approval.

1) If the Township Board finds the rezoning request and offer of conditions acceptable, the offered conditions shall be incorporated into a formal written Statement of Conditions acceptable to the owner and conforming in form to the provisions of this Section. The Statement of Conditions shall be incorporated by attachment or otherwise as an inseparable part of the ordinance adopted by the Township Board to accomplish the requested rezoning.

2) The Statement of Conditions shall:

a) Be in a form recordable with the Register of Deeds of the County in which the subject land is located or, in the alternative, be accompanied by a recordable Affidavit or Memorandum prepared and signed by the owner giving notice of the Statement of Conditions in a manner acceptable to the Township Board.

b) Contain a legal description of the land to which it pertains.

c) Contain a statement acknowledging that the Statement of Conditions runs with the land and is binding upon successor owners of the land.

d) Incorporate by attachment or reference any diagram, plans or other documents submitted or approved by the owners that are necessary to illustrate the implementation of the Statement of Conditions. If any such documents are incorporated by reference, the references shall specify where the document may be examined.

e) Contain a statement acknowledging that the Statement of Conditions or an Affidavit or Memorandum giving notice thereof may be recorded by the Township with the Register of Deeds of the County in which the land referenced in the Statement of Conditions is located.

f) Contain the notarized signatures of all of the owners of the subject land preceded by a statement attesting to the fact that they voluntarily offer and consent to the provisions contained within the Statement of Conditions.

3) Upon the rezoning taking effect, the Zoning Map shall be amended to reflect the new zoning classification along with the designation that the land was rezoned with a Statement of Conditions. The Township Clerk shall maintain a listing of all lands rezoned with a Statement of Conditions.

4) The approved Statement of Conditions or an Affidavit or Memorandum giving notice thereof shall be filed by the Township with the Register of

Deeds of the County in which the land is located. The Township Board shall have authority to waive this requirement if it determines that, given the nature of the conditions and/or the time frame within which the conditions are to be satisfied, the recording of such a document would be of no material benefit to the Township or to any subsequent owner of the land.

5) Upon the rezoning taking effect, the use of the land so rezoned shall conform thereafter to all of the requirements regulating use and development within the new zoning district as modified by any more restrictive provisions contained in the Statement of Conditions.

F. Compliance with Conditions.

1) Any person who establishes a development or commences a use upon land that has been rezoned with conditions shall continuously operate and maintain the development or use in compliance with all the conditions set forth in the Statement of Conditions. Any failure to comply with a condition contained within the Statement of Conditions shall constitute a violation of this Zoning Ordinance and be punishable accordingly. Additionally, any such violation shall be deemed a nuisance per se and subject to judicial abatement as provided by law.

2) No permit or approval shall be granted under this Ordinance for any use or development that is contrary to an applicable Statement of Conditions.

G. Time Period for Establishing Development or Use. Unless another time period is specified in the Ordinance rezoning the subject land, the approved development and/or use of the land pursuant to building and other required permits must be commenced upon the land within 18 months after the rezoning took effect and thereafter proceed diligently to completion. This time limitation may upon written request be extended by the Township Board if (1) it is demonstrated to the Township Board's reasonable satisfaction that there is a strong likelihood that the development and/or use will commence within the period of extension and proceed diligently thereafter to completion and (2) the Township Board finds that there has not been a change in circumstances that would render the current zoning with Statement of Conditions incompatible with other zones and uses in the surrounding area or otherwise inconsistent with sound zoning policy.

H. Reversion of Zoning. If approved development and/or use of the rezoned land does not occur within the time frame specified under Subsection G above, then the land shall revert to its former zoning classification. The revision process shall be initiated by the Township Board requesting that the Planning Commission proceed with consideration of rezoning of the land to its former zoning classification. The procedure for considering and making this reversionary rezoning shall thereafter be the same as applies to all other rezoning requests.

I. Subsequent Rezoning of Land. When land that is rezoned with a Statement of Conditions is thereafter

rezoned to a different zoning classification or to the same zoning classification but with a different or no Statement of Conditions, whether as a result of a reversion of zoning pursuant to Section H above or otherwise, the Statement of Conditions imposed under the former zoning classifications shall cease to be in effect. Upon the owner's written request, the Township Clerk shall record with the Register of Deeds in the County in which the land is located a notice that the Statement of Conditions is no longer in effect.

J. Amendment of Conditions.

1) During the time period for commencement of an approved development or use specified pursuant to Subsection G above or during any extension thereof granted by the Township Board, the Township shall not add to or alter the conditions in the Statement of Conditions.

2) The Statement of Conditions may be amended thereafter in the same as was prescribed for the original rezoning and Statement of Conditions.

K. Township Right to Rezone. Nothing in the Statement of Conditions nor in the provisions of this Section shall be deemed to prohibit the Township from rezoning all or any portion of land that is subject to a Statement of Conditions to another zoning classification. Any rezoning shall be conducted in compliance with this Ordinance and 2006 PA 110, as amended.

L. Failure to Offer Conditions. The Township shall not require an owner to offer conditions as a requirement for rezoning. The lack of an offer of conditions shall not affect an owner's rights under this Ordinance.

(Ord. No. 202 eff. Dec. 21, 2006)

Section 23.04 REFERENDUM.

A. Within 7 days after publication of an amendment to the Zoning Ordinance, a registered elector residing in the zoning jurisdiction of the Township may file with the clerk of the Township a notice of intent to file a petition under this section and Section 402 of the Zoning Enabling Act, 2006 PA 110, as amended.

B. If a notice of intent is filed under the above paragraph, the petitioner has 30 days after publication of the amendment to file a petition signed by a number of registered electors residing in the Township not less than 15% of the total votes cast within the Township for all candidates for governor at the last preceding general election at which a governor was elected, with the Township Clerk, requesting submission of the amendment to the electors residing in the unincorporated portion fo the Township for their approval.

C. Upon the filing of the notice of intent, the amendment at issue will only take effect as provided by law, including 2006 PA 110, as amended.

(Ord. No. 201 eff. Dec 21, 2006)

Appendix F

ARTICLE XXIV
VALIDITY OF THE ZONING ORDINANCE

Section 24.01 VALIDITY OF THIS ORDINANCE.

Each section, subsection, provision, requirement, regulation, or restriction established by this Ordinance or any amendment thereto, is hereby declared to be independent, and the holding of any part to be unconstitutional, invalid or ineffective for any cause shall not affect nor render invalid the Ordinance or amendments thereto as a whole, or any other part thereof, except the particular part so declared to be invalid.

(Ord. No. 1 eff. Jan. 8, 1983)

Appendix F

ARTICLE XXV
ENACTMENT

Section 25.01 DECLARATION OF IMMEDIACY OF NEED.

The provisions of this Zoning Ordinance are hereby presented as an amendment to replace the present Ordinance which became effective on June 2, 1979. It is declared that these provisions are of immediate necessity to the preservation of the public health, safety and other aspects of the general welfare of Howell Township, and are hereby ordered to take effect and be enforced on and after the earliest date allowed by law.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 25.02 PUBLICATION.

A. After Township Board approval of a petition to amend this Ordinance, the amendment must be filed with the Township Clerk and the Township must publish a notice of ordinance amendment within fifteen (15) days after adoption in a newspaper of general circulation within the Township.

B. The notice of adoption must include the following information.

    1) Either a summary of the regulatory effect of the amendment, including the geographic area affected, or the text of the amendment.

2) The effective date of the ordinance amendment.

3) The place where and time when a copy of the ordinance amendment may be purchased or inspected.

C. A copy of the notice must be mailed to the airport manager of an airport that registers its name and mailing address with the Township Clerk for the purpose of receiving notice of public hearings on ordinance amendments.

(Ord. No. 1 eff. Jan. 8, 1983, amended by Ord. No. 202 eff. Dec. 21, 2006)

Initial Publication Dates: June 23, 1982 and July 14, 1982

Date of Public Hearing: July 20, 1982 by Planning Commission

Adoption by Planning Commission: July 20, 1982

Date of Public Hearing by Township Board: November 22, 1982

Date of Publication regarding Board Public Hearing: November 10, 1982

Adoption by Township Board: November 22, 1982

Final Publication Date in Livingston County Press: December 8, 1982

Appendix F

ARTICLE XXVI
ROADS, DRIVEWAYS AND RELATED LAND USE DEVELOPMENTS

Section 26.01 PURPOSE.

The purpose of this Section is to consolidate all of the regulations included in this Zoning Ordinance in one location for more efficient use of them in relation to all road, driveway and related land use developments.

Section 26.02 FRONTAGE ON PUBLIC ROAD OR HIGHWAY.

In any zoning district, every use, building or structure established after the effective date of the amendment of this ordinance shall be on a lot or parcel that fronts upon a public road right-of-way or a private road right-of-way which private road has been constructed and approved by Howell Township in accordance with Article XXVI of this zoning ordinance. (amend. by Ord. No. 172 eff. Apr. 25, 2004)

A. Pre-existing residential private roads.

1) Those parcels of land which existed as of January 8, 1983, (the date of the adoption of the Howell Township Zoning Ordinance) which front upon any of the following main private roads, to wit: Amberwood Trail, Donna Marie, Eason, Monterey Court, Nancy Ann, Olde Franklin Drive, Pineway Trail, Popple Lane,

Santa Rosa, Solace Drive, Starlight, Suntar Valley, John Ward, Barkley Drive, Preston Knolls, and Woodhaven, may be used for residential purposes provided the parcel meets all of the requirements of the zoning ordinance for the district in which the parcel is located. The zoning administrator is empowered to issue land use permits for the developments of these lots or parcels if such developments meet the requirements of the zoning ordinance.

2) Any further partitioning or splits of any parcels on the private roads identified in paragraph B1 shall not be permitted unless the petitioner seeking the requested splits provides to the Howell Township Planning Commission the following information and documentation which must be approved by the Township Planning Commission.

   a) A recorded easement agreement to the public for purposes of emergency vehicle access and other public services as necessary;

   b) A recorded easement which will provide for all utilities, drainage, sewer, water and ingress and egress;

   c) An equitable road maintenance agreement which is to be reviewed and approved by the Township Planning Commission and be recorded in the office of the Livingston County Register of Deeds;

d) A document acknowledging that no public funds of any kind will be used to build, repair or maintain the private road and further acknowledging and affirming that the Township has no responsibility or obligation regarding construction, repair, improvement or maintenance in regard to said private road or as it pertains to ingress and egress to any parcel utilizing such road;

e) An indemnification and hold harmless agreement acknowledging that the Township shall be indemnified, held harmless and released from any and all claims, causes of action, damages, known or unknown, in any way related to said private road and its use thereof;

f) The aforementioned easements, agreements and other documents must be signed by all of the legal and equitable owners of all parcels which abut said private road or have access to said private road including secured parties and parties having a lien hold interest in the premises;

g) Since any such additional splits as contemplated by the preceding paragraph shall increase the burden upon said road, the road shall be constructed, maintained and brought up to the specifications for private roads as required by the Livingston County Road Commission;

h) The extension of any road in anticipation of serving other parcels shall be expressly prohibited unless the road is brought up to the road standards required by the Livingston County Road Commission.

C. The required minimum area and road frontage for each lot, parcel or site area shall be equal to the minimum lot or parcel width as required in each zoning district.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 12 eff. Sept. 5, 1986; further amend. by Ord. of July 2, 1992; Ord. No. 40 eff. June 3, 1993)

Section 26.03 ACCESS TO A PUBLIC ROAD OR HIGHWAY.

Any lot or parcel of record created prior to the effective date of this Ordinance without any frontage on a public road or way shall not be occupied except where access to a public road or way is provided by a public or private easement or other right-of-way no less than twenty (20) feet in width.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 26.04 FRONTAGE ACCESS ROADS OR SERVICE ROADS.

Access along major thoroughfares—in order to promote efficient use of thoroughfares and to decrease hazardous

traffic conditions, the following regulations shall apply to the use of all land fronting upon major thoroughfares except for existing lots, parcels and sites of record and single lots, parcels and sites described by metes and bounds on file with the Livingston County Register of Deeds.

A. Connecting service roads and parking areas shall be required between adjacent land uses.

B. Owners of all property shall submit to the Township a properly executed and witnessed license agreement which give the Township Board the authority to open and close service roads and driveways whenever necessary in order to guarantee to the satisfaction of the Township Board a safe and efficient movement to traffic. The said license may be recorded in the office of the Register of Deeds of Livingston County, Michigan. Acceptance of the said license shall, in no way, obligate the Township to build, repair, maintain or clear the said service roads or parking areas and no public funds may be spent by the Township Board to build, repair, maintain, or close the said service roads and/or parking areas. The intent of this subsection is to allow the Township to enforce its traffic Ordinance, on the said service roads and parking areas, and otherwise facilitate the safe and efficient movement of traffic thereon.

C. No less than two (2) driveways shall be available to such coordinated parking areas and service

road systems; provided that said driveways have appropriate designated driveway intersections with roads or highways; which meet the requirements of the Livingston County Road Commission or the Michigan Department of Transportation for acceleration and/or deceleration lanes or tapered lanes; provided further, this requirement may be waived by the Township Planning Commission where the needs of a particular use require and when traffic hazards will not be increased thereby.

D. All requirements shall apply only when developed adjacent to an existing use. The purpose of this subsection is to minimize the length of on-site roads and the number of parking areas and to forestall their construction until they are needed.

E. Parking lots, driveways and service roads shall be surfaced with concrete or bituminous materials and provided with curbs and gutters as specified by the Township Planning Commission and maintained in a usable dirt free condition.

F. Parking layouts shall follow standards prescribed in this Ordinance in Sections 18.02 and 18.03 in Article XVIII, Off-Street Parking, Loading and Unloading Requirements.

G. On-site roads and driveways shall have a paved width of twenty-four (24) feet and shall be provided with a curb and gutters.

H. The on-site roads shall be separated from required parking areas by a landscaped buffer of not less than ten (10) feet in width.

I. See Section 26.14B.13).

(Ord. No. 1 eff. Jan. 8, 1983, Amend. by Ord. No. 172 eff. Apr. 25, 2004))

Section 26.05 SETBACK REQUIREMENTS ALONG M-59, GRAND RIVER ROAD, OAK GROVE ROAD AND COUNTY PRIMARY ROADS.

The following setback requirements shall supersede the setback requirements as specified in individual zoning districts. The setback shall be fifty (50) feet from all buildings and twenty (20) feet for all other structures from the highway or road right-of-way line of M-59, I-96, Grand River Road, Oak Grove Road and all County Primary Roads.

Existing lots and parcels, as of the date of this amendment, which do not have sufficient depth to be utilized for a principal use that is allowed in the district in which the property is located, then the Planning Commission can waive the fifty (50) foot setback but in no event shall the front setback line be less than that required by the zoning district in which the parcel is located.

(Ord. No. 47 eff. Dec. 9, 1993; amend. by Ord. No. 97 eff. Feb. 23, 2000; further amend. by Ord. #224 eff. May 1, 2009)

Appendix F

Section 26.06 ACCESS THROUGH RESIDENTIAL DISTRICTS.

Public access to commercial, industrial, or other uses incompatible with residential uses shall not be designed so as to pass through the residential neighborhoods.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 97 eff. Feb. 23, 2000)

Section 26.07 VISIBILITY AT INTERSECTIONS.

No fence, wall, hedge, screen, sign, structure, vegetation or planting shall be higher than three (3) feet above a road grade on any corner lot or parcel in any zoning district requiring front and side yards within the triangular area formed by the intersecting road right-of-way lines and a straight line joining the two road lines at points which are thirty (30) feet distant from the point of intersection, measured along the road right-of-way lines.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 26.08 ROAD CLOSURES.

Whenever any road, alley, or other public way is vacated by official action, the zoning district adjoining each side of such public way shall automatically be extended to the center of such vacation, and all area included therein shall henceforth be subject to all appropriate regulations of that district within which such area is located.

(Ord. No. 1 eff. Jan. 8, 1983)

Appendix F

Section 26.09 LIMITATIONS ON THE NUMBER OF DRIVEWAYS ON DESIGNATED ROADS.

Existing lots and parcels, as of the date of this amendment, shall be permitted one "driveway curb cut" access onto M-59, Grand River Road, and Oak Grove Road and County Primary Roads. If a property owner has more than three hundred thirty (330) feet of continuous road frontage, the owner would be allowed more than one driveway curb cut, provided each driveway meet the requirements of the Livingston County Road Commission or Michigan Department of Transportation. All new lots created by lot splits or platted subdivision, or parcels which will have more than one (1) principal structure (such as site condominiums) which need more curb cuts than allowed by this paragraph, must provide access to M-59, Grand River Road or Oak Grove Road and County Primary Roads in accordance with the provisions of Section 26.14.

(Ord. No. 47 eff. Dec. 9, 1993; amend. by Ord. No. 97 eff. Feb. 23, 2000, amend by Ord. No. 172 eff. April 25, 2004)

Section 26.10 DRIVEWAYS AND ROAD APPROACHES.

All residential driveways and commercial driveways must be located, designed, constructed and maintained in accordance with the specifications of the Livingston County Road Commission's Driveway and Road Approaches.

All public and private road approaches must be located, designed, constructed and maintained in accordance with the Livingston County Road Commission or Michigan

Appendix F

Department of Transportation Specifications for Road Approaches.

(Ord. eff. Aug. 6, 1992)

Section 26.11 CURB CUTS FOR DRIVEWAYS

Curb cuts for driveways may be located only upon approval by the Zoning Administrator, and such other county and state authorities as required by law; provided, however, such approval shall not be given where such curb cuts would unnecessarily increase traffic hazards.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 26.12 DRIVEWAY ENTRANCES AND GATES

In driveway, entranceway or gateway structures including, but not limited to, walls, columns and gates marking driveway entrances to private or public uses may be permitted, and may be located in a required yard, except as provided in Section 26.07, "Visibility at Intersections," provided that such entranceway structures shall comply with all codes and ordinances of the Township and County and shall be approved by the Zoning Administrator and a zoning permit issued by Livingston County Road Commission or Michigan Department of Transportation.

(Ord. No. 1 eff. Jan. 8, 1983)

Appendix F

Section 26.13 COMMON DRIVEWAYS WITH ACCESS FROM PRIVATE ROADS AND COMMON DRIVEWAYS

Common driveways with access from private roads or common driveways with access from roads or common driveways may be permitted along common or extended property lines or through a meandering designated driveway easement involving two (2) adjacent lots, parcels or sites with frontages on the same road, or common driveway, provided the following conditions are met:

A) The principal buildings, including their accessory garages or automotive parking shall meet the required setbacks from property lines.

B) The adjacent property owners shall be required to include in their respective deeds a provision for a common driveway easement, for their and future owners and occupants mutual use, presented in the form of a written recordable maintenance and financial agreement and recorded with the County Register of Deeds.

C) The common driveway easement shall be at least twenty (20) feet in width in order to provide for two-way traffic.

D) The driveway entrance located between the public road pavement and the property line shall meet the construction standards of the Livingston County Road Commission or Michigan Department of

Transportation, whichever has jurisdiction for driveway approaches through curb cuts.

E) A driveway surface shall be located within the twenty (20) foot on-site easement and shall be at least sixteen (16) feet in width.

F) If the driveway exceeds 200 feet in length as measured from the front property line, the on-site portion of the driveway shall meet the requirements of the local fire department in order to assure convenient and safe access by emergency vehicles.

G) If the driveway exceeds 200 feet in length as measured from the front property line, all trees and shrubs shall be removed from within the twenty (20) foot wide easement, and all overhead vegetation within the easement shall be removed to the height of fourteen (14) feet from the ground level of the driveway pavement in order to provide a clear access over the easement by emergency vehicles and trucking.

(Ord. No. 95 eff. Jan. 23, 2000)

Appendix F

Section 26.14 LOT SPLITS, PLATTED LOTS, SUBDIVISION, SITE CONDOMINIUMS AND DEVELOPMENTS ALONG M-59, GRAND RIVER ROAD AND OAK GROVE ROAD AND COUNTY PRIMARY ROADS.

Access along M-59, Grand River Road and Oak Grove Road and County Primary Roads shall be in accordance with the following standards:

A) Purpose. Unlimited ingress and egress to the major arterial roads and highways greatly increase the potential for unsafe conditions at these intersections, thereby putting public safety in jeopardy. Reducing the number of access points may have a beneficial impact on traffic operations and safety, while preserving the property owner's right to reasonable access by a shared driveway or service road connecting two (2) or more lots, parcels or sites.

B) All future lot splits, platted lot subdivisions, site condominiums and developments along the main arterial roads of M-59, Grand River and Oak Grove Road and County Primary Roads shall have access by way of a driveway, frontage roads, service drives, or internal connecting roads in accordance with the following provisions: See Section 26.04.

1) All land divisions of property into lots, parcels or sites where there are not more than two (2) lots, parcels or sites shall have their own

shared driveway except when not permitted by the safety standards established by the County Road Commission for the location of curb cuts in a dedicated sixty-six (66) foot easement for road and utility purposes. The driveway servicing these two (2) lots, parcels or sites shall have a minimum width of twenty (20) feet. All common driveways shall meet the requirements of the Livingston County Road Commission Standards. Plan 1 depicts an example of how two (2) lots, parcels or sites would be serviced by a common driveway which would be over a common easement for the benefit of both parcels.

2) All land divisions of property where there are more than two (2) but not more than four (4) separate lots, parcels or sites shall have their own shared driveway except when not permitted by the safety standards established by the County Road Commission for the location of curb cuts in a dedicated sixty-six (66) foot easement for road and utility purposes. The driveway servicing up to four (4) lots, parcels or sites shall have a minimum width of twenty (20) feet and meet all of the requirements of the Livingston County Road Commission Standards. Further, the driveways must be hard surfaced. Plan II depicts an example of how four (4) lots, parcels or sites would be serviced by a common driveway which would be over a common easement for the benefit of four (4) lots, parcels or sites.

3) All land divisions of property where there are more than four (4) lots, parcels or sites, the common road affording access from the lot, parcels or sites to the major roads shall be brought up to the Livingston County Road Commission Standards for roads in a platted subdivision which was adopted by the Board of County Road Commissioners, which standards are entitled, Specifications for Plat Developments. All land divisions of property where there are more than four (4) lots, parcels or sites shall have a dedicated sixty-six (66) foot easement for road and utility purposes, which road shall meet all of the requirements of the Livingston County Road Commission Standards for roads in a plat development which was adopted by the Board of County Road Commissioners. Road lengths upon dead end roads shall meet the County Road Commission standards for dead end roads or cul-de-sacs. Plan III depicts an example of how six (6) lots, parcels or sites would be serviced by a common road.

4) When divisioning land for more than four (4) lots, parcels or sites the developer can provide internal roads or service roads which shall meet the Livingston County Road Commission Standards which are included in its publication entitled, "Specifications for Plat Development." Plan IV depicts an alternative method for developers to provide a single access from a major road by way of internal roads.

5) A lot, parcel or site land division may provide for a frontage access or service road with not more than two (2) entries onto the major roads, which entries must meet the requirements of the Livingston County Road Commission or Michigan Department of Transportation, which ever has jurisdiction. The frontage access or service road easement must be parallel with the major road and must be sixty-six (66) feet and run to the boundaries of the lot, parcel or site being developed so adjacent parcels may, in the future, have access or service by way of the same frontage access or service road. The frontage access road for the lot, parcel or site being developed must have a minimum width of twenty (20) feet of pavement for access to those lots, parcels or sites being developed. Plan V depicts an example of how a frontage access or service road would provide access to a lot, parcel or site development with two (2) entry points from a main road. 6) The petitioner who subdivides, partitions or develops his property must provide in writing an instrument in recordable form that gives each parcel equal access rights to the sixty-six (66) foot easement, a common driveway, frontage access road, service drive, or internal roads which will provide access to said parcels and further provide for a written maintenance agreement in recordable form that provides the mechanism whereby each parcel may be assessed for the improvement, maintenance and upkeep of the

access road and entry point upon the major roads. Further, the maintenance agreement must provide a mechanism for collecting any sums not paid by the parcel owner.

7) Each private easement for common driveway, frontage access road, service road, and internal roads must be extended to the boundary line of the parcel to be subdivided. Further, in the event other adjacent parcels of land are to be developed in the future, the adjacent parcels shall be given a legal right to use the easement, frontage access road, service road, or other easements for both road purposes and utility purposes, provided that the new development must share in proportion the cost of constructing, maintaining and upgrading the frontage access road, easement, common driveway, or service drive.

8) The Township Planning Commission will have the right to approve any of the following:

   a) Cul-de-sacs to be temporary or permanent.

   b) Temporary intersections between shared driveways and service roads or major roads may be permitted until such time as adjacent properties are developed. The Planning Commission may reduce the minimum requirement of Livingston County Road Commission or Michigan Department of

Transportation whichever has jurisdiction feet between driveway intersections with major roads provided the Planning Commission finds that such a requirement is a detriment to the development of the area and the reducing of the minimum distance would not put in jeopardy public health, safety and welfare. For example, the allowing of two (2) entries upon the road if one is for entrance only and the second is an exit only could be authorized by the Planning Commission.

c) A temporary or permanent turn around shall be built at the end of each dead end road when there are more than four (4) lots, parcels or sites being proposed, as specified in the sketch for Plan II showing Four-Lot Split Extended.

9) Each lot, parcel or site to be partitioned shall have the minimum required road frontage along the easement, access road, service drive, frontage road or shared driveway as required by the zoning district in which the lot, parcel or site lies.

10) The developer shall record a restriction on each lot, parcel or site that fronts upon the existing major roads of M-59, Grand River Road or Oak Grove Road and County Primary Roads, that there is no direct access from the

lot, parcel or site to the existing major road and such recorded restriction must run with each lot, parcel or site to be split. The restriction must be approved by the Township Planning Commission on the advice of legal counsel and then recorded before any land use permit will be issued by the Township.

11) The Planning Commission may allow temporary access to a major road where the service road, shared driveway or frontage access road is not completed if a performance bond or other financial guarantee is provided which assures the elimination of the temporary access upon completion of the service road, shared driveway or frontage access road.

12) A Certificate of Zoning Ordinance Compliance shall not be issued until such financial guarantees have been submitted to the Township and approved by the Township Board.

13) Service Roads and Frontage Road Design Standards.

    a) Service roads generally will be parallel or perpendicular to the front property line and may be located either in the front of, adjacent to or behind the principal buildings. In considering the most appropriate alignment for a service road, the Planning Commission shall consider the setbacks of existing

buildings and the anticipated traffic flow for the site. The service road may be built within the front yard setback requirements provided there is sufficient distance between the service road and the existing major road so as not to create a traffic hazard.

b) A service road shall be within an access easement permitting traffic circulation between adjoining properties. The easements shall be a minimum of sixty-six (66) feet wide.

c) The service roads and frontage access roads shall be built in accordance with the Livingston County Road Commission Standards for public roads in a subdivision with a minimum pavement width of twenty (20) feet.

d) Service roads are intended to be used exclusively for circulation and not as parking. The Planning Commission may require the posting of no parking signs along the service road. In reviewing the site plan, the Planning Commission may permit temporary parking in an easement area where a continuous service road is not yet available, provided that the layout provides for removal of the parking in the future to allow the extension of the service road.

e) The Planning Commission shall approve the location of all accesses from lots, parcels or sites onto the service road, based upon the driveway standards as provided by the Livingston County Road Commission Standards.

f) The site plan shall indicate the proposed elevation of the service road at the property line and the Township shall maintain a record of all service road elevations so that the grades can be coordinated with adjacent property owners.

C) Provisions of Section 14.32 shall supplement those of this Section 26.15 b. 13), except, where there is a conflict, the most restrictive shall prevail.

(Ord. No. 47 eff. Dec. 9, 1993; amend. by Ord. No. 97 eff. Feb. 23, 2000, amend. Ord. No. 172 eff. April 25, 2004)

Section 26.15 ROADS AND DRIVEWAY DEVELOPMENT AND CONSTRUCTION IN PRIVATE DEVELOPMENTS

A. PURPOSE.

The purpose of this Section is to provide standards and specifications for the construction and development of roads and driveways within a private development within the Township of Howell; to contribute to and promote the general safety, health, and welfare of the

public utilizing the roads, driveways, and buildings within a private development. This Section will establish standards to allow for access by emergency vehicles and to assist in the organized flow of pedestrian and vehicular traffic within a private development. This Section is not meant to supersede any part of Act No. 288, Public Acts of 1967.

(Ord. eff. May 7, 1992)

B. ROADS IN PRIVATE DEVELOPMENTS.

All roads in private developments that are not dedicated and accepted by the public shall be designed and constructed in accordance-with the Livingston County Road Commission's Specifications for Plat Development adopted May 23, 1991 by the Board of County Road Commissioners for Livingston County and effective May 24, 1991.

(Ord. eff. May 7, 1992)

C. INSPECTIONS OF PRIVATE ROAD DEVELOPMENTS.

1) All inspections and reviews shall be done by the Township Engineer. Any approvals, reviews or inspections by the Township Engineer shall not be construed as a warranty or an assumption of liability on the part of the Township of Howell or its Engineer. The petitioner or applicant must pay the actual cost incurred by the Township in

having the Township review, inspect and approve the design and construction of any private roads and drainage improvements and pay all legal fees incurred by the Township in reviewing the same. The applicant shall pay an inspection fee in the amount of three percent (3%) of the approved proprietor's engineer's estimate of the cost of the road and drainage improvements which shall be paid by cash or certified check to Howell Township at the time the land use permit is issued for the development of the property. This fee is to cover the administrative cost and inspections incurred and authorized by Howell Township relevant to the development. In the event the inspection costs exceed the estimated three percent (3%) charge, the proprietor, developer and/or owners shall be responsible for paying the additional sum which is in excess of three percent (3%) to Howell Township prior to receiving final approval. All references in the Livingston County Road Commission's "Specifications for Plat Development" to the County Engineer are hereby revised to read the Howell Township Engineer.

2. Any reference to the Livingston County Road Commission in its "Specifications for Plat Development" in Section 9 entitled, "Financial Requirements" for the purpose of this Ordinance shall read Howell Township, a municipal corporation.

(Ord. eff. May 7, 1992)

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D. WAIVER OF HARD SURFACING REQUIREMENTS.

The requirement of hard surfacing the road in a private development may be waived by the Howell Township Planning Commission under the following conditions:

1) The private development is designed for single family residences, with each parcel consisting of five (5) acres or more. However, there will be no waiver of the requirement of hard surfacing in developments which consist of, in whole or in part, multiple principal buildings upon a parcel of land.

1b) Land divisions consisting of two (2) acres or more in area that do not consist of more than four (4) lots, are accessed from a public road which are not paved and are zoned for single family residences.

2) The development does not have more than fifteen (15) lots, parcels or sites that either abuts the private road and/or have access to the private road.

3) In the event any of the existing lots, parcels or sites are to be partitioned or further subdivided so that the total number of potential residential units using the private road exceeds fifteen (15), the road must be brought up to the then current requirements and specifications required by the Livingston County Road Commission for a public road including hard surfacing. The developer, prior

to selling any lot, parcel or site, will be required to restrict each lot, parcel or site by recording an affidavit of restrictions in the office of the Livingston County Register of Deeds whereby each lot, parcel or site that has access to the private road shall be subject to a special assessment for the purpose of bringing the road up to the Livingston County Road Commission's specifications for a public road including hard surfacing. The affidavit of restrictions must contain an appropriate mechanism for the assessing, the placing of liens and the collecting of the appropriate sums to make the road conform to the Livingston County Road Commission's specifications for a public road including hard surfacing.

4) The Howell Township Planning Commission and Zoning Administrator shall not authorize the construction and/or further partition of any lots, parcels or sites in a private development if that division creates a 16th lot, parcel or site which will utilize a said private road, unless the road meets all of the requirements of the Livingston County Road Commission.

(Ord. Eff. May 7, 1992)

E. ROAD MAINTENANCE AGREEMENTS.

1. Road maintenance agreements, easement agreements for ingress and egress, and deed restrictions shall provide for the perpetual private

(non-public) maintenance of such roads and/or easements which are necessary and reasonable standards to serve the several interests involved. These documents shall contain as a minimum the following provisions:

a) A method of initiating and financing of such roads and/or easements in order to keep the road in good and useable condition and continuously meet the standards of the Livingston County Road Specifications for Road and Plat Development.

b) A workable method of apportioning the cost of maintenance and improvements.

c) A notice that if repairs and maintenance are not made, the Township Board may bring the road up to design standards specified in this Article XXVI and assess owners of the parcels on the private road or those residents who have access to the private road for the improvements plus an administrative fee in the amount of twenty-five percent (25%) payable to Howell Township.

d) A notice that no public funds of Howell Township are to be used to build, repair or maintain the private road.

e) Easements to the public for the purpose of emergency and other public vehicles for whatever public access or services are necessary.

f) A provision that the owners of any and all property using the road shall refrain from prohibiting, restricting, limiting or in any manner interfering with the normal ingress and egress and use by any of the other owners. Normal ingress and egress and use shall include use by family, guests, invite, tradesmen, and others bound to or returning from any of the properties having the right to use the road.

2. All agreements and documents required by this Section shall be approved by the Howell Township Board after receiving recommendations form the Howell Township Planning Commission, Township Attorney and Township Engineer on this matter. (Ord. eff. May 7, 1992)

F. UTILITIES.

1. Prior to selling any lot, parcel or site, the developer or owner shall create and record an appropriate easement which will provide for all utilities to serve the project, and any expansion thereof, which easement(s) shall also provide for drainage, sewer, and water. These easements shall meet the approval of the Howell Township Planning Commission after receiving recommendations from the Township Attorney and the Township Engineer.

2. Public utilities and driveways shall be located in accordance with the rules of the Livingston

County Road Commission then in effect. The underground work for utilities shall be stubbed to the building site boundary line. The developer shall make arrangements for all distribution lines for telephone, electric and cable television service to be placed underground entirely throughout the development area, and such conduits or cables shall be placed within private easements provided to such service companies by the developer or within dedicated public ways. Those telephone and electrical facilities placed in dedicated public ways shall be planned so as not to conflict with other underground utilities. The proposed location of all underground wiring shall be submitted to the appropriate utility for approval. Installation shall not proceed until such approval has been granted. All telephone and electrical facilities shall be constructed in accordance with standards of construction in compliance with all applicable federal, state and local laws and regulations. Cable television facilities shall be constructed in accordance with applicable state and federal regulations, as well as in compliance with the Howell Township Cable Communications Franchise Ordinance. All drainage and underground utility installations which traverse privately owned property shall be protected by easements granted by the developer.

(Ord. Eff. May 7, 1992, Amend. Ord. 184 eff. April, 13, 2005)

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ARTICLE XXVII
PUD—PLANNED UNIT DEVELOPMENT PROJECTS

Section 27.01 PURPOSE.

The intent of Planned Unit Developments (PUD) is to provide a more reasonable procedure which will permit greater flexibility and consequently more creative plans for various types of development than are permitted under conventional zoning regulations. It is the intention of this Article to allow flexible arrangements of land use composition and design in the preparation of site plans without sacrificing the basic principles of sound zoning practice. The basic zoning districts and their permitted uses as established in this Ordinance will form the land use base for designing a combination of uses already permitted in each district without rezoning in the form of clustering principal uses and activities at a higher density than would otherwise be possible under the respective district regulations on a preferred portion of a parcel while maintaining the overall density of development of the parcels consistent with the district regulations. Another option would be to combine the planning of land uses and activities from several districts through the rezoning procedure as one project on the same clustering principle. This PUD District is further intended to minimize development impacts upon important environmental natural features, to provide for a more economical arrangement of an on-site infrastructure by permitting principal uses to have greater density on one portion of a PUD site while retaining the overall density requirements

of the Zoning District in which the PUD is located or, in the case of a combination of Zoning Districts, after rezoning, to permit the various Zoning Districts involved fitting the overall plan for the design and composition of the PUD.

(Ord. No. 66 eff Feb. 16, 1998)

Section 27.02 PERMITTED PRINCIPAL AND ACCESSORY USES.

In pursuing the PUD—Planned Unit Development Procedure, the following provisions, regulations and restrictions shall apply:

A. Minimum lot or parcel size required for PUD projects in the various zoning districts shall be:

1) AR—100 acres provided that one of its property lines is located no more than one-quarter (1/4) mile from any other zoning district boundary.

2) SFR—30 acres.

3) MFR—20 acres.

4) OS—10 acres.

5) NSC—10 acres.

6) RSC—40 acres.

7) HSC—20 acres.

8) HC—20 acres.

9) I—40 acres.

10) When a combination of uses from more than one (1) zoning district are proposed in a PUD, such a PUD shall require the PUD to include at least the minimum required acreage for the sizes of areas specified for each zoning district in Section 27.02.

B. Types of Planned Unit Developments (PUDs)

1) A "Type 1" PUD is one which can be located in any zoning district upon application to the Township Planning Commission for a PUD project which includes only those uses permitted in the zoning district in which it is to be located. This type of PUD only requires site plan approval by the Township Planning Commission and Township Board.

2) A 'Type 2" PUD is one which can be located in any zoning district upon application to the Township Planning Commission for a PUD which includes uses permitted in the zoning district in which it is to be located and additionally other uses not permitted in the zoning district but which are permitted in other zoning districts. This type of PUD requires both rezoning and site plan approval and is subject to the Amending the Zoning Ordinance

procedure required by Article XXIII.

3) A "Type 3" PUD is one which is required of all developments in a zoning district which has the PUD designation placed upon it on the Township Zoning District Map, and which otherwise meets the specifications of " 1" above.

4) A "Type 4" PUD is one which is required of all developments in a zoning district which has the PUD designation placed upon it on the Township Zoning District Map, and which otherwise meets the specifications of " 2" above.

5) All types of condominium projects, including Condominium Subdivisions, provided that they comply with the requirements of this Zoning Ordinance and the required provisions of Public Act 59 of 1978, The Condominium Act, as amended (MCL Sections 599.101–599.275) and comply with this Zoning Ordinance as authorized by MCL Section 599.241, "Law, Ordinance or Regulation of Local Unit of Government."

Specifically Condominium Subdivisions shall meet all of the requirements of MCL Sections 599.166 and 599.167, "Condominium Subdivision Plan; Preparation; Signature and Seal; Contents; Recording; Structures" and "Improvements to be Completed by the Developer" and specified as follows:

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MCL 559.166 Condominium subdivision plan; preparation; signature and seal; contents; recording; structures and improvements to be completed by developer.

Section 66.

1) The condominium subdivision plan for each condominium project shall be prepared by an architect, land surveyor, or engineer licensed to practice and shall bear the signature and seal of such architect, land surveyor, or engineer. The condominium subdivision plan shall be reproductions of original drawings.

2) A complete condominium subdivision plan shall include all of the following:

   a) A cover sheet.

   b) A survey plan.

   c) A floodplain plan, if the condominium lies within or abuts a floodplain area

   d) A site plan.

   e) A utility plan.

   f) Floor plans.

   g) The size, location, area, and horizontal boundaries of each condominium unit.

h) A number assigned to each condominium unit.

i) The vertical boundaries and volume for each unit comprised of enclosed air space.

j) Building sections showing the existing and proposed structures and improvements including their location on the land. Any proposed structure and improvement shown shall be labeled either must be built or need not be built. To the extent that a developer is contractually obligated to deliver utility conduits, buildings, sidewalks, driveways, landscaping and an access road, the same shall be shown and designated as Amust be built, but the obligation to deliver such items exists whether or not they are so shown and designated.

k) The nature, location, and approximate size of the common elements.

l) Other items the administrator requires by rule.

3) Condominium subdivision plans shall be numbered consecutively when recorded by the Register of Deeds and shall be designated _____ county condominium subdivision plan number _____.

4) The developer shall complete all structures and improvements labeled pursuant to subsection (2) (j) "must be built". MCL 559.167 Changes in condominium project; amendment; replat of condominium subdivision plan.

Section 67.

1) A change in a condominium project shall be reflected in an amendment to the appropriate condominium document. An amendment is subject to sections 90 and 91.

2) If a change involves a change in the boundaries of a condominium unit, or the addition or elimination of condominium units, a replat of the condominium subdivision plan shall be prepared and recorded assigning a condominium unit number to each condominium unit in the amended project. The replat of the condominium subdivision plan shall be designated replat number _____ of _____ county condominium subdivision plan number , using the same plan number assigned to the original condominium subdivision plan.

C. Permitted accessory uses. Accessory buildings and uses customarily incidental to the principal permitted and social uses included on the site plan.

(Ord. No. 66 eff. Feb. 16, 1998; amend. by Ord. No. 70 eff. August 12, 1998; further amend. by Ord. No. 97 eff. Feb. 23, 2000)

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Section 27.03 GENERAL PROVISIONS.

A. Continuing applicability of information on approved PUD site plans. The location of all uses and buildings, all uses and mixtures thereof, all yards, setbacks, buffer areas and transition strip, and all other information regarding uses of properties as shown on or as part of a site plan which is approved shall have the full force and permanence of the Zoning Ordinance as though such site plans and supporting information were specifically set forth as requirements in the Zoning Ordinance. Such information shall be the continuing obligation of any subsequent interests in a "PUD" district or parts thereof and shall not be changed or altered except as approved by the Township through amendment or revision procedures as set forth in this Article. The approved site plan(s) and any conditions attached thereto shall control all subsequent planning or development. A parcel of land that has been approved as a "PUD" shall not thereafter be developed or used except in accordance with the approved final site plan approved by the Township Board.

B. Construction. Upon submitting an application for a PUD, no construction, grading, tree removal, soil stripping, or other site improvements or changes shall commence, and no zoning permit shall be issued until all of the requirements of this Article have been met and approved as to conformance with this Ordinance by the Township Board.

C. Financial guarantees. Before a zoning permit is issued, financial guarantees shall be required for all public and common site improvements and developments and, if phased, all phased developments on a per phase basis, including all improvements necessary to each phase even if they extend beyond the initial and subsequent phases. Financial guarantees may be in the form of cash, certified checks, certified bank letters of credit or performance bonds as approved by type of financial guarantee and dollar amount by the Township Board. Cost estimates to be used in setting dollar amounts for the financial guarantee shall be based upon the findings regarding estimated costs as reported by the Township Engineer, Public Agency or PUD Engineer, subject to the review and recommendation of the Planning Commission to the Township Board for its approval.

(Ord. No. 66 eff. Feb. 16, 1998)

Section 27.04 PRE-APPLICATION CONFERENCES.

A. An applicant for a PUD may request a pre-application conference with the Township Zoning Administrator and Planning Commission prior to filing an application for developing a PUD. The request shall be made to the Zoning Administrator or Planning Commission who shall set a date for the conference. The Planning Commission may invite other officials who might have an interest in the proposed development, or who might assist the Township in the review process. The applicant may also confer with the Zoning

Administrator on the specific requirements of the Zoning Ordinance. Costs of such conferences with the Planning Commission, when held at times other than regularly scheduled, special or work session meetings, shall be paid for by the applicant.

B. The purpose of such conferences shall be to inform the Planning Commission and other officials of the concept of the proposed development and to provide the applicant with information regarding land development policies, procedures, standards, and the requirements of the Township and other agencies. The applicant is encouraged to present schematic plans, site data and other information that will help explain the proposed development at this pre-application conference.

C. Statements and presentations made in the conference shall be only for the exchange of information and shall not be legally binding commitments on either the applicant nor to the Township.

(Ord. No. 66 eff. Feb. 16, 1998)

Section 27.05 SITE PLAN REQUIREMENTS.

A site plan shall be submitted for the total project and approval may be given for construction of the total project or for each phase of development. Preliminary site plans shall be submitted and reviewed in accordance with, and shall meet all provisions of Article XX, "Site Plan Review Procedures." Site plans for PUDs shall require the recommendation of the Planning Commission after

public hearing to the Township Board and the approval, approval with conditions, or denial by the Township Board.

The Planning Commission may require the applicant to provide appropriate market feasibility studies and analyses, traffic studies, facility, utility and service studies and other information necessary for the Planning Commission to properly and adequately analyze a PUD project as the basis for recommendation to the Township Board in respect to the project being requested by the applicant.

To that end, an environmental impact assessment of the probable effect of the proposed PUD development upon the natural environment and existing and planned development for the general area surrounding the PUD may be required to be prepared by the applicant and submitted to the Planning Commission concurrently with the site plan. This document shall be prepared by a professional environmental assessment specialist in narrative form, with such accompanying charts, graphs, maps and/or tables as may prove necessary. Topics to be addressed may include, as determined by and required by the Planning Commission, such studies, statements and reports on the impact of the PUD in relationship to adjacent and other surrounding existing and planned land uses, additional traffic likely to be generated per twenty-four (24) hour period, directional distribution of trips generated by the proposed development, additional police and fire service, public utilities, facilities and service needs to be anticipated and environmental components, i.e., soils to be found on the site, site topography, wetlands,

groundwater and aquifers supplying water through wells, a mapped inventory of natural features of note that are located on the site and how each would be impacted by the proposed PUD development.

(Ord. No. 66 eff. Feb. 16, 1998)

Section 27.06 SITE PLAN; ADMINISTRATIVE REVIEW PROCEDURE.

A. An application for a PUD shall be made by all of the owner(s) of record of the subject parcel. The applicant shall provide evidence of full ownership of all land in a PUD or execution of a binding or conditional sales agreement, prior to receiving a recommendation on the application and site plan by the Township Planning Commission.

B. The application shall be filed with the office of the Zoning Administrator, who shall check it for completeness in accordance with this Zoning Ordinance, discuss it with the applicant, and transmit the application and the site plan to the Planning Commission. The application shall be filed, if complete, with the Zoning Administrator at least two (2) weeks prior to the Planning Commission meeting at which it is to be first considered.

C. The Township Planning Commission shall hold a public hearing on the application, site plan and supporting information. The public hearing shall follow the same procedure as that required in Article XXIII, "Amending the Zoning Ordinance and Map."

D. At the public hearing, the applicant shall present evidence regarding adherence to all of the standards and requirements of this Zoning Ordinance. To this end, evidence, if required by the Planning Commission, expert opinion shall be submitted by the applicant in the form of professionally prepared maps, charts, reports, models and other materials, and/or in the form of testimony by professional experts who can clearly state the full nature and extent of the proposal. Complete sets of plans and supporting information shall be submitted with the application in a sufficient number of copies, but not less than ten (10) copies for review by each member of the Planning Commission, Zoning Administrator and other Township officials. Materials submitted shall include the required site plan and any required supplementary sources of information necessary to satisfy the requirements detailed in Section 27.06 and Article XX, "Site Plan Review Procedures."

E. The Planning Commission shall undertake a study of the application and site plan and shall submit a report of its recommendation after public hearing to the Township Board. This report shall contain the Planning Commission's analysis of the application and site plan, findings regarding requirements and standards, suggested conditions for approval, if applicable, and its recommendations for approval, approval with conditions or denial with reasons stated in the official minutes of the Planning Commission. Materials and information to be considered in this study and review process shall include input from such agencies as the Sewer and

Water Authority, County Health Department, County Road Commission, County Drain Commissioner, Michigan Department of Transportation, Michigan Department of Environmental Quality, among other County, State, Township and local public agencies having a public interest responsibility in the PUD development project.

F. After making its recommendations to the Township Board, the Planning Commission shall transmit the PUD to the County Planning Commission, if amendments to the Zoning Ordinance Text or Zoning District Map are required for its approval, approval with conditions or disapproval as its recommendation to the Township Board.

G. The Township Board shall review the application and site plan and the Township and County Planning Commission's recommendations thereon, and shall approve, approve with conditions, deny, or table for future consideration the application and site plan. Major changes in the application or site plan as determined by the Township Board shall be referred back to the Township Planning Commission for a review and recommendation back to the Township Board prior to the Township Board taking final action thereon. The Township Board may attach any one or all conditions to its approval of a PUD proposal, providing each condition has been reviewed and reported upon by the Township Planning Commission, except that dealing with financial guarantees.

H. If the application and site plan are approved by the Township Board, the applicant and all owner(s) of record of all property included within the PUD shall sign a statement that the approved application and site plan shall be binding upon the applicant and owner(s) of record or their assigned agent(s) and upon their heirs, successors, and assigns, unless future changes mutually agreed to by any future Township Board and future applicant and owner(s) of record or the assigned agent(s) or their heirs, successors and assigns.

(Ord. No. 66 eff. Feb. 16, 1998)

Section 27.07 SUPPLEMENTARY DEVELOPMENT STANDARDS AND REGULATIONS.

The following requirements expand upon and are in addition to the requirements detailed in Article XX, "Site Plan Review Procedures." They shall, in all cases, be adhered to by developments in a PUD project unless the Planning Commission recommends a waiver of these requirements in accordance with section 27.08.

A. The clustering of principal and accessory use structures shall be permitted provided that the overall density of dwelling units or lot coverage by commercial or industrial buildings which can be placed upon a lot or parcel of land shall not be exceeded, and all dimensional requirements shall not be reduced by more than thirty percent (30%), except as otherwise provided in the Ordinance and except that overall lot coverage requirements and perimeter front, rear and

side yard setback requirements or those specified in this Article, whichever is the greater, shall be met.

The overall density of a PUD Residential Project may exceed the following SFR, RB and MFR Zoning District densities of dwelling units per acre of net developable land contained in a parcel of land by no more than 25%:

SFR	3.0	dwelling units per net developable acre of land
RB	3.63	dwelling units per net developable acre of land
MFR	12	dwelling units per net developable acre of land

assuming that the net developable land is the total gross acreage of the parcel of land less the sum of the acreage of surface water, wetlands and required open space.

B. PUD project location and minimum size:

1) All PUD development projects shall be limited to tracts of land having an area of at least the minimum number of acres required for the respective types of PU Ds as specified in Section 27.02.

2) All PUD development projects shall be restricted to sites having access to a hard surfaced paved roadway and accepted and maintained by the

County Road Commission or the Michigan Department of Transportation.

C. Impact of PUD on the natural environment and existing land uses:

1) A preliminary indication of the impact of the development upon the natural environment elements; including, but not limited to, topography, vegetation, wetlands, flood areas, surface water and wildlife prepared as part of the PUD site plan submittal.

2) The applicant shall also provide a statement of the anticipated impact of the proposed development upon the public services; including, but not limited to, education facilities, transportation system and public safety requirements and the existing land use pattern of development in the Township.

D. External and internal circulation and access:

1) A dedication of a system of public and private roads shall be made so as to cause continuity of public access between adjacent and connecting public roads in order to provide continuous public ingress and egress to all private developments within a PUD.

2) Access points to a PUD development project shall be located no less than requirements of Livingston County Road Commission or Michigan Department

of Transportation when measured parallel to the adjoining roadway(s) upon which the project fronts.

3) Each lot or principal building or structure located in a PUD project shall have frontage upon and shall have vehicular access from a public or private road constructed to County Road Commission standards.

4) Each lot or principal building shall have pedestrian access to and from a public or private sidewalk or walkway which shall be at least five (5) feet wide and built to normal and accepted hard surface pavement standards in accordance with local area construction practices.

5) As property is developed as a PUD project, a sidewalk system linking all on-site principal and accessory and off-site adjacent principal uses which it is determined by the Planning Commission relate to the PUD, unless it is demonstrated to and determined by the Planning Commission that such a system would be inappropriate or unnecessary to the on-site development or with off-site adjoining parcels. The pathway system shall be designed and constructed so as to be appropriate both for pedestrian and non motorized transport modes. The pathway shall be no less than five (5) feet in width and shall be built to normal and accepted hard surface pavement standards in accordance with local area construction practices.

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The system of paved walkways connecting all principal and accessory buildings and the system of a road and walkways shall be required of each development in the PUD district and shall have the financial support for their operation and maintenance ensured through deed restrictions which shall provide that each owner, lessee, renter or occupant shall be obligated to participate in the cost of their operation and maintenance. The PUD organization's elected representatives in addition to their other duties shall function for the purpose of administering and dispensing payments for such costs.

6) Standards of design for widths or rights-of-way or easements for on-site private roads or drives may be modified to adequately provide the service required. The site plan shall provide for separation of pedestrian and vehicular traffic and provide for adequate off-road parking facilities. Modifications of proposed private roads and drives shall be reviewed and recommended by the Planning Commission to the Township Board for final approval. Modifications of private roads and drives shall be approved as a part of the site plan.

7) Private road and drive pavements may be modified as to width, but shall be no less than twenty (20) feet in width, and shall otherwise be designed and constructed according to the standards for public roads as established by the County Road Commission.

8) If public roads are to be included in the PUD, the applicant(s) shall plan, design and build the roads to County Road Commission standards and specifications and have them approved by the County Road Commission.

E. Open space regulations:

1) At least one (1) land or land and water area, exclusive of the areas contained in the required perimeter and internal yards, setbacks and spacing between buildings, for active or passive recreation purposes or for other specified purposes, with water areas constituting not more than twenty-five percent (25%) of the total open space shall be provided for each PUD project. The required open space shall be an area or areas equal to at least ten percent (10%) of the total land area exclusive of water surfaces of the PU D, and developed according to an open space development plan, which shall be incorporated as an integral part of the approved PUD site plan. This open space shall be for the use of the occupants and users of the PUD project or a specific phase of it, and shall be considered as an integral component of the overall PUD. This open space may be a recreation area, a park, a landscape setting for buildings, gardens or for some other functional purpose. The developer and owners shall provide financially for the mandatory perpetual care and maintenance of the open space developments and plants through the use of deed restrictions which shall require

the financial participation in the operation and maintenance cost of the open space by each owner, lease holder, renter or occupant within the PUD.

2) The prorated open space shall be irrevocably committed by dedication to an association of the residents, either as rights in fee or easement, and retained as open space for park, recreation or other common uses. All lands dedicated in fee or easement shall meet the requirements of the Township Board upon recommendation of the Planning Commission.

3) Buildings, structures, parking lots, drives and similar improvements may be permitted within the designated open space areas if related and necessary to the designed facilities and functions of the open space.

4) Open space areas shall be conveniently located and accessible by pedestrians and vehicles in relation to the principal uses in the PUD.

5) Open space areas shall have at least minimum design and construction standards, so that they can be operated, used and maintained for the activities and functions intended.

6) The Township Board may, upon recommendation of the Planning Commission, require that unique natural amenities located on the PUD site, such as ravines, rock outcrops, wooded areas, tree or

shrub specimens, unusual wildlife habitats, ponds, streams, and regulated and unregulated wetlands, shall be preserved, as part of the open space system.

F. Parking and circulation:

1) The parking and loading requirements set forth in Article XVII, Off-Street Parking, Loading and Unloading Requirements, shall apply except that the number of spaces required may be reduced if approved by the Township Board, upon recommendation of the Planning Commission, and included as part of the site plan submitted.

2) The number of off-street parking spaces shall be in accordance with Article XVII, "Off-Street Parking, Loading and Unloading Requirements," except that all PUD Commercial Developments shall require at least four (4) square feet of vehicular parking and circulation pavement for each square foot of leasable commercial building floor area.

G. Landscaping:

1) Refer to Article XXVIII, Landscaping Requirements.

H. Utilities:

1) Each principal and accessory building shall be connected to public water and sanitary sewer systems approved by the Township Board, Sewer

and Water Authority, and the County and State Health officials as a part of the site plan.

2) All PUDs shall be required to provide an adequate fire protection as determined and recommended by the Fire Marshal of the Fire Department serving the Township to the Township Board for final decision. In cases where an on-site system is determined to be needed, detailed drawings, plans and/or other background materials as well as written approval from the appropriate County or State agencies shall be presented as part of the site plan submitted.

   Maintenance of any, all approved on-site utility systems shall be ensured by the use of deed restrictions which shall provide for financial participation in the operation and maintenance costs by each owner, lessee, renter or occupant of the PUD served by the on-site system.

3) Each site shall be provided with an adequate surface and piped storm drainage system as approved by the County Drain Commissioner and the State Department of Environmental Quality. Open drainage courses and storm water retention or detention ponds may be permitted.

4) Electrical, telephone, natural gas and cable television lines shall be placed underground. Surface mounted equipment for underground lines shall be shown on the site plan and shall be screened from view.

Appendix F

I. Site design, layout and density criteria:

1) All density and lot coverage of developments in a PUD shall be completed on a total gross lot, parcel, site or phase area basis, less surface water area(s), with the exception that water areas and wetlands of less than one (1) acre may be included as part of the gross land area for computing density but water areas and wetlands in excess of one (1) acre or more shall exclude the acreage of water area above the one (1) acre.

2) Residential areas may contain several different types of dwelling units if it can be demonstrated to the satisfaction of the Township Planning Commission and Township Board that the proposed combination will not interfere with the reasonable arrangement of lots of an area to be platted and that the overall density of dwelling units shall not exceed that specified or computed for each zoning district based upon the gross area of the lot, parcel, site or phase divided by the minimum lot area per dwelling unit specified for each zoning district.

3) All principal and accessory buildings and structures shall be located at least three (3) times their height in feet from all exterior planned or existing public or private road right-of-ways or easements, property lines and zoning district boundaries.

4) The outdoor storage of goods and materials shall be prohibited in a PUD, except in HC and I districts.

Appendix F

J. Special requirements for Planned Residential Development—PRD–PUDs:

1) The purpose of a PRD is to permit the development of complete residential neighborhood units as a PUD, which, because of the large acreage involved, can be planned as self-contained areas of development. It is the further purpose of a PRD to permit nonresidential uses that are oriented primarily but not exclusively to residents of the PRD as a significant component of the overall PRD concept. On the basis of the total PRD, it is further the intent of the PRD to permit the developer to vary the specific bulk, density, and area requirements of this Ordinance subject to the approval of the PRD plan by the Planning Commission and Township Board and the requirements as herein set forth. It is also the intent of this Section to encourage the provision of different housing types when this is undertaken on the basis of an overall plan for the entire PRD area which is designed to provide for compatible land use relationships between the various housing types and nonresidential uses.

2) Regulations, limited height, bulk, density and area by land use.

a) Where the outer boundaries of the area proposed for a PRD abut a residential zoning district or an existing residential development, the PRD shall meet the following minimum yard setback requirements:

i) If the PRD abuts single family housing, the minimum yard setback shall be 50' for all structures.

ii) If the PRD abuts multiple family housing, the minimum yard setback shall be 50' for all structures except that, if the multiple family housing buildings exceed 25' in height, the yard setback shall be increased, in addition to the 50', by the additional height in feet above the 25' height.

iii) In both 1. and 2. above there shall be a screen planting or a combination berm and screen planting having an initial height of at least 8' located within the entire length of yard setback area. The screen planting shall consist of a double row of interlocking evergreen trees with the anticipated future growth height of the trees be at least 40'.

b) Where the outer boundaries of the area proposed for a PRD abut a non residential zoning district or an existing nonresidential zoning development, the PRD shall meet the following requirements: 1 00' setbacks for all buildings and 50' setbacks for all other structures as defined in (Article II Definitions #166) and shall further meet the screening requirements of Section 27.07 J.2)a)3. above.

c) The overall total permitted density within any PRD shall not exceed the number of dwelling units per

acre or lot coverage permitted in the zoning district in which the PRD is located except as otherwise provided in this Ordinance. (See Section 27.07 A.) Public roads, and land under water, including wetlands, lakes, ponds or streams shall be excluded in computing the area of the parcel for purposes of density or lot coverage.

d) On the final development plan of any PRD, the common areas and open spaces shown on the plan may be used to complete the overall density or lot coverage in the zoning district in which the PRD is located.

e) All yards for internal lots or sites may be reduced as follows on roads located within the PRD:

i) Front yards may be reduced to no less than twenty-five (25) feet or the height of the building, whichever is the greater.

ii) Side yards may be reduced to eight (8) feet, but at least sixteen (16) feet of combined side yards shall be provided between buildings for single-family dwellings and the height of multiple family dwellings for both side yards and the spacing between buildings. 3) Land area once used in computing density for one PRD or any phase of it, shall not again be used to compute density in another PRD or phase.

iii) Schedules of construction. In the development of a PRD, the percentage of one-family dwelling

units under construction shall be at least in the same proportion to the percentage of multiple family dwelling units under construction at any one time; provided, that this requirement shall be applied only if one-family dwelling units comprise twenty-five percent (25%) or more of the total housing stock proposed for the PRD. Nonresidential structures shall not be built until the PRD has enough dwelling units built financially to support such nonresidential use based upon an economic feasibility study prepared by the applicant to this effect.

K. Special requirements for planned shopping centers—PSC-PUDs. Such centers shall be permitted as a PUD in the NSC, RSC, and HSC zoning districts and shall comply with the following provisions:

1) Uses permitted. Limited to the uses permitted in each of the respective NSC, RSC and HSC Districts in which the PSC is to be located, unless an application for rezoning for the non permitted uses is made as a part of the PUD.

2) Site development:

a) Such development shall occupy a site per Section 27.02 and have a minimum of 300 feet of road frontage in the NSC district and an area per Section 27.02 and a minimum of 600 feet of road frontage in the RSC and HSC district.

b) No building shall be located nearer to any residential property line than a distance equal to three (3) times the height of said building.

c) No building or structure shall exceed the height limitation specified in the zoning district in which it is located, except as otherwise provided in the Ordinance.

3) Screening. When a PSC-PUD project is located in or adjacent to an AR, SFR or MFR zoning district, or when located adjacent to a school, hospital, church, or other public institution or open space, an approved fence or masonry wall of not less than four (4) feet nor greater than six (6) feet in height shall be erected and maintained along all property lines abutting such districts or use. In lieu of a fence or masonry wall, an evergreen buffer planting that may include berms that effectively screen the parking area from adjacent properties may be planted and maintained at a height of not less than six (6) feet.

4) Outdoor lighting. All outdoor lighting shall be installed in such a manner that no illumination source is visible beyond all property lines.

5) Vehicular approach. Driveways and approaches to the property shall be so designed and located as to create minimum interference with traffic on the surrounding public roads. No more than two (2) driveways, each not to exceed thirty (30) feet

in width at the property line shall be permitted on each road frontage of the property. Such driveways shall be located as far from road intersections as practicable, but in no case less than fifty (50) feet.

6) Parking and circulation. There shall be provided no less than four (4) square feet of parking and circulation space for every one (1) square foot of leasable floor area within the shopping center. On-site circulation facilities shall be designed so that there shall not be backing up of traffic into public roads. All areas accessible to traffic shall be paved and maintained so as to provide a smooth, dustless, and a well-drained surface. Such areas shall be lighted for those hours of darkness during which establishments within the center are open for business.

7) Applicability of district regulations. Except as otherwise indicated in this Section, all applicable regulations in the NSC, RSC and HSC districts shall apply to the respective Neighborhood Shopping Center, Regional Shopping Center and Highway Service Shopping Centers permitted in their respective districts.

L. Legal mechanisms to ensure facility and open space administration, operation, maintenance and financing.

1) Legal instruments setting forth the manner of financing permanent maintenance of common areas, utilities and facilities shall be submitted

to the Township Attorney for review before the Township Board approves a final site plan. All such legal instruments shall be filed with the Livingston County Register of Deeds and shall remain in effect unless and until the applicant/owner(s) or subsequent applicant/owner(s) and Howell Township by mutual written agreement approve any changes or amendments in the instruments.

2) Where a Home Owners Association (HOA) or an Association of Commercial Establishments (ACE) or Association of Industrial Establishments (AIE) is to be used to maintain common areas, utilities and facilities, the owner/developer shall file a declaration of covenants and restrictions that will govern the HOA, ACE or AIE as a part of the site plan submitted. The provisions shall include, but shall not be limited to, the following:

   a) The HOA, ACE, or AIE shall be established before any building or structure in the PUD is sold or occupied.

   b) Membership in the HOA, ACE or AIE shall be mandatory for each building unit owner(s) and for any successive owner(s) and shall be so specified in the covenants.

   c) Declarations of Covenants and Restrictions shall be permanent parts of the deed to the property or any part of it separated by individual ownerships.

d) The HOA, ACE, or AIE shall be made responsible for liability.

3) Building unit owners shall pay their prorated share of all costs and this requirement shall be specified in the covenants. Assessments levied by the HOA, ACE, or AIE shall become a lien on individual property ownerships.

M. Project phasing:

1) If the proposed development is to be constructed in phases, a narrative description that describes all work to be done in each phase shall be submitted to the Planning Commission when the site plan is submitted.

2) A phase shall not be dependent upon subsequent phases for safe and convenient vehicular and pedestrian access, adequate public utility, water supply and wastewater disposal services, storm drainage system and open spaces, but each phase shall have that which is needed to make each phase completely functional and have all of the necessary common elements planned, designed and built when needed.

3) Public or common water supply, wastewater disposal systems and hard-surfaced roads are required for any and all phases of a PUD.

4) The final plan of each PUD or any phase of it shall be in conformity with the overall general

development plan of the entire acreage. Any changes or amendments requested shall terminate approval on the overall plan until such changes and/or amendments have been reviewed and approved by the Township as in the instance of the first submittal.

(Ord. No. 66 eff. Feb. 16, 1998; amend. by Ord. No. 97 eff. Feb. 23, 2000, further amend by Ord. 108 eff. June 07, 2000, further amend by Ord. No. 126 eff. June 17, 2001, further amend by Ord. No. 264 eff. April 28, 2015).

Section 27.08 REGULATORY FLEXIBILITY.

A. To encourage flexibility and creativity consistent with the planned unit development concept, the Planning Commission may recommend, and the Township Board may grant a waiver from the requirements of this article as a part of the approval process as follows:

   1. Yard, lot width, minimum lot size, density, bulk standards, and other supplementary Development Standards and Regulations may be modified, provided that such modifications result in a more creative design, an arrangement of infrastructure that is more economical and/or sensitive to existing natural features.

B. Any regulatory modification shall be approved through a finding by the Planning Commission and Township Board that the deviation shall result in a higher quality of development than would be possible using conventional zoning standards.

C. Regulatory modifications are not subject to variance approval of the Zoning Board of Appeals. No part of an open space planned unit development plan may be appealed to the Zoning Board of Appeals. This provision shall not preclude an individual lot owner from seeking a dimensional variance following final approval of the planned unit development, provided, such variance does not involve alterations to open space areas as shown on the approved planned unit development site plan.

D. A table shall be provided on the site plan which specifically details all deviations from the established zoning area, height, and setback regulations, off-street parking regulations, general provisions, subdivision regulations, or supplementary regulations which would otherwise be applicable to the uses and development proposed in the absence of this section. This specification should include Ordinance provisions from which deviations are sought, and the reasons and mechanisms to be utilized for the protection of the public health, safety and welfare in lieu of the regulations from which deviations are sought. Only deviations consistent with the intent of this article shall be considered

(Ord. No. 264 eff. Apr. 28, 2015)

Section 27.09 STANDARDS FOR REVIEW.

The Planning Commission with the assistance of the Zoning Administrator shall determine and shall provide

evidence in its report to the Township Board to the effect that the PUD application, site plan and supplementary informational materials submitted by the applicant meet the following standards:

A. The proposed PUD development shall conform to the Township Master Plan for Land Use or conform to a land use policy which in the Planning Commission 's opinion, is a logical and acceptable change or modification of the adopted Township Master Plan for Land Use.

B. The proposed PUD development shall conform to the intent and purpose of the Township Zoning Ordinance and the regulations and standards of this PUD Article, other provisions and requirements of this Zoning Ordinance and any other Township, County, State and Federal requirements.

C. The proposed PUD development shall be adequately served by utilities, facilities and services such as: roads, sidewalks, road lights, police and fire protection, storm drainage system, water supply and wastewater disposal system, refuse disposal; or that the persons, organizations or agencies responsible for the proposed PUD development shall be able to properly provide for such utilities, facilities and services not available from the Township or other public agency or public utility company.

D. Common open space, other common properties and facilities, individual properties, and all other

elements of a PUD which provide open space shall be so planned that they will achieve a unified plan for all of its functional and activity elements in appropriate locations, which are suitably planned, designed and related to each other both on-site and in relation to adjacent uses of land.

E. The applicant shall have made provision to ensure that all on-site utilities, facilities and services shall be irrevocably committed through recorded protective covenants or deed restrictions for that purpose, including provisions for the financing of the construction, management, operation and maintenance costs of all on-site utilities, facilities and services included in the approved site plan and supporting documentation.

F. Traffic to, from, and within the PUD shall be safe and convenient to the occupants and users of the project and the surrounding area. In applying this standard the Planning Commission shall consider, among other things, convenient routes for automotive and pedestrian traffic; relationship of the proposed project to main thoroughfares and road intersections; and the general character and intensity of the existing and potential land use development of the surrounding area.

G. The mix of housing unit types and densities, and the mix of residential and nonresidential uses shall be acceptable in terms of their interrelationships, convenience, privacy, compatibility, and other common health, safety and welfare measures.

F. The Planning Commission shall determine, where applicable, that noise, odor, light or other external effects which are connected with the proposed PUD shall not adversely affect adjacent and surrounding area land uses and activities.

G. The proposed PUD development shall create a minimum disturbance to natural features, land forms and the environment generally.

H. Roads shall be compatible with the topography, be properly spaced, and be located and aligned in accordance with the intended function of each road. The PUD shall have adequate access to public roads. The plans shall provide suitable road connections to adjacent parcels, where applicable.

K. Pedestrian circulation shall be provided with the PUD and shall interconnect all PUD use areas where applicable. The on-site pedestrian walkway system shall provide for a logical extension of pedestrian ways outside the PUD and to the edges of the PUD, where applicable, for future connections between the PUD and the future development of adjacent properties.

(Ord. No. 66 eff. Feb. 16, 1998; amend. by Ord. No. 264 eff. Apr. 28, 2015)

Appendix F

Section 27.10 AMENDMENTS TO SITE PLANS.

Preliminary and final site plans may be amended in accordance with the process detailed in Article XX, Site Plan Review Procedures.

(Ord. No. 66 eff. Feb. 16, 1998; amend. by Ord. No. 264 eff. Apr. 28, 2015)

Section 27.11 PUD SITE PLANS, LAND DIVISION PLANS AND CONDOMINIUM LAND DIVISION PLANS.

The Township Board shall have the authority to deny or table an application for approval of a PUD Site Plan, Land Division Plan or Condominium Land Division Plan if, in its opinion and after a report thereon from the Planning Commission, such PUD Site Plan, Land Division Plan or Condominium Land Division Plan will result in premature development of the area involved, or will result in premature or improper scheduling of public improvements such as, but not limited to, roads, public water supply and wastewater disposal systems, utilities, schools and other public facilities, utilities and services.

(Ord. No. 66 eff. Feb. 16, 1998; amend. by Ord. No. 264 eff. Apr. 28, 2015)

Appendix F

Section 27.12 REQUIRED CONDITIONS FOR FINAL APPROVAL OF A PUD.

Before approving the PUD in either a preliminary or final manner, the Planning Commission and Township Board shall determine that:

A. Provisions have been made to provide for the financing of all improvements shown on the plan, for the development of open spaces and common areas which are to be provided by the applicant and that maintenance of such improvements is assured by an organizational and financial means satisfactory to the Township Board.

B. Provisions have been made to reserve or otherwise provide for necessary future sites for public or common use.

C. The cost of installing all roads and necessary utilities, including water supply and wastewater collection and treatment and storm damage system has been assured by satisfactory organizational and financial means.

(Ord. No. 66 eff. Feb. 16, 1998; amend. by Ord. No. 264 eff. Apr. 28, 2015)

Appendix F

Section 27.13 FINANCIAL GUARANTEES.

Performance guarantees shall be provided in accordance with Section 20.15 of Article XX, "Site Plan Review Procedures."

(Ord. No. 66 eff. Feb. 16, 1998; amend. by Ord. No. 264 eff. Apr. 28, 2015)

Section 27.14 VIOLATIONS.

Violations shall be dealt with in the manner provided in Section 20.16 of Article XX, "Site Plan Review Procedures."

(Ord. No. 66 eff. Feb. 16, 1998; amend. by Ord. No. 264 eff. Apr. 28, 2015)

Appendix F

ARTICLE XXVIII
LANDSCAPING REQUIREMENTS.

Section 28.01 INTENT AND SCOPE OF REQUIREMENTS.

A. ***Intent.***

Landscaping, including screening, green belts, buffers, berms and walls and fences are necessary for the continued protection and enhancement of all land uses. Landscaping is capable of enhancing the visual image of the Township, preserving natural features, improving property values, and alleviating the impact of noise, traffic, and visual distraction associated with certain uses. Landscaping is important to protect less-intensive uses from the noise, light, traffic, litter and other impacts of more intensive, nonresidential uses. Accordingly, these provisions are intended to set minimum standards for the design and use of landscaping, and for the improvement, protection and enhancement of the Township's natural and man-made environments in the interest of the public health, safety and welfare.

1) Improve the general appearance of the Township as development occurs.

2) Improve the appearance of off-street parking areas, vehicular use areas, and property abutting roads and highway rights-of-way.

3) Protect and preserve the appearance, character, and value of residential areas which abut nonresidential areas, parking areas, and other intensive use areas.

4) Reduce soil depletion resulting from erosion.

5) Increase water retention by pervious soils and thereby helping reduce storm water runoff and flooding.

B. ***Scope of application.***

These requirements shall apply to all uses which are developed, expanded, or changed and to all lots, sites, and parcels which are developed or expanded upon following the effective date of this Article. No site plan shall be approved unless it shows landscaping consistent with the requirements of this Article. Where landscaping is required, a zoning permit shall not be issued until the required landscape plan is submitted and approved as a part of Site Plan Review and a Certificate of Occupancy shall not be issued unless provisions set forth in this Article have been met or a Performance Guarantee has been posted in accordance with the provisions set forth in Section 20.15.

C. ***Minimum requirements.***

The requirements in this Article are minimum requirements, and under no circumstances shall they preclude the developer and the Township from agreeing to more extensive landscaping.

D. ***Design creativity.***

Creativity in landscape design is encouraged. Accordingly, required trees and shrubs may be planted at uniform intervals, at random, or in groupings, depending on the designer's desired visual effect and, equally important, the intent of the Township to coordinate landscaping on adjoining properties.

Section 28.02 GENERAL SITE REQUIREMENTS.

A. ***General site requirements.***

All developed portions of the site shall conform to the following general landscaping standards, except where specific landscape elements, such as green belts, berms, screenings, walls or fences are required:

1) All unpaved portions of a site shall be planted with grass, ground cover, shrubbery, or other suitable live plant material, which shall extend to any abutting road pavement edge. Grass areas in the front yard of all nonresidential uses shall be planted with sod, hydroseeding, or mulched or covered seeding.

2) A mixture of evergreen and deciduous trees shall be planted on nonresidential parcels at the rate of one (1) tree per 3,000 square feet or portions thereof of any unpaved open area for which specific landscaping requirements do not appear later in this Article. Required trees may be planted at

uniform intervals, at random, or in groupings or clusters.

B. ***Berms.***

Where required, berms shall conform to the following standards:

1) Dimensions. Unless otherwise indicated or appropriate, required berms shall be measured from the grade of the adjacent road right-of-way or parking lot adjacent to the berm, whichever is higher, and shall be constructed with slopes no steeper than one (1) foot vertical for each three (3) feet horizontal (33 percent slope), with at least a two (2) foot flat area on top. Berms shall undulate both vertically and horizontally and the landscape plan shall show the proposed contours of the berm.

2) Protection from erosion. Any required berm shall be planted with sod, hydroseeding, or mulched or covered seeding, ground cover, or other suitable live plant material to protect it from erosion so that it retains its height and shape. The use of railroad ties, cement blocks, and other types of construction materials to retain the shape and height of a berm shall be prohibited unless specifically reviewed and approved by the Planning Commission.

3) Required plantings.

a) Berms located in the front yard of nonresidential parcels: Berms located in the front yard of

nonresidential parcels shall be landscaped in accordance with the requirements for Landscaping Adjacent to Roads, Section 28.03A3.

b) Berms used for screening other than in the front yard: A minimum of one (1) deciduous shade tree shall be planted for each thirty (30) lineal feet or portion thereof, plus, a minimum of one (1) ornamental tree shall be planted for each fifty (50) lineal feet or portion thereof of required berm, plus, evergreen trees or hedges that are at least six (6) feet high as measured from the top of the rootball, which, upon being planted at fifteen (15) foot staggered intervals, will create a visual barrier for at least fifty percent (50%) of the berm length.

4) Measurement of berm length. For the purpose of calculating required plant material, berm length shall be measured along approximate center line of the berm.

C. ***Parking lot landscaping.***

In addition to required screening, all off-street parking areas shall also provide landscaping as follows:

1) Landscaping ratios. Off-street parking areas containing greater than fifteen (15) spaces shall be provided with at least twenty-five (25) square feet of interior landscaping per parking space, except

that only ten (10) square feet of interior landscaping shall be required per parking space located in a parking structure in the MFR, OS, NSC, RSC, HSC, HC, and I Zoning Districts.

2) Minimum area. Landscaped areas located in parking lots and adjacent to any building wall shall be no less than twelve (12) feet in any single dimension and no less than one hundred fifty (150) square feet in area, except that interior landscaped areas shall measure no less than three hundred (300) square feet in area in the MFR zoning districts, unless otherwise approved by the Planning Commission. In the OS, NSC, RSC, HSC, HC, and I Zoning Districts, any planting island located within a parking lot or located adjacent to a perimeter driveway shall be a minimum of twenty (20) feet in any single dimension and no less than four hundred (400) square feet in area. Wherever possible, parking areas and driveways shall be separated from buildings by a landscaped area. Landscaped areas in or adjacent to driveways and parking lots shall be protected with curbing or other means to prevent encroachment of vehicles.

D. ***Screening***

1) General screening requirements. Unless otherwise specified, wherever an evergreen or landscaped screen is required, evergreen screening shall consist of closely spaced plantings which can be reasonably expected to form a complete visual

barrier that is at least six (6) feet above ground level within five (5) years of planting. Wherever screening is required adjacent to residentially zoned or used property, the screening shall be installed prior to the beginning of site grading and general construction, except where such activity would result in damage to the screening. The minimum width of a screening area shall be fifteen (15) feet.

2) Screening of utility substation and mechanical equipment. Mechanical equipment, such as air compressors, pool pumps, transformers, air conditioning units, sprinkler pumps, satellite dish antennae, utility substations and similar equipment shall be screened by evergreens on at least three (3) sides. Insofar as practical, said screening shall exceed the vertical height of the equipment being screened by at least six (6) inches within two (2) years of planting. Specific screening requirements for utility substations will be determined on a case-by-case basis by the Township depending on the particular character of the area where the substation is proposed to be located.

E. ***Landscaping of rights-of-way.*** Public rights-of-way located adjacent to required landscaped areas and green belts shall be planted with sod, hydroseeding, or mulched or covered seeding or other suitable live ground cover, and shall be maintained by the owner or occupant of the adjacent property as if the right-of-way were part of the required landscaped areas.

No plantings except grass or ground cover shall be permitted closer than three (3) feet from the edge of the road pavement.

F. ***Maintenance of unobstructed visibility for drivers.*** No landscaping shall be erected, established, or maintained on any parcel or in any parking lot which will obstruct the view of drivers. Interior landscaping in parking lots shall not be permitted to obstruct visibility between a height of thirty (30) inches and six (6) feet above the grade level of the parking lot throughout the parking lot.

G. ***Potential damage to utilities.*** In no case shall landscaping material be planted in a way which will interfere with or cause damage to underground utility lines, public roads, or other public facilities. Species of trees whose roots are known to cause damage to public roadways, sewers, or other utilities shall not be planted closer than fifteen (15) feet from any roadways, sewers, or utilities. A list of such tree species shall be kept on file with the Zoning Administrator, and shall be made available to all interested persons upon request.

H. ***Landscaping of divider medians.*** Where traffic on driveways, maneuvering lanes, private roads, or similar vehicle access ways is separated by a divider median, the median shall be curbed and have a minimum width of twelve (12) feet as measured from the back of the curb. A minimum of one (1) deciduous or evergreen tree shall be planted for each thirty (30) lineal feet or portion thereof of median. Trees may be planted at uniform intervals at random, or in

groupings, but in no instance shall the center-tocenter distance between interfacing trees exceed forty (40) feet.

I. ***Storm water detention areas and retention ponds.*** Detention areas or retention ponds shall be designed as an integral part of the overall site plan and shall be considered a natural landscape feature having an irregular or curvilinear shape. Maximum slopes and depths of such areas or ponds shall conform to the County Drain Commissioner's requirements. The following standards shall be considered minimum requirements for the landscaping of detention areas or retention ponds:

1) Groundcover: The side slopes and bottom of the pond shall be sodded or seeded. If seeding is proposed, a seed mat or seed blanket shall be installed to prevent erosion and seed washing. The Township shall withhold a portion of the required landscape financial guarantee equal to the estimated cost of the groundcover until the sides and bottom of the pond have become permanently established.

2) General landscaping: All proposed detention areas and retention ponds shall be landscaped in accordance with the following standards:

a) One (1) deciduous shade or evergreen tree and ten (10) shrubs shall be planted for every fifty (50) lineal feet of the detention areas or retention pond's perimeter as measured along

the top of bank containing the area or pond, or as otherwise approved by the Planning Commission.

b) The required trees and shrubs shall be planted in a random pattern or in groupings. Placement of required landscaping may be located on top or slope of the bank of the detention area or retention pond, or as otherwise approved by the Planning Commission.

Section 28.03 SPECIFIC LANDSCAPING REQUIREMENTS FOR ZONING DISTRICTS.

A. ***Requirements for commercial and industrial districts.***

In addition to the General Landscaping Requirements set forth in Section 28.02, all lots or parcels of land located in MFR, OS, NSC, RSC, RT, HSC, HC and I Zoning Districts shall comply with the following landscaping requirements:

1) Front yard berm requirements: Wherever front, side or rear yards adjacent to road right-of-way are used for parking, a berm shall be required to screen the parking from view of the road. The berm shall be located totally on private property, adjacent to the road right-of-way line. The Township encourages undulation in the height and contour of the berm. Required berm height and width shall be related to building setbacks as indicated in the following schedule (see illustration):

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Existing or Required Setback	Required Berm Width	Average Berm Height	Minimum Berm Height
165 feet or less:	20 feet	3 feet	2 feet
More than 165 feet:	26 feet	4 feet	2 feet

2) Protective screening requirements: Protective screening in the form of a berm and plantings shall be required wherever a nonresidential use in a commercial, office, research or industrial district abuts directly upon land zoned for residential purposes. Berms shall be a minimum of four (4) feet in height, and shall be planted in accordance with Section 28.02B. An alternate method of screening may be considered by the Planning Commission based on specific site characteristics and compatibility with the character of the surrounding area.

3) Landscaping adjacent to roads and highways: All front, side, or rear yards in addition to berms, shall be landscaped in accordance with the following standards:

   A minimum of one (1) deciduous shade or evergreen tree shall be planted for each forty (40) lineal feet or portion thereof of road frontage, plus, a minimum of one (1) ornamental tree shall be planted for each one hundred (100) lineal feet or portion thereof of

road frontage, plus, a minimum of eight (8) shrubs shall be planted for each forty (40) lineal feet or portion thereof of road frontage. For the purposes of computing length of road frontage, openings for driveways and sidewalks shall not be counted. Trees and shrubs may be planted at uniform intervals, at random, and/or groupings.

4) Foundation landscaping: Foundation plantings shall be provided along the front or sides of any buildings which faces a road, is adjacent to a parking lot or other area which provides access to the building(s) by the general public. Foundation planting areas shall contain at a minimum, one (1) ornamental tree and five (5) shrubs per thirty-five (35) lineal feet of applicable building frontage. Individual planting areas shall be at least eight (8) feet in any single dimension and not less than one hundred fifty (150) square feet in area. Planting areas located directly adjacent to a building wall shall be at least ten (10) feet in depth from the building.

B. ***Requirements for MFR zoning districts.***

In addition to the General Landscaping Requirements set forth in Section 28.02 above, all lots or parcels of land located in MFR zoning districts shall comply with the following landscaping requirements:

1) General site landscaping: A minimum of two (2) deciduous or evergreen trees, plus, four (4) shrubs

shall be planted per dwelling unit. Unless otherwise specified, required landscaping elsewhere in the multiple-family residential development shall not be counted in meeting these requirements for trees.

2) Landscaping variety: In order to encourage creativity in landscaping and to minimize tree loss caused by species-specific disease, a variety of tree species shall be required, as specified in the following schedule:

Landscape Variety Schedule	
Required Number of Trees	**Minimum Number of Species**
5 to 30	2
31 to 60	3
61 to 100	4
More than 100	5

3) Parking lot landscaping: Multiple family residential uses requiring off-street parking areas containing greater than fifteen (15) spaces shall be provided with at least fifteen (15) square feet of interior landscaping per parking space, excluding those parking spaces abutting a public right-of-way for which landscaping is required by the various provisions of this Ordinance, and also excluding all parking spaces which are directly served by a driveway abutting and running parallel to a public

right-of-way. Interior landscaping shall comply with all applicable requirements set forth in Section 28.02C.

4) Protective screening requirements: Protective screening in the form of a berm and plantings or an obscuring wall shall be required wherever development in a MFR district abuts directly upon land zoned for single family residential purposes. Berms shall be a minimum of four (4) feet in height, and shall be planted in accordance with Section 28.02B. If a wall is used instead of a berm, the wall shall meet the requirements of Section 28.08.

5) Privacy screens: Where multiple family dwellings are designed so that rear open areas or patio areas front onto a road or highway, a landscaped privacy screen shall be provided. Such screen shall consist of a combination of trees, shrubs, and berms, subject to review and approval by the Planning Commission.

6) Landscaping adjacent to a limited access highway: Where multiple family dwellings abut a limited access highway, a landscaped buffer shall be provided to screen highway noises and views. The buffer shall consist of a combination of closely spaced evergreens and earth mounding, providing a total minimum design height of eleven (11) feet. The size and placement of plantings shall provide for a complete visual barrier at the desired height within five (5) years of planting. The Planning

Commission may modify these requirements where noise mitigation measures such as walls and plantings have been constructed in the highway right-of-way.

7) Landscaping adjacent to roads: The front, side, or rear yards adjacent to roads shall be landscaped in accordance with the following standards:

A minimum of one (1) deciduous shade or evergreen tree shall be planted for each forty (40) lineal feet or portion thereof of road frontage, plus, a minimum of one (1) ornamental tree shall be planted for each one hundred (100) lineal feet or portion thereof of road frontage, plus, a minimum of eight (8) shrubs shall be planted for each forty (40) lineal feet or portion thereof of road frontage. For the purposes of computing length of road frontage, openings for driveways and sidewalks shall not be counted. Trees and shrubs may be planted at uniform intervals, at random, and/or groupings.

C. ***Requirements for nonresidential uses in residential districts.***

In addition to the General Landscaping Requirements set forth in Section 28.02 above, all nonresidential uses developed in residential districts shall comply with the following landscaping requirements:

1) Protective screening requirements: Protective screening in the form of a berm and plantings or

an obscuring wall shall be required wherever a nonresidential use in a residential district abuts directly upon land zoned for residential purposes. Berms shall be a minimum of four (4) feet in height, and shall be planted in accordance with Section 28.02B, above. If a wall is used instead of a berm and plantings, the requirements of Section 28.08 shall be complied with.

2) Screening of off-street parking: A four (4) foot height obscuring wall shall be required along all sides of any off-street parking or vehicle use area constructed to serve a nonresidential use in a residential district, where said off-street parking or vehicle use area is located within twenty-five (25) feet of any land zoned for residential uses.

3) Landscaping adjacent to roads: The front, side, or rear yards adjacent to roads and highways shall be landscaped in accordance with the following standards:

   A minimum of one (1) deciduous shade or evergreen tree shall be planted for each forty (40) lineal feet or portion thereof of road frontage, plus, a minimum of one (1) ornamental tree shall be planted for each one hundred (100) lineal feet or portion thereof of road frontage, plus, a minimum of eight (8) shrubs shall be planted for each forty (40) lineal feet or portion thereof of road frontage. For the purposes of computing length of road frontage, openings for driveways and sidewalks shall not be counted.

Trees and shrubs may be planted at uniform intervals, at random, and/or groupings.

Section 28.04 STANDARDS FOR LANDSCAPE MATERIALS

Unless otherwise specified, all landscape materials shall comply with the following standards:

A. ***Plant quality.***

Plant materials used in compliance with the provisions of this Ordinance shall be nursery grown, free of pests and diseases, hardy in Livingston County, in conformance with the standards of the American Association of Nurserymen, and shall have passed inspections required under state regulations.

B. ***Nonliving plant material.***

Plastic and other imitations of plant materials shall not be considered as meeting the landscaping requirements of this Ordinance.

C. ***Plant material specifications.***

The following specifications shall apply to all plant material proposed in accordance with the landscaping requirements of this Ordinance:

1) Deciduous shade trees. Deciduous shade trees shall be a minimum of two and one-half (2.5) inches in

caliper measured twelve (12) inches above grade with the first branch a minimum of four (4) feet above grade when planted.

2) Deciduous ornamental trees. Deciduous ornamental trees shall be a minimum of one and one-half (1.5) inches in caliper measured six (6) inches above grade with the first branch a minimum height of four (4) feet above grade when planted.

3) Evergreen trees. Evergreen trees shall be a minimum of six (6) feet in height and a minimum spread of three (3) feet when planted. The diameter of the burlap root ball shall be at least ten (10) times the caliper measured six (6) inches above grade.

4) Shrubs. Shrubs shall be a minimum of two (2) feet in height when planted. Low growing shrubs shall have a minimum spread of twenty-four (24) inches when planted.

5) Hedges. Hedges shall be planted and maintained so as to form a continuous, unbroken, visual screen at least two (2) feet in height when planted.

6) Vines. Vines shall be a minimum of thirty (30) inches in height after one (1) growing season.

7) Ground cover. Ground cover used in lieu of turf grasses in whole or in part shall be planted in such a manner as to present reasonably dense coverage after one (1) growing season.

8) Grass. Grass area shall be planted using species normally grown as permanent lawns in Livingston County. Grass, sod, and seed shall be clean and free of weeds, pests, and diseases. Grass may be sodded, plugged, mulched, covered, drilled, sprigged or seeded, in any other acceptable manner approved by the Planning Commission except that sod, hydroseeding, or mulched or covered seeding shall be installed in swales on slopes or other areas that are subject to erosion, and in the front yard areas of all nonresidential uses. When grass is to be established by a method other than complete sodding or seeding, nurse grass seed shall be sown for immediate effect and protection until complete coverage is otherwise achieved. Straw or other types of mulch normally used in landscaping shall be used to protect newly seeded areas.

9) Mulch. Mulch used around trees, shrubs, and vines shall be a minimum of three (3) inches deep, and installed in a manner as to present a neat, uniform, finished appearance.

10) Sod. Grass areas in the front yard of all nonresidential uses shall be planted with sod, hydroseeding, or mulched or covered seeding. Types of sods are defined as follows:

    a) Mineral sod: Sod extracted by pieces or strips from the surface of grassland containing grass, support soil, and healthy roots, extracted with the intention of replanting in another area for

the purpose of establishing lawn areas. The sod shall be grown on mineral soil, commonly referred to as topsoil, and must be a minimum of two (2) years old. The grasses permitted for use in sod for landscaped lawns shall be a blend that reflects the current standards in the industry and has been demonstrated to prosper under local conditions in Livingston County.

b) Peat sod: Sod extracted by pieces or strips from the surface of grassland containing the grass, support soil, and the healthy roots, extracted with the intention of replanting in another area for the purpose of establishing lawn areas. The sod shall be grown on peat and must be a minimum of two (2) years old. The grasses permitted for use in sod for landscaped lawns shall be a blend that reflects the current standards in the industry and has been demonstrated to prosper under local conditions in Livingston County.

Section 28.05 INSTALLATION AND MAINTENANCE

The following standards shall be observed where installation and maintenance of landscape materials are required.

A. ***Installation*:** Landscaping shall be installed in a sound, workmanlike manner to ensure the continued growth of healthy plant material. Trees, shrubs, hedges and vines shall be generously mulched at the time of planting.

B. ***Protection from vehicles*:** Landscaping shall be protected from vehicles through use of curbs. Landscape areas shall be elevated above the pavement to a height adequate to protect the plants for snow removal, salt, and other hazards.

C. ***Off-season planting requirements*:** If development is completed during the off-season when plants cannot be installed, the owner shall provide a financial guarantee to ensure installation of required landscaping in the next planting season in accordance with Section 20.15.

D. ***Maintenance*:** Landscaping required by this Ordinance shall be maintained in a healthy, neat, and orderly appearance, free from refuse and debris. All unhealthy and dead plant material shall be replaced immediately by the owner/occupant or upon notice from the Zoning Administrator, unless the season is not appropriate for planting, in which case such plant material shall be replaced at the beginning of the next planting season. An automatic irrigation system is required of all proposed developments for all landscaped and/or lawn areas. This requirement may be waived by the Planning Commission if it is determined that the scope of the project is minimal and that the cost of installation of such equipment would be prohibitive to the development of the site. Trees, shrubs, and other plantings and lawn areas shall be watered regularly throughout the growing season. All constructed or manufactured landscape elements

such as, but not limited to, benches, retaining walls, edging, and so forth, shall be maintained in good condition and neat appearance. Rotted, deteriorated, or damaged landscape elements shall be repaired or replaced immediately by the owner/occupant or upon notice from the Zoning Administrator.

Section 28.06 TREATMENT OF EXISTING PLANT MATERIAL

The following regulations shall apply to existing plant material:

A. ***Consideration of existing elements in the landscape design.***

In instances where healthy plant material exists on a site prior to its development, the Planning Commission may permit substitution of such plant material in place of the requirements set forth previously in this Article, provided such substitution is in keeping with the spirit and intent of this Article and this Ordinance in general.

Existing hedges, berms, walls, or other landscape elements may be used to satisfy the requirements set forth previously, provided that such existing elements are in conformance with the requirements of this Article.

B. ***Preservation of existing plant material***

Site plans shall show all existing trees which are located on the site which are six (6) inches or greater in diameter, measured at four and one-half (42) feet above grade, and which will meet the minimum specifications of Section 28.04C.

Existing trees shall be labeled "To Be Removed" or "To Be Saved" on the site plan. If existing plant material is labeled To Be Saved on the site plan, protective measures should be implemented, such as the placement of fencing or stakes at the drip line around each tree. No vehicle or other construction equipment shall be parked or stored within the drip line of any tree or other plant material intended to be saved.

In the event that healthy existing plant materials which have been approved to meet the requirements of this Ordinance are damaged or destroyed during construction or die within one (1) year of completion of the project, said plant material shall be replaced with the same or comparable species as the damaged or removed tree, in accordance with the following schedule, unless otherwise approved by the Zoning Administrator based on consideration of the site and building configuration, available planting space, and similar considerations:

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Diameter Measured 2 Feet Above Grade		
Damaged Tree	Replacement Tree	Replacement Ratio
Less than 6 inches	2 to 3 inches	1 for 1
More than 6 inches	2 to 3 inches	1 replacement tree for each 6 inches in diameter or fraction thereof of damaged tree.

Section 28.07 MODIFICATIONS TO LANDSCAPE REQUIREMENTS

In consideration of the overall design and impact of a specific landscape plan, and in consideration of the amount of existing plant material to be retained on the site, the Planning Commission may modify the specific requirements outlined herein, provided that any such adjustment is in keeping with the intent of this Article and Ordinance in general. In determining whether a modification is appropriate, the Planning Commission shall consider whether the following conditions exist:

A. Topographic features or other unique features of the site create conditions such that strict application of the landscape regulations would result in a less effective screen than an alternative landscape design made in consideration of topographic features.

B. Parking, vehicular circulation, or land use is such that required landscaping would not enhance the site or result in the desired landscaping effect.

C. The public benefit intended by these landscaping regulations could be better achieved with a plan that varies from the strict requirements of this Article and Ordinance in general.

Section 28.08 OBSCURING WALLS AND FENCES

A. ***Obscuring wall and fence standards***

Where permitted or required by this Article and Ordinance, obscuring walls shall be subject to the following regulations:

1) Location. Required obscuring walls and fences shall be placed inside the lot line except in the following instances:

a) Where underground utilities interfere with placement of the wall or fence on the property line, the wall shall be placed on the utility easement line located nearest the property line.

b) Walls and fences, other than those permitted to be located adjacent to property lines or for topographical purposes, shall conform to the road and setback requirements as set forth in other Articles and Sections of this Ordinance.

c) When adjacent property owners agree to the construction of walls or fences on their common property line, walls or fences may be constructed on their common property line.

2) Time of construction. Wherever construction of an obscuring wall or fence is required adjacent to residentially zoned or used property, the wall or fence shall be constructed prior to the beginning of site grading and other on-site construction, except were such grading or construction would result in potential damage to the wall or fence.

3) Corner clearance. Obscuring walls and fences shall comply with the specifications as set forth in Section 14.18.

4) Substitution. As a substitute for required obscuring wall or fence, the Planning Commission may, in its review of the site plan, approve the use of other existing and/or proposed natural or man-made landscape features, such as closely spaced evergreens, that would produce substantially the same results in place of walls or fences for durability and permanence. The character of adjoining uses shall be taken into consideration in determining whether any such substitution is appropriate.

5) Wall specifications. Required obscuring walls shall comply with the following height requirements, unless otherwise specified in this Ordinance.

Purpose	Required Height
To screen a use in an OS, NSC, RSC, RT, HSC, HC, and I Zoning Districts from adjacent land zoned for Residential.	Six (6) feet
To screen a nonresidential use or parking area located in a Residential Zoning District from adjacent land zoned for Residential.	Four (4) feet

Required walls shall be constructed of masonry material that is architecturally compatible with the materials used on the façade of the principal structure on the site, such as face brick, decorative block, or poured concrete with simulated brick or stone patterns. Concrete block walls with no decorative features are not permitted. Required walls shall be finished on their sides, ends, and tops.

6) Fence specifications. Fences erected for screening purposes shall be six (6) feet in height unless otherwise specified in this Ordinance, and shall be constructed of redwood, cedar, or No. L pressure-treated wood. Chain link fences shall not be permitted for screening purposes.

7) Refer to Section 14.26—Fences.

(Amend. By Ord. No.158 eff. May 25, 2003)

Section 28.09 RESIDENTIAL FENCES AND WALLS

A. ***General standards***.

Fences or walls in Residential Zoning Districts, whether for the purposes of screening or decorative landscaping, shall meet the requirements specified above in Section 28.08.

B. ***Entranceway structures.***

Residential subdivision entranceway structures shall be permitted, subject to the site plan review as landscape features. These structures shall not be considered to be walls or fences.

(Ord. No. 74 eff. Sept. 30, 1998; amend. by Ord. No. 97 eff. Feb. 23, 2000; amend)

Appendix F

ARTICLE XXIX
MANUFACTURED HOUSING DISTRICT

Section 29.01 PURPOSE:

It is the purpose of this Section to provide for the location and regulation of Manufactured Housing District (MHD) to assure that they are provided with necessary utilities, facilities and services in a setting that is designed to protect the health, safety and welfare and provide a high quality of living for its residents by locating them where they will be compatible with adjacent land uses and meet the comparable standards of development established in this Ordinance for other types of residential developments permitted in Howell Township.

Section 29.02 REGULATION OF MANUFACTURED HOUSING DISTRICT (MHD).

MHD in Howell Township shall be governed by PA 96 of 1987, as amended, the Manufactured Housing Code (MH Code), being R125.2301 et seq and R325.331 et seq of the Michigan Administrative Code (MAC) and the provisions only of this Article XXIX of this Ordinance.

Section 29.03 DEFINITIONS:

"COMMISSION" means the Michigan Manufactured Housing Commission.

"DEPARTMENT" means the Department of Consumer and Industry Services.

"DEVELOPER" means the developer of a new manufactured housing development or the owner of an existing development who is changing or expanding the development.

"MDEQ" means the Michigan Department of Environmental Quality.

"MHD" means Manufactured Housing District.

"MHC" means Manufactured Housing Community.

"TOWNSHIP" means Howell Township, Livingston County, Michigan.

"COUNTY" means Livingston County, Michigan.

Section 29.04 LOCATION OF MANUFACTURED HOUSING DISTRICT (MHD).

MHD may be located in areas zoned for Manufactured Housing District as indicated on the Howell Township Zoning Map.

Section 29.05 PERMITTED LAND, BUILDING AND STRUCTURAL USES:

Land, Building and Structural Uses in a manufactured housing district shall be those permitted in the Manufactured Housing Code of the State of Michigan.

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Section 29.06 PERMITTED SITE IMPROVEMENTS AND STANDARDS OF CONSTRUCTION:

The following is a list of site requirements in a manufactured housing district, and, if constructed, the standards of construction which shall be met. All site improvements shall meet the requirements of the Manufactured Housing Code (MH Code) and, where specified, the additional requirements of this Article XXIX.

A. MHD/C SITE SIZE
15 acres minimum.

B. GRADING OF SITE MH CODE requirements and practice of qualified professionals licensed or registered by the State of Michigan, including, but not limited to, civil engineers, landscape architects and architects.

C. SURFACE AND UNDERGROUND PIPED STORM WATER SYSTEM
MH Code requirements.

D. SOIL EROSION AND SEDIMENTATION CONTROL
MH Code requirements.

E. WETLANDS AND FLOODPLAINS
MH Code requirements and review and approval of the Michigan Department of Environmental Quality.

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F. ROAD ACCESS AND ROADS
MH Code requirements.

G. WATER SUPPLY DISTRIBUTION SYSTEM
MH Code requirements and review by and approval of the Michigan Department of Environmental Quality.

H. FIRE HYDRANTS AND FIRE EXTINGUISHING EQUIPMENT
MH Code requirements, and the requirements of the Michigan Department of Environmental Quality R325.11105 for fire hydrants and the Michigan State Fire Code per Public Act 133 of 1974 for fire extinguisher equipment.

I. WASTEWATER DISPOSAL SYSTEM
MH Code requirements and review by and approval of the Michigan Department of Environmental Quality.

J. OTHER UTILITIES
MH Code requirements and the requirements of the Public Utility Company providing the service.

K. STREET AND OTHER OUTDOOR LIGHTING
MH Code requirements, provided that excessive glare from a light source shall not be visible beyond the property line of the MHD/C.

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L. ON SITE PARKING
MH Code requirements.

M. SIDEWALKS
MH Code requirements.

N. OPEN SPACE
MH Code requirements.

O. ENTRANCE AND OTHER ON SITE SIGNS
MH Code requirements.

P. STREET NAMES
MH Code requirements and the requirements of the Livingston County Road Commission.

Q. ADDRESS NUMBERING OF SITES
MH Code requirements and the numbering sequence required by the Livingston County Road Commission.

R. ROAD AND HIGHWAY SETBACKS
MH Code requirements, except that setbacks from Grand River Road, M-59 State Highway and Oak Grove Road shall in accordance with Section 26.05 of this Ordinance as required of all other development fronting on these highways and roads.

S. OTHER SETBACKS
MH Code requirements for font, side and rear yard setbacks.

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T. STORAGE
MH Code requirements.

U. STORAGE/PARKING
MH Code requirements.

V. TRASH AND GARBAGE DISPOSAL
MH Code requirements.

W. INSTALLATION OF MANUFACTURED HOMES
MH Code requirements.

X. SPACING OF BUILDINGS AND OTHER STRUCTURES
MH Code requirements for all accessory buildings and other structures.

Y. SKIRTING
Skirting shall be installed around all manufactured homes. Such skirting shall be compatible aesthetically with the appearance and construction of the home. All skirting shall be installed prior to the issuance of a Certificate of Occupancy. In the event that such installation is delayed due to weather, or for other similar reasons, a temporary Certificate of Occupancy may be issued for a period not to exceed ninety (90) days. All skirting shall meet the specifications established by the MH Code.

Z. FENCES
MH Code requirements.

AA. COOKING SHELTERS, BARBEQUE PITS, FIREPLACES, AND WOOD BURNING STOVES OR INCINERATORS
Shall be located, constructed, maintained and used so as to minimize fire hazards and smoke nuisance both on the site and neighboring properties. Open fires shall not be allowed except in facilities and equipment designed and provided for such use and provided that all fires shall be continually attended by a responsible adult. No fuel shall be used or items burned which emit dense smoke or noxious and objectionable odors. Refer to Section 14.40 of the Zoning Ordinance for additional regulations.

BB. INDIVIDUAL FUEL OIL, LIQUID PETROLEUM, OR OTHER FUEL TANKS OR CONTAINER. Shall not be permitted to be stored in or under any manufactured housing unit.

Section 29.07 APPLICATION FOR ZONING AND SITE PLAN/PRELIMINARY PLAN REQUIREMENTS:

A. Applicants proposing the development of a manufactured housing district in the Township shall fill out an Application Form for Proposed Developments. Forms are available from the

Township Zoning Administrator with offices located in the Township Hall.

B. The land area proposed for a manufactured housing district must be zoned Manufactured Housing District (MHD) as indicated on the Howell Township Zoning Map. Parcels which are not zoned MHD must be rezoned in accordance with Article XXIII.

C. SITE PLAN/PRELIMINARY PLAN INFORMATION REQUIRED. Parcels which are zoned MHD are eligible for site plan / preliminary plan approval, subject to the following submittals:

1. Name of proposed development, names, addresses and telephone numbers of all persons having an ownership interest in the property; names, addresses and telephone numbers of professionals preparing site plans, a map showing the general location of the project and the date when site plan was prepared.

2. Plot of Survey, including property description, and showing boundaries of the project with bearings and distances, acreage of site, existing natural features, such as wetlands, floodplains, lakes, ponds, streams and other natural features of environmental importance, existing buildings and structures, easements, monuments, stakes and irons and any other property improvements.

3. General Development Plan of the project showing the location of all proposed manufactured home sites, roads, parking areas, buildings and other structures, landscaping signs, streets, and other outdoor lighting, sidewalks, fencing, open space, and other site improvements, but shall not include detailed engineering drawings or constructions plans.

4. Copies of the Grading and Drainage Plan showing changes in topography, detention basins, and retention ponds for storm water runoff shall be submitted as a part of the final construction plans approved by the Manufactured Housing Commission.

5. Copies of the Utilities Plan showing plans for piped storm water system, water supply source and distribution system, wastewaterdisposal sanitarysewersystem, including on sitetreatmentfacility, if proposed,electrical distribution system, natural gas distribution system, telephone service system, and cable television service system shall be submitted as a part of the final construction plans approved by the Manufactured Housing Commission.

6. Copies of Landscaping Plan showing existing trees and shrubs to be preserved and proposed landscape plant materials to be planted on site, including the names and sizes of trees and shrubs and areas to be planted in grass or

other ground cover shall be submitted to the Township as a part of the final construction plans approved by the Manufactured Housing Commission.

7. Copies of Construction Details of road, parking areas, and other pavements, water, sewer and storm water appurtenances, such as manholes, catch basins, drop inlets, fire hydrants, signs, street lights and other outdoor lighting and other improvements proposed by the developer, including detailed information on their construction shall be submitted to the Township as a part of the final construction plans approved by the Manufactured Housing Commission.

8. Copies of Cost Estimates of only those portions of public utilities proposed to be located outside of the boundaries of the MHD which will be connected to utility systems provided by Howell Township for the purpose of determining the Performance Guarantee shall be submitted to the Township as a part of the final construction plans approved by the Manufactured Housing Commission.

9. Other Requirements to be filed with the Township which are a part of the final construction plans approved by the Manufactured Housing Commission.

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a. Copy of the License from the Licensing Executive, Manufactured Housing Division authorizing the proposed construction of an MHD in Howell Township, when project is completed and copies of license become available.

b. Copies of letters of Approval or Permits from the various State and other Public Agencies, when required for:

   i) Water Supply Systems.
   ii) Sanitary Sewer and Wastewater Treatment Systems per Section 11 (3).
   iii) Storm Water Drainage Systems.
   iv) Wetlands and Floodplains.
   v) Access to County and State Highways.

c. Copies of Letters of Approval or Permits from the various Livingston County Agencies, when required for:

   i) Access to County Roads for ingress and egress roads
   ii) Storm water Drainage Systems for outlet drainage.
   iii) Soil erosion and Sedimentation Control.
   iv) Health and Sanitation Facilities.

Appendix F

Section 29.08 FILING OF SITE PLAN

A. Seven (7) copies of the final construction plans, including letters of approval, permits and other documentation as approved by the Manufactured Housing Commission shall be submitted to the Township for distribution to and use by Township Officials.

B. REVIEW PROCEDURE

The Planning Commission shall review the submitted Preliminary Plan and communicate it approval, approval with conditions, tabling, or disapproval of the Plan to the Applicant. In cases where modifications have been recommended, the Applicant shall resubmit a site plan incorporating those modifications to the Planning Commission for its review, any required modifications shall be directed to the specific items of noncompliance and the elimination of unsafe or hazardous health or safety conditions. Upon receipt of the modified site plan, the Planning Commission shall evaluate the changes which have been made and, if deemed acceptable, shall communicate its approval or disapproval of the site plan to the Applicant. Such modified site plan may be approved, approved with conditions, or disapproved for any inadequacy found to be detrimental to the public health, safety, and general welfare. Final Preliminary Plans shall be submitted to the Manufactured Housing Commission of its review and approval, approval

with conditions or disapproval. If approved by the Manufactured Housing Commission, the approved final Construction Plans shall be requested by the Zoning Administrator for distribution to Township Officials with a request for the issuance of a Zoning Permit. The Township review shall be limited by the provisions of PA 96 of 1987, as amended.

C. NONCOMPLIANCE

Any noncompliance with this Ordinance shall be reported to the Manufactured Housing Commission for remedy along with all pertaining evidence.

D. REQUIRED FEES

Fees shall be paid to the Township for the review of MHD Preliminary Plans for conformance to the provisions of this Article XXIX, "Manufactured Housing Developments of Communities (MHD)" in accordance with the Fee Schedule established by the Howell Township Board.

(Ord. No. 104 eff. May 24, 2000, amend. by ord. #256 eff. 4/12/2013)

APPENDIX G — ORDER OF THE 2021 ZONING ORDINANCE AMENDMENTS, FILED SEPTEMBER 30, 2022

HOWELL TOWNSHIP

ORDINANCE NO. 285

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF HOWELL TOWNSHIP TO AMEND THE TEXT OF ARTICLE II, **SECTION 2.02; ARTICLE** Ill, **SECTION 3.17; ARTICLE X, SECTION 10.02.B; ARTICLE XI SECTION 11.03; ARTICLE XII, SECTION 12.01, 12.02, 12.03, 12.04, 12.05 AND 12.06; AND ARTICLE XVI SECTION 16.18; AND TO CREATE ATRICLE XIV, SECTION 14.45; AND ARTICLE XVI SECTION 16.20, SECTION 16.21, SECTION 16.22, OF HOWELL TOWNSHIP; AND TO PROVIDE FOR REPEALER OF ANY ORDINANCES INCONSISTENT HEREWITH.**

HOWELL TOWNSHIP ORDAINS AS FOLLOWS:

Section 1. Section of the Howell Township, Zoning Ordinance, shall be amended as follows:

Modify Article** II. **Definitions.

Sec. 2.02. DEFINITIONS.

Add the following definition, "Cafeteria" to read as the following:

> *Cafeteria:* A dining facility typically located within an office or educational facility that does not offer its services to the public, where there is little to no

waitstaff service, and food, either brought from home or purchased at a counter, may be eaten. A Cafeteria is not to be used synonymously as a restaurant or cafe!

Add the following definition, "Indoor recreation facilities" to read as the following:

Indoor recreation facilities: Facilities for recreation activities conducted entirely within a building, which typically receives a fee in return for providing some recreational activity or part of a facility. Such activities and facilities include but are not limited to: indoor courts and fields for various sports, gymnasiums, swimming pools, skating rinks, performance studios, indoor skateboard parks, climbing facilities, indoor driving ranges, batting cages, sport shooting ranges, and similar activities or facilities. Such facilities may provide ancillary accessory uses such as pro shops or snack bars.

Add the following definition, "Outdoor recreation facilities" to read as the following:

Outdoor recreation facilities: Facilities for recreation activities conducted outside a building, which typically receives a fee in return for the provision of some recreational activity or facility. Such activities and facilities include, but are not limited to: pools, splash pads, fields or courts for various sports, skateboard parks, shuffleboard, horseshoe courts, archery range, sport shooting ranges, miniature golf, golf driving range, children's amusement park or similar recreation

uses. Such facilities may provide ancillary accessory uses such as pro shops or snack bars.

Revise Definition "Swimming Pool (Outdoor)" to be titled "Swimming Pool" and read as follows:

Swimming Pool: Any permanent, non-portable structure or container, for public or private use, located either above or below grade designed to hold water to a depth of greater than 24 inches, intended for swimming or bathing. A swimming pool shall be considered an accessory structure for purposes of computing lot coverage.

Add the following definition, "Water Park (Public)" to read as the following:

Water Park (Public): A recreational area for public use consisting of a splash pad, water playground, wave pool, lazy river, swimming pool or any other similar water feature, including area(s) for bathing or swimming, in solitude or within a group. Although a water park may include one or more swimming pools, a swimming pool by itself is not considered a water park.

Revise Definition of Open Air Business Uses to read as the following.

Open Air Business Uses: Display or storage of merchandise or equipment for sale or rent outside of a permanent structure. Such merchandise or equipment shall include the following:

(a) Sports equipment, motorcycles, watercraft, snowmobiles, off road vehicles, utility truck or trailer, farm implements, construction or home equipment, and similar products.

(b) Garages, sheds, play structures, mobile homes, swimming pools, and similar products.

(c) Trees, fruit, vegetables, shrubbery, plants, seeds, topsoil, humus, fertilizer, and similar products.

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Revise Section 3.17 SCHEDULE OF AREA, HEIGHT, AND SETBACK REGULATIONS

Add Appropriate Row in the Schedule of Regulations corresponding with Industrial Flex Zone Requirements as follows:

ZONING DISTRICT	MIN LOT SIZE/UNIT		MAXIMUM BUILDING HEIGHT		MINIMUM YARD SETBACK REQUIRED			MAXIMUM LOT COVERAGE AREA AS PERCENT OF LOT AREA	MINIMM FIRST FLOOR AREA
	AREA	WIDTH AT BLDG SITE	STORIES	FEET	FRONT YARD	SIDE YARD	REAR YARD		
IF, Industrial Flex Zone	2 acres 40,000 sq. ft. with public sewer/water	200 feet 120 feet with public sewer/water	-- --	70	35	10, minimum both side yard setbacks total of 25 ft.	10, 50 ft. abutting AR, SFR, MFR	75%	--

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Replace Section 10.02.B. PERMITTED PRINCIPAL USES

Section 10.02 PERMITTED PRINCIPAL USES.

B. Service establishments, either as completely separate units or as an integral part of any of the principal uses permitted in A. above, and additionally including service outlets for insurance, real estate, medical and dental clinics, veterinary clinics and hospitals, nursing and convalescent homes, theatres, assembly and concert halls, indoor recreation facilities, clubs, fraternal organizations and lodge halls, restaurants, private and business schools, churches, public and private office buildings, motels and hotels, and uses of a similar character that are normally an integral part of a regional shopping center.

Replace Section 11.03.A. PERMITTED PRINCIPAL SPECIAL USES WITH CONDITIONS

Section 11.03 PERMITTED PRINCIPAL SPECIAL USES WITH CONDITIONS.

A. Indoor recreation facilities Recreation and sports areas, if areas are completely enclosed with fences, walls or berms with controlled entrances and exits.

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Create Section 14.45 "Performance Standards" to read as the following:

Section 14.45 PERFORMANCE STANDARDS

A. Airborne Emissions.

1. Smoke and air contaminants. It shall be unlawful for any person to permit the emission of any smoke or air contaminant from any source whatsoever to a density greater than that permitted by applicable Federal and State Clean Air Standards. There shall not be discharged from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment or nuisance to the public or which endanger comfort, repose, health or safety of persons or which cause injury or damage to business or property.

2. Odors. Any condition or operation which results in the creation of odors of such intensity and character as to be detrimental to the health and welfare of the public or which interferes unreasonably with the comfort of the public shall be removed, stopped or so modified as to remove the odor.

3. Gases. The escape or emission of any gas that is injurious, destructive, or harmful to persons or property or explosive shall be unlawful and shall be abated.

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B. Noise.

1. General Requirements. No use, operation or activity shall be carried on that causes or creates measurable noise levels that are unreasonably loud or that unreasonably interfere with the peace and comfort of others, or that exceed the maximum noise level limits prescribed in Table 14-1 as measured at any point on property adjacent or in close proximity to the lot, parcel or other property on which the operation or activity is located.

2. Methods and Units of Measurement. The measuring equipment and measurement procedures shall conform to the latest American National Standards Institute (ANSI) specifications. The sound measuring equipment shall be properly calibrated before and after the measurements.

   Because sound waves having the same decibel (Db) level "sound" louder or softer to the human ear depending upon the frequency of the sound wave in cycles-per second (that is, depending on whether the pitch of the sound is high or low) an A weighted filter constructed in accordance with ANSI specifications shall be used on any sound level meter used to take measurements required in this section. All measurements

below are expressed in Db(A) to reflect the use of the A-weighted filter.

3. Table of Maximum Noise Levels. Except as otherwise provided in this section, noise levels shall not exceed the limits set forth in the following Table 14-1:

Table 14-1		
Noise Level Standards		
Use	Time	Sound Level (A-Weighted) Decibels – Db(A)
Residential and Nonresidential Uses (in AR, SRF, MFR, MHD, and PUD, districts)	7:00am to 7:00pm	60
Commercial, Business, Office Uses (in OS, NSC, HSC, and RSC districts)	7:00pm to 10:00pm	55
	10:00pm to 7:00am	50
	7:00am to 7:00pm	65
	7:00pm to 7:00am	50
Industrial, Office and Research Office (uses in IF, I, and RT districts)	Anytime	70

4. Background Noise. Where existing background noise exceeds the maximum permitted levels specified in Table 14-1, the noise caused or created by a specific operation or activity may exceed the levels specified in the Table, provided that the sound level on property adjacent or in close proximity to the lot or parcel on which the operation or activity is located does not exceed the background noise level. For purposes of this subsection, background noise shall mean noise being produced by permitted uses conducted in a legally-accepted manner from all sources other than those occurring on the lot or parcel on which the operation or activity is located. Background noise levels shall be determined by measurement at substantially the same time and location as the noise levels caused or created by the complained-of operation or activity.

5. Intermittent or Other Unreasonable Sounds. Intermittent sounds or sounds characterized by pure tones might be a source of complaints, even though the measured sound level does not exceed the permitted level in Table 14-1. Such sounds shall be prohibited when found to be unreasonably loud or to unreasonably interfere with the peace and comfort of others. In making such determination, the following shall be considered:

a. The proximity of the sound to sleeping facilities;

b. The nature of the use from which the sound emanates and the area where it is received or perceived;

c. The time (day or night) the sound occurs; and

d. The duration of the sound.

6. Exemptions. Noise resulting from the following activities shall be exempt from the maximum permitted sound levels provided such activity occurs in a legally accepted manner:

a. Construction activity between the hours of 7:00am and sunset, Monday through Saturday and between the hours of 10:00am and 6:00pm on Sunday.

b. Performance of emergency work, including snow removal;

c. Warning devices necessary for public safety, such as police, fire, and ambulance sirens, tornado and civil defense warning devices, and train horns;

d. Lawn care and yard maintenance that occurs between 8:00am and 9:00pm;

e. Outdoor school and playground activities when conducted in accordance with the manner in which such spaces are generally used, including, but not limited to, school athletic and school entertainment events;

f. The operation or use of any organ, bell, chimes or other similar means of announcing religious services at a place of religious worship between the hours of 8:00am and 9:00pm, no more than five (5) times per day, and for a duration of no more than two (2) minutes each time; provided, however, the sound level does not exceed 80Db(A) at the property line of the religious facility;

g. An un-amplified human voice; and

h. Public works maintenance, repair, or improvement projects being conducted by or on behalf of public agencies.

C. Vibration

1. No use shall generate any ground-transmitted vibration in excess of the limits set forth in Table 14-2. Vibration shall be measured at the nearest adjacent lot line.

2. The instrument used to measure vibrations shall be a three (3) compartment measuring system capable of simultaneous measurement of vibration in three (3) mutually perpendicular directions.

3. The vibration maximums set forth in Table 14-2 are stated in terms of particle velocity, which may be measured directly with suitable instrumentation or computed on the basis of displacement and frequency. When computed, the following formula shall be used: PV = 6.28 F x D

   Where:

   PV = Particle velocity, inches-per-second

   F = Vibration frequency, cycles-per-second

   D = Single amplitude displacement of the vibration, inches

   The maximum velocity shall be the vector sum of the three (3) components recorded.

4. The following is the table of maximum ground-transmitted vibration:

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Table 14-2	
Vibration Standards	
Particle Velocity (Inches-Per-Second)	
Along Nonresidential District Boundaries	Along Residential District Boundaries
0.10	0.02
0.20	0.02

5. The values stated in Table 14-2 may be multiplied by two (2) for impact vibrations, i.e., non-cyclic vibration pulsations not exceeding one (1) second in duration and having a pause of at least two (2) seconds between pulses.

6. Vibrations resulting from temporary construction activity shall be exempt from the requirements of this section.

***Replace the entire existing ARTICLE XII HC HEAVY COMMERCIAL DISTRICT with the following*:**

ARTICLE XII
IF - Industrial Flex Zone

Section 12.01 - Purpose and Intent

The purpose of the Industrial Flex Zone Classification is to provide flexibility for land uses while being more prescriptive regarding design and quality of development. Many industrial or large format commercial uses could be compatible, because such uses often have the same or

similar building and spatial requirements such as floor area and building height. The design requirements of this district are intended to allow for the mixing of certain industrial and commercial uses, and promote the reuse of buildings and sites for multiple such uses. The flexibility of this district is intended to foster economic development, create employment opportunities, and increase the tax base by promoting the development, redevelopment, or continued use of land adjacent to existing industrial and commercially developed property.

It is also the intent of the Industrial Flex Zone to allow development of property that eliminates blighted properties, ensures safe and complementary vehicular and pedestrian circulation patterns, improves environmental quality and remediates degraded properties, while also providing an attractive transition between residential and non-residential properties.

Section 12.02 - Permitted Principal Uses

The following uses are permitted within the Industrial Flex Zone District.

A. General office buildings, public or private.

B. Educational and training facilities.

C. Facilities for experimental product development, business and scientific research, and testing laboratories.

D. Photography, art and graphic art studios.

E. Sale or leasing of new motorized passenger vehicles including cars, and trucks. Outdoor sales/display lots in connection with such use shall not require a special use permit for an open air businesses. (Subject to Section 16.22)

F. Sale or leasing of used motorized passenger vehicles in conjunction with a new car dealership.

G. Warehouses and distribution centers.

H. Warehousing, wholesaling, refrigerated, and general storage conducted completely within a building, or structure.

I. Mini-warehousing, when conducted completely within a building, or structure.

J. Retail sales and wholesale of parts equipment, and supplies for: plumbing, electrical, building and construction, furnace and air conditions, home appliances, outdoor and indoor recreation, gardening and landscaping.

K. Service establishments, either as completely separate units or as an integral part of any of the principal uses permitted in J. above. Public and private office buildings.

L. Contractor buildings, structures and equipment and materials storage yards for building and other types of construction such that any area used for outdoor storage is completely enclosed and screened from external visibility beyond such storage area.

M. Woodworking or furniture making shops.

N. Tool and die, machine shops, light assembly, injection molding.

O. Any manufacturing plants and uses having performance characteristics similar to those listed in this district that conform with the performance standards in Section 14.45.

Section 12.03 - Permitted Principal Special Uses with Conditions:

The following uses are permitted as special uses in accordance with Article XVI, "Special Uses":

A. Indoor recreation facilities (subject to Section 16.18).

B. Outdoor recreation facilities (subject to Section 16.18).

C. Water Parks if completely enclosed with fences, walls or berms with controlled entrances and exits.

D. Commercial Kennels (subject to Section 14.42).

E. Veterinary clinics and animal hospitals.

F. Storage of recreational vehicles.

G. Open Air Business as a Principal Use. (Subject to Section 16.22)

H. The following uses are permitted as long as they are conducted completely within a building, structure or an area enclosed and screened from beyond the lot lines of the parcel:

   a. Electrical machinery, equipment and supplies, electronic components and accessories.

   b. Professional, scientific and controlling instruments, photography and optical goods.

   c. Fabricating metal products, except heavy machinery and transportation equipment.

   d. Contract plastic material processing, molding and extrusion.

I. Vehicle repair facilities for automobiles, trucks, busses and trailers (subject to section 16.20).

J. Towing facilities (subject to Section 16.21).

K. Propane Storage/Distribution.

L. Sale, leasing, or rental of used motorized vehicles not in conjunction with a new car dealership.

Section 12.04 - Permitted Accessory Uses:

1. All normal accessory uses to all "Permitted Principal Uses" and "Permitted Principal Special Uses" including:
   - B. Restaurants.
   - C. Cafeterias.
   - D. Medical and health care facilities.
   - E. Office facilities.
   - F. Warehouse and storage facilities.
   - G. Physical fitness facilities.
   - H. Work clothing sales and service facilities.
   - I. Banking facilities.
   - J. Education, library and training facilities.
   - K. Research and experimentation facilities.
   - L. Truck or other vehicular and equipment service maintenance, repair and storage facilities conducted completely within a building, or structure.
   - M. Indoor sales display areas.
   - N. See Section 14.34.

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Section 12.05 - Required Conditions of All District Uses:

1. All lots are permitted one (1) driveway unless the Planning Commission determines that any additional drives are necessary in promoting the efficient and safe use of the site due to size, layout, general circulation, or the need to separate drives for truck, or heavy equipment operations from general traffic (see subsection 3 below). The applicant shall provide all information deemed necessary to justify the necessity of any additional driveways.

2. Sites must be designed with sidewalks along building frontages where entrances are located. Such sidewalks should provide for safe and convenient access from parking lots and must connect to adjacent public or private roadways. Where sidewalks cross parking areas and drives the sidewalk material must be carried through. Color changes to highlight the crossing may be appropriate.

3. Parking lots should be designed to accommodate general vehicular and pedestrian traffic as well as employees and commercial traffic. Where heavy equipment and large trucks may be present, sites must be designed to separate such traffic from the general public. Parking areas for customers and employees must be separated physically and visually from loading areas.

4. All toxic wastes shall be disposed of in accordance with all state laws, rules and regulations governing their disposal.

5. The developer of any permitted use or special use with conditions within the IF district must demonstrate that such use will not produce any noise, smoke, fumes, glare, or odors beyond the property boundaries. The Planning Commission may request additional studies to demonstrate compliance with the requirement.

Section 12.06 - Dimensional Requirements, Except as Otherwise Specified in this Ordinance:

A. Lot Area: A minimum of two (2) acres or 40,000 square feet for sites with direct access to water, wastewater, and sewer systems on site.

B. *Lot Width:* Minimum of 200 feet at the required minimum building setback line when on site well water supply and septic tank and field wastewater disposal systems are used or a minimum of 120 feet at the required minimum building setback line when public sewer and water systems are available and connections made to the lot or parcel.

C. *Lot Coverage:* Maximum of 75%.

D. Yard and Setback Requirements:

Front yard:	Minimum of 35 feet (from the road right of way)

Side yards:	Minimum of ten (10) feet Minimum total of both sides: 25 feet
Rear yard:	Minimum of ten (10) feet, but minimum of fifty (50) feet when abutting AR, SFR, MFR property lines.

E. Height Limitations: Maximum of seventy (70) feet unless reduced by the maximum permitted by the Livingston County Airport Zoning Ordinance.

F. Locational Requirements: Any storage of materials outside of the permitted structure must be proposed and approved by the Planning Commission and be screened from public view and adjacent properties by a wall or fence of no greater than 12 feet in height unless stated otherwise in the Ordinance.

Revise Section 16.17(8)(1): "Public and Private Educational and Training Schools and Facilities"

Section 16.17 PUBLIC, SEMI-PUBLIC AND PRIVATE BUILDINGS AND RELATED STRUCTURES AND OUTDOOR ACTIVITY AREAS

B. Public and private educational and training schools and facilities

1) Permitted in all zoning districts which permit any type of residential use, except that professional,

business, and technical training schools and facilities shall only be permitted in the RSC, I and IF zoning districts as either a principal or accessory use.

Replace Section 16.18 Nonprofit public, semi-public and private park and recreation facilities

Section 16.18 Nonprofit public, semi-public and private park and indoor and outdoor recreation facilities

A. The following public and private park and outdoor and indoor recreation facilities shall be permitted in the zoning districts indicated in Table 16-1. Their minimum land area of the parcels for each use must also conform to the requirements in Table 16-1: Where no size or district is listed, the minimum lot size for the district where a recreation use is specifically permitted through Article IV through XIII shall apply.

Table 16-1		
Minimum Parcel Sizes for Recreation Facilities		
Land Use	**Zoning District/ Location**	**Minimum Lot Area**
Neighborhood parks for active and passive recreation	AR, SFR and MFR	Five (5) acres

Community parks, serving two (2) or more neighborhoods for active and passive recreation	AR, SFR and MFR	Twenty (20) acres
Playgrounds for outdoor and indoor activities	AR, SFR and MFR	Ten (10) acres, except when located in conjunction with a K–8 school on at least five (5) acres
Tot lots serving children up to five (5) years old	All residential zoning districts	One-half (1/2) acre
Beaches	Located on parcels with the waterfront of lakes or rivers	Ten (10) acres
Indoor recreation facilities	RSC, HSC, IF, and I	Two (2) acres

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Outdoor recreation facilities	RSC, HSC, IF, and I	Twenty (20) acres
Golf courses	AR, SFR, and MFR	Forty (40) acres per nine (9) holes of golf
Golf driving ranges	AR, IF	Ten (10) acres additional five (5) acres to the minimum acreage for a nine (9) hole golf course
Golf driving ranges as an accessory use to a golf course	AR	Five (5) acres in addition to the minimum acreage for a nine (9) hole golf course
Nature study areas	AR and SFR	Ten (10) acres

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Forest and woodlot preserves	AR and SFR	Ten (10) acres
Passive recreation areas and facilities related to the natural environment	AR, SFR, and MFR	Five (5) acres

* Where no size or district is listed, the minimum lot size for the district where a recreation use is specifically permitted through Article IV through XIII shall apply.

B. Recreation facilities shall at a minimum conform to the following standards in addition to any conditions placed on an individual permit by the Township Board through Section 16.01 to 16.06.

1. All outdoor recreation and sports areas shall be completely enclosed with fences, walls or berms with controlled entrances and exits.

2. The site shall maintain free and clear access for emergency service vehicles during all activities. Site access shall be reviewed during the site plan approval/special use permit process.

3. All activities or facilities shall be located a minimum of two hundred (200) feet from the property lines.

4. Hours of Operation shall be limited to the hours between sunrise and sunset but not prior to 8:00 a.m. or later than 10:00 p.m. The Township Board may apply more restrictive hours where protection for nearby residential uses or property zoned for residential uses.

5. Noise. No sound or noise shall be discernible beyond the property lines in excess of street and traffic levels, and in no event shall noise exceed seventy (70) decibels on the dB(A) scale as measured at property lines of the facility. If contained within a multi tenant building, the sound shall not exceed sixty-five (65) decibels on the dB(A) scale along a common wall. Sound shall be measured using a Leq (10-minute interval). All measurements and modeling shall be conducted in compliance with ANSI/ISO standards for outdoor sound measurements and be supervised by a qualified acoustical consultant with full member status with the Institute of Noise Control Engineering (INCE).

6. All off-road vehicles are prohibited, except for vehicles used for event control and administration.

7. Outdoor recreation activities shall be subject to lighting in Section 14.22 of this ordinance.

8. Parking shall be provided at a rate of one (1) parking space per two (2) participants anticipated during peak recreational activities. The Planning

Commission may allow a waiver of hard surface paving and parking requirements set forth in Section 18.02 for those situations where parking is used on a periodic basis for all or part of the parking requirements.

9. All sites or facilities shall comply with food and water supply regulations, health and sanitation regulations, or other regulations necessary to protect health, safety, or welfare as established by the county health department or the appropriate state agency.

10. All sport shooting ranges shall at a minimum conform to the following standards in addition to any conditions placed on an individual permit by the Township Board through Section 16.02.

    a. Design and Operation Standards. The design and operation of such facilities shall conform with the specifications and best practices provided by the National Rifle Association Range Source Book, the generally accepted operation practices adopted pursuant to the Michigan Sport Shooting Ranges Act, Public Act 269 of 1989, applicable Environmental Protection Agency regulations and guidelines, Occupational Safety & Health Administration regulations and guidelines, and applicable federal and state law, and local ordinances.

    b. Safety. The design of the facility shall clearly show that safety of persons on and off the site is

guaranteed. This shall mean that no projectile of any kind may be permitted to leave the site. Indoor ranges must be designed so projectiles cannot penetrate the walls, floor or ceiling, and ricochets or back splatter cannot harm range users. Unless this safety requirement is clearly indicated by the design plans, a permit shall not be issued.

c. Lead Management/Environmental. The facility shall manage lead contamination and environmental impacts consistent with applicable federal and state law, including but not limited to the Resource Recovery and Conservation Act (RCRA), the Clean Water Act (CWA), and the EPA's Best Practices for Lead at Outdoor Shooting Range.

d. Hours of Operation. Shooting on a range shall be limited to the hours between sunrise and sunset but not prior to 9:00 a.m. or later than 8:00 p.m. The Township Board may apply more restrictive hours where protection for nearby residential uses or property zoned for residential uses.

e. Facility Size. Outdoor sport shooting ranges must be located on a parcel of twenty (20) acres or more.

f. Setbacks. Any area used for firearm shooting activities must be located at least 1,600 feet from

a lot line of any property zoned for residential uses, educational institution or school, public or private park, church, and house of worship or other religious facility. Any outdoor firearm shooting activities must be located at least 100 feet from all other lot lines. The minimum distance between uses shall be measured horizontally between the nearest property lines.

g. Security. Fencing and gates shall be provided around an outdoor sport shooting range facility to maintain a level of security with a minimum height of 8 feet. Any indoor range shall be secured so as to prevent the unauthorized access to the range. Signage must be maintained and be posted at a minimum of 200-foot intervals by durable, weather proof signs not less than two square feet in size with a minimum of two-inch lettering, containing the following in large print: "DANGER SHOOTING RANGE".

h. Reclamation: A surety bond, letter of credit or equivalent financial instrument shall be posted, in an amount determined by the Township with consultation of a registered engineer licensed in Michigan, taking into account the costs to reclaim the property to its condition prior to operation of the facility as estimated 30 years in the future. This instrument is to be used in the event the facility is not voluntarily reclaimed when operations cease to

mitigate environmental contaminants, parcel grading, and public health and safety concerns associated with sport shooting range facilities. The surety bond, letter of credit or equivalent financial instrument shall be in favor of the Township and shall contain a replenishment obligation. The Township reserves the right to review the decommissioning plan every 5 years and revise the requirements and amount of any such instrument as necessary.

i. Application Requirements: In addition to all information required by Articles XVI and XX of this Ordinance, all applications for a sport shooting range shall be accompanied with the following information:

    i. A range safety plan addressing:

        1. Firearm handling rules;

        2. Range officers;

        3. Shooting range rules;

        4. Types of firearms permitted and any applicable conditions;

        5. Types of activities permitted on the premises; and

        6. Range targets.

ii. Shot-fall zones, backstops, berms, target locations, and relevant baffling.

iii. Existing and proposed structures on the site.

iv. Dwellings within one half (1/2) mile from the facility property lines.

v. A written plan outlining the facility's Best Management Practices (BMPs) program relating to lead management.

vi. A report of the predicted sound impact of the proposed facility shall be included with the application. The report shall demonstrate that the sound level limits required by this Ordinance are met and the report conforms with ANSI/ISO standards for outdoor measurements and predictions. The report shall be produced by a qualified acoustical consultant with full member status with the Institute of Noise Control Engineering (INCE). Where such standards include confidence limits or limitations of use, the report shall present them and provide an explanation of how they were addressed. It shall include:

    1. A description and map of the facility's sound producing features, including

the range of decibel levels expected (to be measured in dB(A)), and the basis for the expectation.

2. A description of the project's proposed sound control features shall be described in detail, including specific measures to minimize noise impacts to neighboring residents and occupants.

vii. At the Township's request, the applicant shall provide an environmental assessment or impact study and/or other relevant report(s) or studies (including, but not limited to, assessing the potential impact on lead contamination caused by repeated use of lead shot) as required by the Township for review by the Township regarding the area or surrounding areas where the facility will be placed. Each such study or report requested shall be provided to the Township prior to the time when the Township Board makes its final decision.

Create Section 16.20 Vehicle Repair Facilities

Section 16.20 Vehicle Repair Facilities

Vehicle repair facilities shall be subject to the following regulations and conditions in addition to all applicable regulations in effect in the district in which they are to be located:

A. All work on vehicles shall take place indoors.

B. No sound or noise shall be discernible beyond the property lines in excess of street and traffic levels, and in no event shall noise exceed seventy (70) decibels on the dB(A) scale as measured at property lines of the facility. If contained within a multi tenant building, the sound shall not exceed sixty-five (65) decibels on the dB(A) scale along a common wall. Sound shall be measured using a Leq (10-minute interval). All measurements and modeling shall be conducted in compliance with ANSI/ISO standards for outdoor sound measurements and be supervised by a qualified acoustical consultant with full member status with the Institute of Noise Control Engineering (INCE). No vehicle in any state of disrepair shall be stored in front of the principle building.

C. No outdoor storage of vehicle parts shall be permitted.

Create Section 16.21 Tow Yards

Section 16.21 Tow yards

Tow yards shall be subject to the following regulations and conditions in addition to all applicable regulations in effect in the district in which they are to be located:

A. Vehicles are stored on site temporarily, not to exceed 60 days, while waiting for repairs or

transport to a junk yard or salvage yard. Such period shall be tolled during any period when local, state, or federal law and law enforcement agency requires the tow yards to hold such vehicles.

B. Vehicle storage areas shall be design with individual stalls and accessible drive lanes consistent with the parking lot design standards in Section 18.02 with the exception that no interior landscaping or landscape islands shall be required. Storage areas shall be paved with asphalt or concrete. This requirement shall not be subject to a waiver as indicated in Section 18.02.E.3.

C. Storage areas shall be drained to an oil and water separator.

D. Storage areas shall be screened from the public view and adjacent properties by a screen fence, wall or other means deemed appropriate by the Planning Commission. Such screen shall be high enough to screen any storage areas but shall not exceed twelve (12) feet in height. A cyclone fence with inserts or fabric material shall not be used for screening.

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Create Section 16.22 Open Air Businesses:

Section 16.22 Open Air Businesses

Open Air Businesses shall be subject to the following regulations and conditions in addition to all applicable regulations in effect in the district in which they are to be located:

A. All display areas shall meet the minimum setback requirements for the district in which they are located.

B. Any area for the storage of rental equipment shall be screened from the public view and adjacent properties by a screen fence, wall or other means deemed appropriate by the Planning Commission. A screen fence or wall shall be high enough to screen any storage areas but shall not exceed twelve (12) feet in height. A cyclone fence with inserts or fabric material shall not be used for screening.

C. All display or storage areas shall be paved with asphalt or concrete.

Section 2. This Ordiance hereby repeals any ordinances in conflict herewith.

Section 3. Severability

The various parts, sections and clauses of this Ordinance are declared to be severable. If any part, sentence, paragraph,

section or clauses is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected.

Section 4. Savings Clause

That nothing in this Ordinance herby adopted be construed to affect any just or legal right or remedy of any character nor shall any just or legal right or remedy of any character by lost, impaired, or affected by this Ordinance.

Section 5. Publication and Effective Date

This Ordinance is hereby declared to have been adopted by the Howell Township Board at a meeting thereof duly called and held on the 14th of Dec., 2020, was ordered to be given publication in the manner required by law, and was ordered to be given effect as mandated by Charter and statute.

HOWELL TOWNSHIP

BY: /s/ Joan Graham

ADOPTED: 12-14-2020

PUBLISHED: 12-28-2020

EFFECTIVE: 1-4-2021

APPENDIX H — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED MAY 31, 2024

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 23-1179

OAKLAND TACTICAL SUPPLY, LLC; JASON RAINES; MATTHEW REMENAR; SCOTT FRESH; RONALD PENROD; EDWARD GEORGE DIMITROFF,

Plaintiffs-Appellants,

v.

HOWELL TOWNSHIP, MICHIGAN,

Defendant-Appellee.

November 9, 2023, Argued
May 31, 2024, Decided
May 31, 2024, Filed

Appeal from the United States District Court
for the Eastern District of Michigan at Detroit
No. 2:18-cv-13443—Bernard A. Friedman,
District Judge.

Before: COLE, KETHLEDGE, and WHITE, Circuit Judges.

WHITE, J., delivered the opinion of the court in which COLE, J., concurred. COLE, J., delivered a separate concurring opinion. KETHLEDGE, J., delivered a separate dissenting opinion.

OPINION

HELENE N. WHITE, Circuit Judge.

Plaintiff-Appellant Oakland Tactical Supply, LLC (Oakland Tactical) leased a parcel of land in Howell Township, Michigan (the Township) with the intention of constructing and operating a commercial shooting range offering long-distance target practice. It has been unable to do so, however, because the Township's zoning provisions limit the parcel to agricultural and residential uses. Oakland Tactical and five Michigan residents who wish to train at its proposed range sued the Township, alleging that its zoning restrictions violate the Second Amendment. The district court granted the Township's motion for judgment on the pleadings, concluding the zoning restrictions did not violate the Second Amendment. While Plaintiffs' appeal was pending, the Supreme Court announced a new framework for deciding Second Amendment challenges in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). We remanded for reconsideration in light of *Bruen*, and the district court again granted judgment for the Township. We **AFFIRM**.

Appendix H

I.

A. Factual Background

Oakland Tactical leased a 352-acre parcel of land in Howell Township "for the express purpose of operating one or more outdoor shooting ranges" offering "target shooting for self-defense and other lawful purposes, including but not limited to a long distance (e.g. 1,000 yard) range." R.44 PID, 1085-86. The individual Plaintiffs—Scott Fresh, Jason Raines, Matthew Remenar, Ronald Penrod, and Edward Dimitroff—are Michigan residents who wish to practice long-distance target shooting in Howell Township.[1] The Township itself has no public shooting ranges and Plaintiffs allege that shooting ranges in nearby jurisdictions are either inadequate or inconvenient.[2] And while there is public land that would accommodate the long-range shooting they wish to engage in, it is several hours away from the Township. If Oakland Tactical were to construct a long-distance shooting range

1. Penrod and Dimitroff live in Howell Township. Raines lives in Oceola Township. Fresh lives in Livonia, and Remenar lives in Rochester Hills. We note that Howell Township is close to Oceola Township but is some distance from Livonia and Rochester Hills.

2. There are indoor ranges in the neighboring City of Howell but, according to Plaintiffs, they "are often unable to meet the public demand for range time" and "do not provide opportunities for rifle practice." R.44, PID 1094. The Michigan Department of Natural Resources operates a public range thirty minutes from the Township that offers rifle training; however, Plaintiffs assert "there are often long waiting lines to shoot," its fees ($40 per session) are considered high, and it offers rifle shooting only to a distance of 100 yards. *Id.*

on its Howell Township parcel, the individual Plaintiffs would regularly engage in target shooting there.

Oakland Tactical has been unable to construct a range on the parcel, which is part of the "Agricultural-Residential District" (AR District), under the Howell Township Zoning Ordinance (Zoning Ordinance). The version of the Zoning Ordinance in effect when Plaintiffs filed their action classified "rifle ranges" as "[o]pen air business uses." R.61-2, PID 1349. But the ordinance did not expressly permit "open air business uses" in any zoning district and largely limited commercial land uses in the AR District to agribusinesses and home businesses. *Id.*, PID 1367-73. Additionally, "recreation" facilities or buildings were permitted in three districts—the Regional Service Commercial District (RSC District) and the Heavy Commercial District (HC District) permitted indoor recreation facilities, and the Highway Service Commercial District (HSC District) permitted outdoor recreation facilities—but "recreation" was not defined.

Township zoning staff advised Michael Paige, Oakland Tactical's managing member, that zoning restrictions prevented Oakland Tactical from applying for a rifle-range permit because the AR District was not zoned for open-air business uses, and suggested that he request an amendment to the Zoning Ordinance. Paige submitted an application for a zoning amendment on August 29, 2017, requesting that the Zoning Ordinance be changed to allow shooting ranges in the AR District. A zoning analysis report prepared by the Township's planning consultant concluded that the requested amendment would

affect all land in the Township zoned AR, amounting to "approximately 13,500 acres." R.46-4, PID 1141. After a public hearing on the proposed amendment, the Howell Township Board of Trustees denied it on November 13, 2017.

B. Procedural History

Plaintiffs sued the Township roughly one year later, challenging the Zoning Ordinance under the Second Amendment. In their operative complaint, Plaintiffs seek compensatory damages, a declaratory judgment that the Township's actions violate the Second Amendment, and an order permanently enjoining the Township from enforcing zoning ordinances "barring operation of shooting ranges open to the public" and "any law against the ordinary operation and use of shooting ranges open to the public." R.44, PID 1104-05. The Township filed a motion for judgment on the pleadings, and Plaintiffs filed a motion for summary judgment. The district court granted the Township's motion, denied Plaintiffs' motion as moot, and entered judgment for the Township. Plaintiffs filed a motion for reconsideration and a request to amend their complaint. The court denied both, and Plaintiffs appealed.

After this court held argument in Plaintiffs' appeal, the Supreme Court issued its opinion in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022), establishing a new framework for evaluating Second Amendment claims. Because this court was "unable to apply this standard based on the record and arguments" before us, we vacated

the district court's order and remanded for the district court to reconsider Plaintiffs' challenge in light of *Bruen*. *Oakland Tactical Supply, LLC v. Howell Twp.*, 2022 U.S. App. LEXIS 21744, 2022 WL 3137711, at *2 (6th Cir. Aug. 5, 2022). We instructed the district court to:

> decide, in the first instance, whether Oakland Tactical's proposed course of conduct is covered by the plain text of the Second Amendment. If the district court concludes that Oakland Tactical's proposed course of conduct is covered by the plain text of the Second Amendment, it should then determine whether historical evidence—to be produced by the Township in the first instance—demonstrates that the Ordinance's shooting-range regulations are consistent with the nation's historical tradition of firearm regulation.

Id. (internal citations omitted) (citing *Bruen*, 597 U.S. at 31-33, 38).

After considering the parties' supplemental briefing addressing *Bruen*, the district court again granted the Township's motion. The court first defined Plaintiffs' "proposed course of conduct . . . as construction and use of 'an outdoor, open-air, 1,000-[yard] shooting range.'" R.117, PID 2629-30. In so doing, it rejected Plaintiffs' broader proposed formulation: "training with firearms." *Id.*, PID 2629. It then concluded that this proposed course of conduct was not protected by the Second Amendment.

C. Amendments to the Zoning Ordinance

After the district court entered its first opinion granting the Township's motion and while Plaintiffs' motion for reconsideration was pending, the Township amended its Zoning Ordinance. The amendments removed rifle ranges from the definition of "open air business uses," and explicitly defined "[i]ndoor recreation facilities" and "[o]utdoor recreation facilities" to include "sport shooting ranges." R. 97-2, PID 2236-37. The amendments also created a new "Industrial Flex Zone" in which indoor and outdoor recreation facilities are permitted "principal special uses with conditions." *Id.*, PID 2242-43. Those conditions regulate design and operation standards, safety, environmental management, hours of operation, size, setbacks, security, reclamation, and application requirements.

II.

A. Standard of Review

We review a district court's grant of judgment on the pleadings de novo under the same standard as for a motion to dismiss under Rule 12(b)(6). *Warrior Sports, Inc. v. NCAA*, 623 F.3d 281, 284 (6th Cir. 2010). Thus, "all well-pleaded material allegations of the pleadings of the opposing party must be taken as true, and the motion may be granted only if the moving party is nevertheless clearly entitled to judgment." *Id.* (quoting *JPMorgan Chase Bank, N.A. v. Winget*, 510 F.3d 577, 581 (6th Cir. 2007)). "[D]ocuments attached to the pleadings become part of

the pleadings and may be considered." *Com. Money Ctr., Inc. v. Ill. Union Ins. Co.*, 508 F.3d 327, 335 (6th Cir. 2007). Legal conclusions and unwarranted factual inferences need not be accepted as true. *Winget*, 510 F.3d at 581-82.

B. The Second Amendment

1. *Heller* and *Bruen*

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. In *District of Columbia v. Heller*, the Supreme Court held that this right is defined by the Amendment's operative clause—"the right of the people to keep and bear Arms." 554 U.S. 570, 577-78, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). Based on the meaning of "keep" "bear" and "arms" as understood by "ordinary citizens in the founding generation," *id.* at 577, the Court defined the right as one to "have weapons" (keep arms) and "wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person" (bear arms). *Id.* at 582, 584. In more succinct terms, it secures an individual right to "possess and carry weapons in case of confrontation." *Id.* at 592; *see McDonald v. City of Chicago*, 561 U.S. 742, 791, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) (incorporating this right against the states).

After *Heller*, courts of appeals developed a two-step "means-ends" test to determine whether firearms

regulations violate the Second Amendment. *See, e.g., United States v. Greeno*, 679 F.3d 510, 518 (6th Cir. 2012). In *Bruen*, however, the Supreme Court held that two steps "is one step too many." 597 U.S. at 19. Instead:

> [w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Id. at 24 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 49 n.10, 81 S. Ct. 997, 6 L. Ed. 2d 105 (1961)).

2. The Right to Train

Plaintiffs' challenge to the Zoning Ordinance centers on their ability to provide or engage in firearms training, conduct they argue the Second Amendment protects either textually or by "necessary implication." Appellant Br. at 23. We agree with the latter argument—that at least some training is protected, not as a matter of plain text, but because it is a necessary corollary to the right defined in *Heller*. Four Justices seemingly endorsed this view before *Bruen*—Justice Thomas in a concurrence, and Justice Alito in a dissent joined by Justices Thomas and Gorsuch with which Justice Kavanaugh expressed general agreement. *See N.Y. State Rifle & Pistol Ass'n, Inc. v.*

City of New York, 140 S. Ct. 1525, 1541, 206 L. Ed. 2d 798 (2020) (Alito, J., dissenting) (The Second Amendment right includes "necessary concomitant[s]" such as the right "to take a gun to a range in order to gain and maintain the skill necessary to use it responsibly."); *id.* at 1527 (Kavanaugh, J., concurring) ("I . . . agree with Justice [Alito's] general analysis of *Heller* and *McDonald*."); *Luis v. United States*, 578 U.S. 5, 26, 136 S. Ct. 1083, 194 L. Ed. 2d 256 (2016) (Thomas, J., concurring) ("Constitutional rights thus implicitly protect those closely related acts necessary to their exercise . . . . The right to keep and bear arms, for example, implies a corresponding right to obtain the bullets necessary to use them and to acquire and maintain proficiency in their use." (internal quotations and citations omitted)); *see also Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011) ("[T]he core right wouldn't mean much without the training and practice that make it effective.").

Additionally, recognizing that protecting firearms training is necessary to the effective exercise of Second Amendment rights fits with *Heller*'s holding that a law requiring firearms to be kept inoperable violates the Second Amendment. 554 U.S. at 630 ("This makes it impossible for citizens to use [firearms] for the core lawful purpose of self-defense and is hence unconstitutional."). Although prohibiting training does not make it wholly impossible to use firearms the way requiring inoperability does, it inhibits the ability to use them enough to fall within the principle laid out in *Heller*.

C. Applicable Version of the Ordinance

The district court evaluated the Township's motion under the original ordinance because both sides "appear[ed] to agree" that the amendments "should not impact this case on remand[.]" R.117, PID 2628. On appeal, Plaintiffs argue the original ordinance is the relevant one "because the amendments at a minimum cannot extinguish [their] damages claims." Appellant Br. at 5-6. They further argue that the amendments have not changed the lay of the land because Oakland Tactical still cannot operate a shooting range on its parcel. And, Plaintiffs contend, the amended ordinance continues to impose "a de facto ban on outdoor ranges." Appellant Br. at 5. The Township argues that both versions of the ordinance have the same functional effect, maintaining that the original ordinance permitted shooting ranges, and the amended one does as well.

Plaintiffs are correct that the relevant version of the ordinance with respect to their damages claim is the un-amended ordinance in effect when Oakland Tactical first sought to build a shooting range on the property. *See Midwest Media Prop., LLC v. Symmes Twp.*, 503 F.3d 456, 460-61 (6th Cir. 2005) ("The existence of [a] damages claim preserves the plaintiffs' backward-looking right to challenge the original law[.]"). However, the relevant ordinance for purposes of Plaintiffs' claims for declaratory and injunctive relief is the ordinance "as it now stands[.]" *Diffenderfer v. Cent. Baptist Church of Miami, Fla., Inc.*, 404 U.S. 412, 414, 92 S. Ct. 574, 30 L. Ed. 2d 567 (1972) (per curiam); *see Brandywine, Inc. v. City of Richmond*,

359 F.3d 830, 836 (6th Cir. 2004) ("We can . . . [not] enjoin the enforcement of a provision that is no longer in effect.").

III.

A. Plaintiffs' Facial Challenge to the Zoning Ordinance

Plaintiffs bring both a facial challenge to the Zoning Ordinance, based on the allegation that it constitutes an effective ban on shooting ranges within the Township, and an as-applied challenge. *See* R.44, PID 1103 ("Facially and as applied, Howell Township's laws effectively ban the operation of rifle ranges and other shooting ranges[.]"); *id.*, PID 1085 ("Howell Township has prohibited the siting, construction, and operation of shooting ranges in the town through its zoning regulations by failing to provide or allow any designated areas within the town wherein the siting, construction, or operation of a shooting range would be permissible."); *id.* ("Through its actions and inactions, Howell Township has infringed the rights of Oakland Tactical . . . to site, construct, and operate a shooting range within the borders of Howell Township . . . and the rights of the individual Plaintiffs to practice for lawful purposes with firearms.").

Because Plaintiffs assert a claim for damages only with respect to their as-applied challenge, their facial challenge must be considered with reference to the amended ordinance. The original ordinance's treatment of shooting ranges was ambiguous. The definition of "open air business uses" included rifle ranges, but the ordinance

did not expressly permit open-air-business uses in any district. Several districts permitted recreational facilities or buildings. But although the Township took the position in this litigation that recreational uses included shooting ranges, the ordinance itself did not define the term.

If this ambiguity gave Plaintiffs a viable facial challenge, the amendments foreclosed it. The amended ordinance, on its face, permits shooting ranges in the RSC District, the HSC District, the Industrial District, and the Industrial Flex Zone. And Plaintiffs have not argued that other zoning restrictions make it functionally impossible to operate *any* shooting range under the ordinance, only that currently no parcels large enough for an outdoor range of the size it hopes to build are commercially available in the HSC District.[3]

Accordingly, we affirm the district court's dismissal of Plaintiffs' facial challenge.

B. Plaintiffs' As-Applied Challenge

1. Proposed Course of Conduct

Turning to Plaintiffs' as-applied challenge, *Bruen* requires that we first define Plaintiffs' proposed course of conduct. Plaintiffs argue that their proposed conduct

3. To the extent that Plaintiffs suggest that other zoning restrictions in the amended ordinance functionally prohibit shooting ranges within the Township, they forfeited this argument by failing to raise it in their opening brief. *Scott v. First S. Nat'l Bank*, 936 F.3d 509, 522 (6th Cir. 2019).

is "training with firearms that are in common use." Appellant Br. at 15-16. They contend that because they would participate in all activities offered at the proposed range, which would include target shooting at 50 and 100 yards in addition to long-distance shooting at up to 1,000 yards, the proposed conduct should be framed broadly to encompass everything the range would offer.[4] The Township argues the proposed conduct should be defined—as it was by the district court—more narrowly as the "use of an outdoor, open-air, 1,000-yard shooting range." R.117, PID 2629-30 (internal quotations and alterations omitted).

The difficulty in applying *Bruen* here is determining the line between the proposed conduct and the restrictive effect of the regulation. Is the proposed conduct training, certain types of training, or training in particular locations within the Township? This line was of less significance under the balancing test commonly employed by the circuits before *Bruen*. Under that approach, a broad view of the connection between the plaintiff's proposed conduct and the Second Amendment right could be balanced against an analysis of the rationale and effect of the

4. Plaintiffs clarified during argument that Oakland Tactical is not asserting any right of its own to construct a shooting range. Instead, it is asserting the rights of its potential customers to use its proposed range. *See Teixeira v. County of Alameda*, 873 F.3d 670, 673 (9th Cir. 2017) (holding gun retailer had standing to assert potential customers' Second Amendment rights); *Ezell v. City of Chicago*, 651 F.3d 684, 696 (7th Cir. 2011) (holding same for shooting range supplier). Therefore, we address only the district court's analysis of the individual Plaintiffs' proposed conduct.

regulation. *See, e.g., Drummond v. Robinson Twp.*, 9 F.4th 217, 231 (3d Cir. 2021) (applying intermediate scrutiny to a shooting-range zoning regulation and requiring the government to demonstrate "interest, fit," and the availability of "ample alternative channels"). Post-*Bruen*, however, the proposed conduct must be closely tethered to the plain text of the Second Amendment and defined with greater attention and precision because this is how *Bruen* approached the analysis and, if the conduct is protected, no weighing is permitted at *Bruen*'s second step.

Plaintiffs argue that because the Second Amendment protects the right to train and their proposed conduct necessarily involves training, *Bruen*'s first step is satisfied and the only remaining question is whether the zoning regulations are consistent with the "Nation's historical tradition of firearm regulation." 597 U.S. at 24. This argument seems to draw the line based simply on whether the proposed conduct involves firearms, so that any law that regulates conduct connected to firearms must be tested against the historical tradition of regulation. Consider a law regulating the storage of firearms. Consistent with Plaintiffs' approach, one might argue that owning firearms in common use—a right within the Second Amendment's plain text—requires that they be stored in some fashion, so *Bruen* requires that any law regulating how firearms are stored, for example a law requiring that firearms be stored out of reach of young children, must be consistent with the historical regulation of firearms. But *Bruen* does not say that any regulation that affects firearms must satisfy the historical-regulation test. Rather, it first asks whether the proposed conduct affected by the challenged

law is protected by "the Second Amendment's plain text." *Id.* The Second Amendment is not "a second-class right" and confers strong protections for covered conduct, *id.* at 70, but it is a right with a specific definition. As carefully detailed in *Heller*, the right covered by the Second Amendment's plain text is the right to possess and carry arms in case of confrontation.

The *Bruen* Court's approach to defining the proposed course of conduct bears this out. In *Bruen*, the challenged law required gun-license applicants who sought to carry firearms in public to show "proper cause" for the issuance of an unrestricted license to carry a concealed handgun. 597 U.S. at 12-13. The *Bruen* plaintiffs wished to carry their handguns in public for self-defense and applied for unrestricted licenses, which were denied for failure to show proper cause. *Id.* at 15-16. Rather than defining the proposed conduct at the high level of generality urged by Plaintiffs—*i.e.*, "carrying handguns"—the Court's definition incorporated the purpose and location of the plaintiffs' desired action. The Court defined the "proposed course of conduct" as "carrying handguns publicly for self-defense," which it found to be covered by the plain text of the Second Amendment. *Id.* at 32. It then analyzed the historical validity of the proper-cause requirement under the second step.

Plaintiffs contend that because *Heller* and *Bruen* "demonstrate the capacious nature of the Second Amendment's plain text," they require broadly defining the proposed course of conduct. Appellant Br. at 17. Plaintiffs base this argument on *Heller*'s definition of "the

people" to include "all Americans," 554 U.S. at 581, and *Bruen*'s holding that the Second Amendment imposes no "home/public distinction" on the right to keep and bear arms, 597 U.S. at 32. *Heller*'s conclusion that "the people" includes "all Americans" resulted from an examination of how other constitutional provisions use that term. 554 U.S. at 579-80. And *Bruen* concluded that "the definition of 'bear' naturally encompasses public carry" because it has been defined to mean carrying "weapons in case of confrontation" and confrontations necessarily occur outside the home. 597 U.S. at 32-33.[5] But these conclusions were the result of textual analysis, not—as Plaintiffs seem to suggest—the adoption of a default rule that a plaintiff's

5. The dissent argues that this analysis demonstrates that the location of a plaintiff's proposed conduct is "irrelevant" to determining whether it falls within the scope of the Second Amendment right. Dis. Op. at 21. That conclusion is inconsistent with *Bruen*'s reasoning—the *Bruen* Court analyzed, as part of the first step, whether public carry fit within *Heller*'s definition of "bearing" arms. 597 U.S. at 32. And it concluded that the plaintiffs' claim should proceed to the second step not simply because the text does not expressly limit the Second Amendment right to bearing arms at home, but because the Court concluded the text provides positive protection for the right to bear arms in public. Finding the line between steps one and two of a *Bruen* analysis is not always a straightforward exercise. But the "circumstance of place," Dis. Op. at 21, is not per se irrelevant to step one. *See, e.g., Antonyuk v. Chiumento*, 89 F.4th 271, 383 (2d Cir. 2023) (defining plaintiff's proposed conduct in a sensitive-places challenge as "carrying a firearm for self-defense *on private property open to the public*" (emphasis added)). And it is relevant here, where place is the element of conduct the ordinance restricts. *See* Dis. Op. at 22 (noting that the *Bruen* Court incorporated location into its definition of plaintiffs' proposed conduct "because public carry was precisely the conduct that New York restricted").

proposed conduct must be defined with maximal breadth. Instead, *Bruen*'s approach indicates that in defining a plaintiff's proposed conduct, courts should look to the intersection of what the law at issue proscribes and what the plaintiff seeks to do.

Given the Court's emphasis on grounding Second Amendment analysis in the Constitution's plain text, when applying *Bruen* we must ask not simply whether the regulation affects firearms in some way, but whether the regulation infringes the right to own and bear arms in case of confrontation. This is especially true in the context of implied corollary rights, where our analysis begins one step removed from the plain text. If the hypothetical storage regulation above does not restrict conduct necessary to effectuate that right, the proposed conduct—storage within reach of young children—is not protected by the plain text of the Second Amendment and the regulation need not satisfy *Bruen*'s second step, even though it regulates conduct connected to firearms.

Here, Plaintiffs' allegations and arguments make clear both that they wish to engage in conduct more specific than "firearms training" and that the Zoning Ordinance does not infringe their right to possess and carry arms in case of confrontation. First, as Plaintiffs stress, the Zoning Ordinance does not in fact ban all training—it permits "shooting on private property as an accessory use throughout the Township." Appellant Br. at 5. One of Plaintiffs' repeated objections is that the Zoning Ordinance places restrictions on commercial shooting ranges, while allowing "unorganized" non-commercial

shooting on private property. *Id.* at 2 (emphasis omitted). It is uncontested that Oakland Tactical could invite the individual Plaintiffs to train on its property as guests. Thus, at a minimum, Plaintiffs' proposed conduct necessarily involves commercial training.

And, examining Plaintiffs' allegations and argument, their proposed conduct is narrower than commercial training alone. The core of Plaintiffs' challenge is that Oakland Tactical seeks to construct a commercial range within Howell Township offering target shooting at up to 1,000 yards. The individual Plaintiffs wish to engage in target shooting at a commercial range in Howell Township and some, but not all, specifically wish to engage in long-distance shooting. Plaintiffs allege that the Zoning Ordinance prevents them from engaging in their desired training in two ways: first, it prohibits any commercial facility on Oakland Tactical's leased parcel of land; and second, the zoning districts permitting commercial recreational facilities do not contain sufficient "undeveloped land available . . . for a safe, long-distance rifle range." R.44, PID 1097.[6]

Plaintiffs have therefore offered two proposed courses of conduct: (1) engaging in commercial firearms training in a particular part of the Township; and (2) engaging in long-distance firearms training within the Township.

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6. These allegations from Plaintiffs' Second Amended Complaint concern only the original pre-amendment ordinance. Plaintiffs acknowledged in supplemental briefing during their first appeal that the amended ordinance makes more land expressly available for shooting ranges.

Appendix H

1. Covered by the Plain Text of the Second Amendment

Having defined Plaintiffs' proposed course of conduct, we must next determine whether it is covered by "the Second Amendment's plain text." *Bruen*, 597 U.S. at 24. Although Plaintiffs are correct that the Second Amendment protects the right to engage in commercial[7] firearms training as necessary to protect the right to effectively bear arms in case of confrontation, they make no convincing argument that the right extends to training in a particular location or at the extremely long distances Oakland Tactical seeks to provide.

Nor have they established that the Zoning Ordinance infringes the rights the Second Amendment protects. The Township's Zoning Ordinance does not interfere with the Second Amendment right to keep and bear arms in case of confrontation. *See Heller*, 554 U.S. at 592. And unlike in *Bruen*, where the plaintiffs' proposed conduct was the public carrying of firearms for self-defense—conduct squarely covered by the plain text of the Second Amendment—the challenged regulation here does not limit the ability to own, possess, or carry firearms. Nor does it affect the ability to train with firearms on private property. Further, the ordinance permits shooting ranges—commercial training—within the Township.

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7. We agree with Plaintiffs that constitutional protection for firearms training cannot be limited to non-commercial training. Otherwise, only those who own or have access to private land suitable for training would be entitled to exercise their Second Amendment rights effectively.

Plaintiffs seek to vindicate a right not only to train at a commercial facility, but to train at a commercial facility anywhere in the Township. They argue that this right must be protected by the Second Amendment because, although indoor and outdoor ranges are permitted by the Zoning Ordinance, Oakland Tactical has not found a suitable parcel outside the AR District, and the individual Plaintiffs find the existing, nearby options too inconvenient, expensive, or crowded.

These facts do not demonstrate that the Township's ordinance infringes a right necessarily implied by the Second Amendment—to train with firearms for proficiency in case of confrontation. This is not a case where the Township seeks to achieve through its zoning ordinances what it cannot do directly—ban all shooting ranges. *See Gazzola v. Hochul*, 88 F.4th 186, 196 (2d Cir. 2023) (citing *Cummings v. Missouri*, 71 U.S. 277, 325, 18 L. Ed. 356 (1866)). The amended ordinance makes clear that indoor and outdoor ranges are permitted uses in several districts. And Plaintiffs have not alleged that the Township, despite the original ordinance's ambiguity, would have prohibited Oakland Tactical from building a range in the districts allowing recreational facilities—according to the Amended Complaint, the planning commission officials who ultimately denied Oakland Tactical's request to allow shooting ranges in the AR District believed ranges to be "permitted in other districts." R.44, PID 1099. Although no ranges currently operate in the Township, Plaintiffs have not demonstrated that this is due to the Zoning Ordinance, which does not prohibit them. Because the Zoning Ordinance permits commercial training at indoor and outdoor ranges, it does not infringe Plaintiffs' right to

train to achieve proficiency in case of confrontation, and they have not shown that the ability to train commercially anywhere within the Township is necessary to effectuate their Second Amendment rights. Plaintiffs' proposed course of conduct—commercial training in a particular location—is therefore not protected by the plain text of the Second Amendment.[8]

Turning next to long-distance commercial training, Plaintiffs have not established that this formulation of their proposed conduct is protected by the Second Amendment either. Accepting Plaintiffs' contention that the Zoning Ordinance effectively bans the commercial operation of a 1,000-yard range,[9] we ask whether the ability to train at such distances is necessary to effectuate Plaintiffs' Second Amendment right to keep and bear arms "in case

8. Because Plaintiffs argue the zoning amendments should not substantively change our analysis, the failure of this argument forecloses Plaintiffs' claims for both damages and injunctive relief.

9. Plaintiffs have not alleged or argued that the Zoning Ordinance does not make adequate land available for a 1,000-yard range, but rather that "only a few acres of undeveloped land [were] available" when they instituted this lawsuit. R.44, PID 1097. It is questionable whether the fact that of the land the ordinance makes available, only some was or is *commercially* available amounts to a constitutional violation. *See Bruen*, 597 U.S. at 24-25 (explaining that the Court's "Second Amendment standard" in *Bruen* aligns with its approach to "freedom of speech in the First Amendment, to which *Heller* repeatedly compared the right to keep and bear arms"); c*f. City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 53, 106 S. Ct. 925, 89 L. Ed. 2d 29 (1986) ("That respondents must fend for themselves in the real estate market, on an equal footing with other prospective purchasers and lessees, does not give rise to a First Amendment violation.").

of confrontation." *Heller*, 554 U.S. at 592. Plaintiffs have not offered any persuasive argument that it is.

It is difficult to imagine a situation where accurately firing from 1,000 yards would be necessary to defend oneself; nor have Plaintiffs identified one. To the extent that historical evidence is probative of the scope of a right derived by necessary implication, like the right to train, the historical evidence Plaintiffs present—a handful of examples of rifleman making shots from 600 to 900 yards during the Revolutionary War—is not convincing. Assuming these examples show that the Founding-era public understood *military* proficiency to include accuracy at these long distances, they do not establish that the Second Amendment right—which is unconnected to "participation in a structured military organization," *Heller*, 554 U.S. at 584—was similarly understood. And beyond this historical evidence, Plaintiffs make no real argument that long-distance training is necessary for the effective exercise of the right to keep and bear arms for self-defense, other than briefly noting that the federally chartered Civilian Marksmanship Program offers 1,000-yard training. We cannot conclude, based on these arguments, that the plain text of the Second Amendment covers the second formulation of Plaintiffs' proposed course of conduct—the right to commercially available sites to train to achieve proficiency in long-range shooting at distances up to 1,000 yards.[10] Accordingly, the district court did not err in granting the Township's motion.

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10. The dissent seems to concede that the question whether extremely long-distance training is protected by the Second Amendment can be resolved at *Bruen*'s first step, but argues that a

IV.

For the reasons set out above, we **AFFIRM**.

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similar analysis of training at a particular place cannot be performed without drawing "hopelessly arbitrary" distinctions. Dis. Op at 22. But even if the latter analysis is less straightforward than the former, it is not arbitrary. Like the analysis of long-distance training, our analysis of training in a particular place is rooted in the self-defense purpose of the Second Amendment right. The considerations that go into that analysis are, in turn, shaped by the plausibility of plaintiffs' allegations and the arguments made by the parties. *See id.* at 21 (concluding that "plaintiffs have not explained why training at [1,000 yards] is necessary" for self-defense).

Appendix H

CONCURRENCE

COLE, Circuit Judge, concurring.

I join the lead opinion in concluding that the Plaintiffs' proposed course of conduct—"(1) engaging in commercial firearms training in a particular part of the Township; and (2) engaging in long-distance firearms training within the Township"—is not protected conduct under the plain text of the Second Amendment. Op. at 1. Under *Bruen*, our analysis stops there.

Plaintiffs argue that the text of the Second Amendment protects their right to engage in firearms training as a necessary incident to the core right protected by the amendment. Appellant Br. 23. In its exposition generally addressing the Second Amendment, the lead opinion states that "at least some training is protected, not as a matter of plain text, but because it is a necessary corollary to the right defined in *Heller*." Op. at 6 (citing *District of Columbia v. Heller*, 554 U.S. 570, 592, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008)). The opinion's analysis later clarifies, however, that the conduct at issue here is not covered by the Second Amendment's plain text, which is a necessary first step under *Bruen*. Op. at 13-15; *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). In other words, "[p]laintiffs' proposed course of conduct—commercial training in a particular location" or "long-distance commercial training" is not protected by the plain text of the Second Amendment. Op. at 14.

As such, we need not expound on whether corollary rights exist as necessary implication to the Second Amendment. First, and as the lead opinion details, the general right to engage in firearms training is not the course of conduct at issue here. The Township Ordinance does not ban all training with firearms because it allows individuals to train on private property. Appellant Br. 5. Because the facts before us necessarily limit the conduct that we must consider, we need not decide whether the right to engage in commercial firearms training is necessary to protect the right to effectively bear arms in case of confrontation—a constitutional issue of first impression for this court. *See Firexo, Inc. v. Firexo Grp. Ltd.*, 99 F.4th 304, 326 (6th Cir. 2024) (stating "for a statement or conclusion to be a holding, the court must have considered the issue and consciously reached a conclusion about it") (internal quotations omitted); *see also Nemir v. Mitsubishi Motors Corp.*, 381 F.3d 540, 559 (6th Cir. 2004) ("Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.") (citation omitted).

Second, whether the Second Amendment protects the right to train by necessary implication is a largely unaddressed area of the law. As my colleagues detail, the Supreme Court has only addressed corollary rights to "possess and carry weapons in case of confrontation," *see Heller*, 554 U.S. at 592, in a citation to post-Civil War commentators and in its concurrences and dissent. *See Heller*, 554 U.S. at 617-19; *N.Y. State Rifle & Pistol Ass'n, Inc. v. City of New York*, 140 S. Ct. 1525, 1541, 206

L. Ed. 2d 798 (2020) (Alito, J., dissenting); *id.* at 1527 (Kavanaugh, J., concurring); *and Luis v. United States*, 578 U.S. 5, 26, 136 S. Ct. 1083, 194 L. Ed. 2d 256 (2016) (Thomas, J., concurring). Additionally, only the Seventh Circuit has held that the right to bear arms "implies a corresponding right to acquire and maintain proficiency in their use[.]" *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011). Because it is unnecessary for us to take a position on corollary rights to the Second Amendment, we would be best served by waiting to see how the law develops and if the Supreme Court addresses the issue directly.

We need not conclude that the right to train with firearms is a necessarily protected right under the Second Amendment. For these reasons, I respectfully concur.

Appendix H

DISSENT

KETHLEDGE, Circuit Judge, dissenting.

This is a hard case in which the majority has addressed the merits both thoughtfully and evenhandedly. But I see those merits differently, based on the Second Amendment's text as interpreted by the Supreme Court—and so I respectfully dissent.

The Supreme Court has held that, "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S 1, 24, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). The Second Amendment in turn provides, in relevant part, that "the right of the people to keep and bear arms, shall not be infringed." U.S. Const., amend. II. That text, the Supreme Court has said, "'guarantee[s] the individual right to possess and carry weapons in case of confrontation.'" *Bruen*, 597 U.S. at 32 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 592, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008)).

This case involves target shooting, so a threshold question is whether firearms training is to any extent "cover[ed]" by the Second Amendment's "plain text[.]" *Bruen*, 597 U.S. at 24. To date, nearly every relevant authority (save the district court's opinion here) has said that training can fall within that coverage. As Justice Thomas has explained, enumerated rights implicitly protect "closely related acts necessary to their exercise." *Luis v. United States*, 578 U.S. 5, 26, 136 S. Ct. 1083,

194 L. Ed. 2d 256 (2016) (Thomas, J., concurring in the judgment). The key word there is "necessary": rights implied from the Constitution's text are legitimate only to the extent they are actually necessary to the exercise of an enumerated right. Beyond that lie penumbras and emanations. The First Amendment guarantee of a free press, for example, implies a right to buy the inks and paper necessary for printing newspapers. *See Minneapolis Star and Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 582-83, 103 S. Ct. 1365, 75 L. Ed. 2d 295 (1983). Similarly, the First Amendment "right to speak would be largely ineffective if it did not include the right to engage in financial transactions that are the incidents of its exercise." *McConnell v. Federal Election Com'n*, 540 U.S. 93, 252, 124 S. Ct. 619, 157 L. Ed. 2d 491 (2003) (Scalia, J., concurring in part). And the Second Amendment right to keep and bear arms "'implies a corresponding right to obtain the bullets necessary to use them[.]'" *Luis*, 578 U.S. at 26 (Thomas, J., concurring in the judgment) (quoting *Jackson v. City and County of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014)).

More to the point here—in *Heller* itself—the Court cited as authority Thomas Cooley's observation that, "'to bear arms implies something more than the mere keeping; it implies the learning to handle and use them in a way that makes those who keep them ready for their efficient use[.]'" 554 U.S. at 617-18 (quoting T. Cooley, *General Principles of Constitutional Law* 271 (1880)). Accordingly, the Seventh Circuit has held that the right to bear arms "implies a corresponding right to acquire and maintain proficiency in their use[.]" *Ezell v. City of Chicago*, 651

F.3d 684, 704 (7th Cir. 2011). Four justices have expressly agreed with that proposition (in a Second Amendment case dismissed on mootness grounds). *See New York State Rifle & Pistol Ass'n v. City of New York*, 140 S. Ct. 1525, 1540-44, 206 L. Ed. 2d 798 (2020) (Alito, J. dissenting). Meanwhile, the Third Circuit has observed that the word "infringe"—as used in the Second Amendment and as generally understood by the founding generation—referred not only to the elimination of a right but also to restrictions that "hinder" its exercise. *Frein v. Penn. State Police*, 47 F.4th 247, 254 (3d Cir. 2022). Training with firearms is obviously necessary to using them effectively; restrictions on training can therefore hinder the right to bear arms; and so a right to training with firearms might well be expressly (and not just impliedly) covered by the Second Amendment's text. Either way, as a matter of precedent and common sense, the Second Amendment's text covers a right to train with firearms.

Yet that right is subject to the limits of the Second Amendment itself. The Supreme Court has spelled out those limits for purposes of our analysis here. Specifically, as the Court has described it, the Second Amendment guarantees an "individual right to possess and carry weapons in case of confrontation." *Bruen*, 597 U.S. at 32 (quoting *Heller*, 554 U.S. at 592). And the Second Amendment itself says that right belongs to "the people[,]" which comprises (for the most part, at least) "ordinary, law-abiding, adult citizens[.]" *Id.* at 31-32. The Court has also "explained" that the Second Amendment protects only weapons "'in common use at the time,' as opposed to those that 'are highly unusual in society at large.'" *Id.* at

47 (quoting *Heller*, 554 U.S. at 627). Thus—as described by the Court—the Second Amendment guarantees (1) to law-abiding citizens (2) a right to keep and bear arms (3) in common usage (4) for purposes of "confrontation" (or "self-defense"). *Id.* at 32-33.

None of those limitations are arbitrary; to the contrary, all of them are "textual elements of the Second Amendment's operative clause[.]" *Id.* at 32 (internal quotation marks omitted). The question, then, is whether the plaintiffs' proposed conduct falls within them. Here, as in *Bruen*, nobody disputes that the individual plaintiffs are law-abiding citizens, *see id.* at 31-32; and the right to "bear" arms, as explained above, includes a right to train with them. Thus, to the extent the plaintiffs have alleged that they wish to train with arms "in common usage" for purposes (at least in part) of confrontation or self-defense, their conduct is presumptively protected under the Second Amendment. *Id.* at 24.

Most if not all of the individual plaintiffs have made allegations to that effect. As an initial matter, all of them seek to train with weapons in common usage—namely pistols, shotguns, rifles, or some combination thereof. And all of them expressly allege that they wish to train with those weapons for purposes (at least in part) of "target shooting at shorter distances[,]" Second Amended Complaint ¶8, or "for self-defense[.]" *Id.* ¶¶8, 9, 10, 11, 15. To that extent, therefore, each of the individual plaintiffs› proposed conduct is presumptively protected by the Second Amendment. The same is true for Oakland Tactical, since a party "generally" may assert "third-

party rights [meaning here the rights of the individual plaintiffs] in cases where enforcement of the challenged restriction against the litigant [here, Oakland Tactical] would result indirectly in the violation of third parties' rights." *June Medical Servs., LLC v. Russo*, 591 U.S. 299, 318, 140 S. Ct. 2103, 207 L. Ed. 2d 566 (2020) (cleaned up); *see also Gazzola v. Hochul*, 88 F.4th 186, 194-95 (2d Cir. 2023) (holding that gun vendors can assert the Second Amendment rights of their customers and collecting cases from three other circuits holding the same).

The majority concludes that the proposed conduct is not presumptively protected because, in part, it collapses into one step an analysis the Supreme Court has told us to divide into two. Specifically, the majority says that, "[a]lthough Plaintiffs are correct that the Second Amendment protects the right to engage in commercial firearms training as necessary to protect the right to effectively bear arms in case of confrontation, they make no convincing argument that the right extends to training in a particular location [namely Oakland Tactical's 352-acre parcel] or at the extremely long distances Oakland Tactical seeks to provide." Op. at 9.

I have no quarrel with the majority's point about "extremely long distances[.]" That circumstance bears directly on one of the limitations that the Supreme Court has recited as to the Second Amendment's scope—namely that the arms be kept or borne "in case of confrontation" or self-defense. *Bruen*, 597 U.S. at 32. Confrontations typically do not begin at distances of 1,000 yards (*i.e.*, more than a half-mile), which means that training at that

distance is not self-evidently necessary for purposes of confrontation or self defense. And I agree that the plaintiffs have not explained why training at that distance is necessary for those purposes.

But I disagree that the plaintiffs' claims fall outside the coverage of the Second Amendment's text on the ground that the plaintiffs seek to train "at a particular location[.]" That circumstance—the circumstance of place—is irrelevant to the question whether "the Second Amendment's plain text covers an individual's conduct[.]" *Id.* at 24. By way of background (and to reiterate somewhat), whether the Amendment's text covers an individual's conduct is the first step of the analysis prescribed by the Supreme Court in *Bruen*. If that text does cover the individual's conduct, "the Constitution presumptively protects that conduct." *Id.* Then—at the second step of the analysis prescribed in *Bruen*—the government must "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.*

The circumstance of place is relevant to the second step of that analysis, not the first. As discussed above, "the 'textual elements' of the Second Amendment's operative clause[,]" *id.* at 32, yield four limitations on the Amendment's textual scope. Place is not among them. To the contrary, whether a restriction on the places in which citizens may exercise their Second Amendment rights is lawful depends on whether the restriction "is consistent with the Nation's historical tradition of firearm regulation" under step two. *Id.* at 24. That is why—by

way of an "Government example" of the analysis required under step two—the Court devoted two full pages to a discussion of the legality of "'laws forbidding the carrying of firearms in sensitive *places* such as schools and government buildings.'" *Id.* at 30-31 (quoting *Heller*, 554 U.S. at 626) (emphasis added).

Yet the majority concludes that the "location of the plaintiffs' desired action," Op. at 8, is relevant at step one—because, the majority points out, in *Bruen* the Court "defined the 'proposed course of conduct' as 'carrying handguns publicly for self-defense[.]'" *Id.* (quoting *Bruen*, 597 U.S. at 32). True, in *Bruen* the Court described the plaintiffs' conduct that way; but that was because public carry was precisely the conduct that New York restricted (indeed largely proscribed) there. *See Bruen*, 597 U.S. at 11-13. And the Court's reasoning in finding that conduct presumptively protected—that "[n]othing in the Second Amendment's text draws a home/public distinction with respect to the right to keep and bear arms[,]" *id.* at 32—demonstrated the *irrelevance* of place to the question whether the plaintiffs' conduct was covered by that text. *Bruen* refutes the majority's analysis rather than supports it.

Moreover, as this case illustrates, importing the circumstance of place into the analysis at step one would render that analysis hopelessly arbitrary. The Second Amendment's text makes no distinctions as to place, which means (at step one) judges unavoidably would need to make them up. In this case, for example—for the plaintiffs' proposed conduct to be necessary to exercise their right

to bear arms—must each plaintiff reside within a certain distance of Oakland Tactical's proposed range? If so, on what basis would we determine what that distance might be (perhaps by drive-time on Apple Maps)? Or would we instead consider the distance between the proposed range and existing ones? And could the plaintiffs bring a motion under Civil Rule 60(b) if a range in a nearby township later closed? Or should our analysis be confined within Howell Township alone? Relatedly, should the relevant "location" be Oakland Tactical's 352-acre parcel, as the majority says, or the Township as a whole?

These questions are unanswerable at step one precisely because our lodestar for that step—the Second Amendment's text—has nothing to say about them. But about the validity of restrictions upon the places in which citizens may exercise their Second Amendment rights—as *Bruen* took pains to illustrate—the Nation's traditions of firearm regulation might well have plenty to say. And traditions have often taken the form of law—specifically, common law—when judges have had occasion to describe them in words. The Nation's traditions can thus provide a source of law in step two that is absent in step one. Perhaps those traditions would support the Township's actions here, or perhaps not; but *Bruen* requires that we put the Township to its proofs on that issue before rejecting the plaintiffs' claims.

In summary, then, I would reverse the district court's dismissal of the individual plaintiffs' claims and vacate the dismissal of Oakland Tactical's claims (because the question whether it can assert third-party claims has not

yet been litigated). I think that Oakland Tactical's facial challenge to the Township's amended ordinance is likely meritless, for the reasons the majority states; but I would vacate the dismissal of that claim as well, so that it can be properly analyzed under *Bruen*. I would also allow the parties to litigate on remand two issues they have not fully addressed here: first, whether training for purposes of confrontation or self-defense is limited to target shooting at certain distances (which, as discussed above, the plaintiffs have not adequately briefed); and second, whether the Township's restrictions on the plaintiffs' proposed conduct is consistent with the Nation's historical traditions of firearm regulation (which the Township thus far has not briefed at all).

For these reasons, I respectfully dissent.

APPENDIX I — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, FILED FEBRUARY 17, 2023

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

Civil Action No. 18-cv-13443

OAKLAND TACTICAL SUPPLY, LLC, *et al.*,

Plaintiffs,

v.

HOWELL TOWNSHIP,

Defendant.

Signed February 17, 2023

OPINION AND ORDER ADDRESSING SUPPLEMENTAL BRIEFING AND GRANTING DEFENDANT'S MOTION TO DISMISS

Bernard A. Friedman, Senior United States District Judge

This matter is presently before the Court on remand following the Court of Appeals' August 5, 2022, opinion and judgment. (ECF No. 94). Consistent with the Court of Appeals' decision, on August 31, 2022, this Court ordered

the parties to submit additional briefing regarding the plausibility of plaintiffs' claims in light of the Supreme Court's recent decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022).[1] For the reasons stated below, the Court reaffirms its decision to grant the Township's motion to dismiss.

I. Background

This case involves a zoning dispute that, plaintiffs claim, implicates their Second Amendment rights. On September 10, 2020, the Court granted defendant Howell Township's motion to dismiss. (ECF No. 84). On February 9, 2021, the Court denied a motion for reconsideration filed by plaintiffs Oakland Tactical Supply, LLC, Jason Raines, Matthew Remenar, Scott Fresh, Ronald Penrod, and Edward Dimitroff. (ECF No. 91). Plaintiffs appealed, and on August 5, 2022, the Court of Appeals entered an opinion vacating and remanding "to allow [this Court] to consider the plausibility of Oakland Tactical's Second Amendment claim in light of the Supreme Court's recent decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022)." (ECF No. 94, PageID.2197). Accordingly, on August 31, 2022, this Court ordered Howell Township to submit, within 30 days,

> supplemental briefing in support of its motion to dismiss on (1) whether Oakland Tactical's proposed course of conduct is covered by

1. Pursuant to E.D. Mich. LR 7.1(f)(2), the Court shall decide this without a hearing.

> the plain text of the Second Amendment; and (2) whether historical evidence–to be produced by the Township in the first instance–demonstrates that the Howell Township Zoning Ordinance's shooting regulations are consistent with the nation's historical tradition of firearm regulation.

(ECF No. 96, PageID.2206) (cleaned up). Plaintiffs were ordered to submit a response brief within 14 days thereafter. (*Id.*).

On September 30, 2022, Howell Township filed its supplemental brief supporting entry of judgment for the township post-*Bruen*. (ECF No. 97). The Township's supplemental brief urges that Oakland Tactical's proposed course of conduct is not covered by the Second Amendment, but the brief does not address the second question posed by ECF No. 96, instead urging that the "Township need not yet provide analogous historical regulations to uphold the Township Zoning Ordinance, since there is no duty under *Bruen* to provide such evidence absent a right within the plain text of the Second Amendment." (*Id.*, PageID.2229). In their responsive supplemental brief, plaintiffs urge that the conduct at issue is covered by the plain text of the Second Amendment. (ECF No. 104, PageID.2468). Plaintiffs urge that the Township should not be given another opportunity to brief history in support of its motion, but urge that in any event the Township could not "have found any other historical tradition of analogous regulation because no such tradition existed." (*Id.*, PageID.2481).

On November 22, 2022, this Court granted the Michigan Municipal League Legal Defense Fund and the Michigan Townships Association leave to file an amicus curiae brief. (ECF No. 109). The amicus curiae brief argues that the plain text of the Second Amendment does not cover the proposed conduct and further urges that if the Court reaches the second step of the *Bruen* test, there are several analogous regulations. (ECF No. 99-1, PageID.2290). Plaintiffs filed an initial objection to the proposed amicus brief, (ECF No. 106), and this Court provided plaintiffs an additional opportunity to more fully respond, (ECF No. 109). Plaintiffs did so, (ECF No. 112), and on December 12, 2022, this Court denied the Township's motion to reply to plaintiffs' response or file additional briefing, (ECF No. 114).

II. Analysis

Again, the questions now pending before the Court are:

> (1) whether Oakland Tactical's proposed course of conduct is covered by the plain text of the Second Amendment; and (2) whether historical evidence . . . demonstrates that the Howell Township Zoning Ordinance's shooting regulations are consistent with the nation's historical tradition of firearm regulation.

(ECF No. 96, PageID.2206) (cleaned up).[2]

2. The Township urges that Zoning Ordinance Amendment 285 (adopted after this Court's Order granting the motion to dismiss)

As a threshold matter, the Court must determine the nature and scope of the "proposed conduct." The Township urges that it is "operat[ion of] an outdoor, 1,000-yard shooting range on its property in the Agricultural-Residential District . . . of the Township." (ECF No. 97, PageID.2209) (cleaned up). Plaintiffs define it much more broadly as "training with firearms." (ECF No. 104, PageID.2468). On appeal, the Sixth Circuit acknowledged that plaintiffs' identification of the proposed course of conduct has shifted over time.

> We note that, although Oakland Tactical has alleged that the Second Amendment protects the right to train on "outdoor ranges appropriate for . . . common firearms," "shotgun and handgun ranges," and, more generally, "a shooting range," it most recently framed its proposed course of conduct as the right to train on "outdoor, long-distance shooting ranges."

(ECF No. 94, PageID.2200 n.3) (cleaned up).

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and further amendments to the Ordinance (proposed in September 2022) would not have any impact on the Court's prior opinion nor the claims now pending. (ECF No. 97, PageID.2212-14). Plaintiffs similarly urge that "even with the Township's recent changes to its zoning ordinance the zoning ordinance continues to violate their Second Amendment rights and that they continue to sustain damages." (ECF No. 104, PageID.2470 n.2). Because both parties appear to agree that the recent updates to the Zoning Ordinance should not impact this case on remand, the Court declines to analyze the existing and proposed amendments to the ordinance. Similarly, the Court declines plaintiffs' request to convert the present motion to dismiss under Federal Rule of Civil Procedure 12(c) into a motion for summary judgment under Rule 56. (*Id.*, PageID.2468).

In reviewing this matter the first time, this Court looked to the Second Amended Complaint and noted that Oakland Tactical

> alleges that it desires to construct "one or more outdoor shooting ranges to provide a safe location for residents in the area to practice target shooting for self-defense and other lawful purposes, including but not limited to a long distance (e.g. 1,000 yard) range for qualified shooters and public access rifle, shotgun and handgun ranges" on property it leases in Howell Township, Michigan.

(ECF No. 84, PageID.2084) (quoting ECF No. 44, PageID.1085-86, ¶ 6). "The five individual plaintiffs are gun owners who would use Oakland Tactical's proposed facility if it were to be constructed." (ECF No. 84, PageID.2084).

Collectively, the Court believes that the proposed conduct is best summarized as construction and use of "an outdoor, open-air, 1,000-[yard] shooting range." (*Id.*, PageID.2089). Having made this threshold determination, the Court next turns to the first question presented in its Order requiring supplemental briefing: whether the proposed course of conduct is covered by the plain text of the Second Amendment. (ECF No. 96, PageID.2206).

The Township urges that the textual elements of the Second Amendment's operative clause guarantee the individual right to possess and carry weapons in case of

confrontation. (ECF No. 97, PageID.2216). And because "one cannot 'bear,' or carry an outdoor, 1,000-yard shooting range," the plain text does not include a right to construct such a range anywhere one chooses. (*Id.*, PageID.2219). The Township also urges that the history of the adoption of the Second Amendment shows that being "trained" was considered distinct from "keeping and bearing arms." (*Id.*, PageID.2220). More broadly, the Township argues that other Circuits have recognized ancillary rights under the Second Amendment, including a right to range training, but only to the extent such ancillary rights support the exercise of the core right of self-defense. (*Id.*, PageID.2223). The Township further differentiates these cases by noting that they were evaluating a functional ban of an individual right and "relied upon an analysis of the Second Amendment that was not consistent with the plain text as mandated post-*Bruen*." (*Id.*, PageID.2224-27).

Plaintiffs urge that "[t]he plain text of the Second Amendment covers training with firearms." (ECF No. 104, PageID.2474). Citing *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011), plaintiffs argue that because the Second Amendment encompasses an individual right to use firearms for lawful purposes, citizens must have the corresponding right to train with firearms because the right to use them "wouldn't mean much without the training and practice that makes it effective." (ECF No. 104, PageID.2474-75).[3] They also point to the prefatory clause of the Amendment, which, they say, promotes the

3. This Court has already addressed the relevance of *Ezell*. (ECF No. 84, PageID.2089).

existence of a "well regulated Militia." (*Id.*, PageID.2475). Noting that in *District of Columbia v. Heller*, 554 U.S. 570, 597, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), the Supreme Court held that a "well regulated Militia" meant "the body of the people, trained to arms," plaintiffs argue that a right cannot promote a people trained to arms without protecting training with arms. (*Id.*). Plaintiffs then cite to multiple cases in which, they assert, courts have recognized a right to train with arms. (*Id.*, PageID.2475-76). Plaintiffs urge that the founders rejected the addition of "training" language in the Second Amendment and other early documents because it would have been redundant, as training was already protected. (*Id.*, PageID.2476-78). Finally, plaintiffs assert that because under *Heller* and *Bruen* the Second Amendment protects the possession and use of weapons that are in common use, it follows that the Second Amendment protects training with *all* arms in common use, including rifles with an effective range extending to 1,000 yards. (*Id.*, PageID.2479).

Plaintiffs' mischaracterization of the scope of the proposed conduct undermines the majority of their argument. The proposed conduct could not be simply "training with firearms" because the zoning ordinance does not prohibit "training with firearms."[4] Rather, their

4. Moreover, plaintiffs' position that the "proposed conduct" is "training with firearms" would lead to an absurd result. In any future case, any proposed conduct touching on any type of firearms training would be presumptively protected by the plain text of the Second Amendment. In order to regulate, *e.g.*, the location or restriction of such training if challenged in court, a municipality would be required to reach the second step of the *Bruen* analysis and demonstrate that

proposed conduct is the construction and use of an outdoor, open-air 1,000-yard shooting range. And *that* conduct is clearly not covered by the plain text of the Second Amendment.

The Second Amendment reads in its entirety: "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. In *Heller*, the Supreme Court clarified that the operative clause "guarantee[s] the individual right to possess and carry weapons in case of confrontation" and that self-defense is the "central component" of the right. 554 U.S. at 592, 599 (emphasis omitted). *Bruen* reiterated that the Second Amendment "protect[s] the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense" as well as "to carry a handgun for self-defense outside the home." 142 S. Ct. at 2122. And in applying the new standard, *Bruen* demonstrated how courts are to consider the "plain text."

> As we explained in *Heller*, the "textual elements" of the Second Amendment's operative clause – "the right of the people to keep and bear Arms, shall not be infringed" – "guarantee the individual right to possess and carry weapons in case of confrontation." *Heller* further confirmed that the right to "bear arms" refers to the right to "wear, bear, or carry . . . upon the person or

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the regulation is consistent with the nation's historical tradition of firearms regulation. *Bruen* changed the landscape of Second Amendment jurisprudence, but it did not change it that far.

> in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person."

Id. at 2134 (citations omitted).

So after *Bruen*, Courts must look to whether "the Second Amendment's *plain text* covers an individual's conduct." *Id.* at 2129-30 (emphasis added). Even assuming that the Second Amendment offers ancillary or corollary protection for some forms of training, there is no way to read into the Amendment's "plain text" a right to use and construct a 1,000-yard shooting range. *Cf. Ezell*, 651 F.3d at 708 (describing "the right to maintain proficiency in firearm use" as only "an important *corollary* to the meaningful exercise of the *core right* to possess firearms for self-defense") (emphasis added).

Here, the plain text of the Amendment says nothing about long-range firing or even, for that matter, training more broadly. And as this Court has already said:

> None of the cases plaintiffs cite, and none of which the Court is aware, suggest that a municipality must permit a property owner (or a property lessee) to construct, and for interested gun owners to use, an outdoor, open-air, 1,000-foot shooting range, such as plaintiffs propose. Nor have plaintiffs cited a single case that suggests Howell Township must change its zoning ordinance to permit the construction

> and use of such a facility as a matter of right anywhere within the AR district, which in this case comprises fully two-thirds of the township's land. *The claimed right simply is not encompassed by the Second Amendment.*

(ECF No. 84, PageID.2089) (emphasis added).

Thus, the Court finds that the proposed course of conduct, construction and use of an outdoor, open-air 1,000-yard shooting range, is not covered by the plain text of the Second Amendment. The Court agrees with the Township that because this first question is answered in the negative, the Court need not reach the second (*i.e.* whether historical evidence demonstrates that the regulations are consistent with the nation's historical tradition of firearms regulation). *Bruen*, 142 S. Ct. at 2129-30; (ECF No. 94, PageID.2200-01). Accordingly,

IT IS ORDERED that the Township's motion to dismiss is again GRANTED.

SO ORDERED.