



Law Office of Kristyn J. Houle, PLC

October 26, 2023

Kasson Township Zoning Board of Appeals
10988 S. Newman Road
Maple City, MI 49664

Re: Submittal for Record for Enduro Motorcycle Events Appeals

Dear ZBA Members:

Please accept this letter as a rebuttal of Mr. Wendling's memorandum to the ZBA dated October 25, 2023.

1. Mr. Wendling appears to blame Mr. Cypher for the Applicants' decision to submit their SUP application under Section 7.15 of the Zoning Ordinance. However, it is up to each Applicant to decide under what section of the zoning ordinance they want to apply for their SUP. The Zoning Administrator is there to consult with the applicant, but the ultimate decision is the Applicants. It is my understanding that the Applicants were represented by at least two attorneys during the initial SUP process. I assume the attorneys were consulted with during this time and their advice heeded for their SUP application.
2. ZBA member, Scott Mills' recorded comments during the April 17, 2023 public hearing were neutral. At what point during the hearing Mr. Mills makes his comments is of no concern - it is the substance of the comments and his intent that is important. Obviously, after the *voir dire* of Mr. Mills by the township attorney at the ZBA hearing on October 11, 2023 and the vote of the other ZBA members – it is clear that Mr. Mills does not have a conflict of interest in this matter.
3. I am confused by Mr. Wendling's allegation that the ZBA decided to not review the proposed use as a classification of uses under Section 4.4. (p. 4 of memo). I do not believe the ZBA has made any determination on any of the appeal at this point. A continuation of the ZBA hearing is scheduled for November 20, 2023 and I assume the ZBA is planning on making their decision on all of the appealed matters at that time.
4. Mr. Wendling argues that there is "no racetrack" and the property will remain unimproved and the events will occur for a very limited time on a seasonal basis. (p. 4 of memo). However, there must be a track created prior to any Enduro race event – so the motorcycles know where to go. Additionally, this statement by Mr. Wendling is telling – it is not a temporary land use (there will be at least 8 events per season) – nor is it an outdoor recreational facility as that would require some sort of "facility." This proposed land use is problematic because it is a 3-day/overnight **event** that is not a permitted use nor is it a

use allowed with a special use permit in the FR district. The 72-hour camping/overnight component alone makes this proposed land use completely and utterly an unacceptable use in the FR district. Simply put – this is a square peg trying to fit a round hole.

5. Mr. Wendling once again attempts to distinguish Section 7.15 from the *Galien Township* case. However, as pointed out in previous letters (all of which are a part of the record on appeal), Section 7.15 is even more broad than the Galien Township ordinance which allowed “commercial or industrial uses.” Section 7.15 allows *any* “land and structural uses...” to be decided by the Planning Commission – a clear violation of the MZEA specificity requirement. Additionally, it is not just Mr. Grier and myself that believes this section of the zoning ordinance is invalid, Mr. Grier also consulted with the Michigan Township Attorney who is in complete concurrence with this legal analysis.
6. Regarding Mr. Wendling’s statement that “the ordinance does not provide that the township attorney and/or others outside of the township are allowed to kill the process before it occurs.” (p. 4 of memo). The main point is that the Planning Commission does not have the *authority* under the MZEA and case law to decide on the SUP under section 7.15 – it would mean they are legislating as opposed to administering the zoning ordinance, and only the Township Board may legislate. Additionally, the Ordinance allows for the severability of sections of the ordinance that may be found invalid under the MZEA or Michigan case law. Section 1.5 of the Kasson Township Zoning Ordinance provides: “this Ordinance and the various parts, subsections, paragraphs, sentences, phrases, and clauses thereof are hereby declared to be severable.” In other words, if any part of the Ordinance is found to be invalid, then it is simply severed from the remainder of the valid portions of the ordinance. Frankly, this happens all of the time, and is not that uncommon.
7. The Zoning Administrator has the authority to interpret and decide whether a proposed use would fit the definition under a particular section of the ordinance, such as was decided in the July 7, 2023 decision on section 4.7.2 by Mr. Cypher. The unpublished case cited by Mr. Wendling can easily be distinguished by the facts of this matter. In *Tullio v Attica Township*, the proposed use was a mulching operation that the Courts and ZBA determined fit the definition of agribusiness – which included engaging in the storage and processing of an agricultural commodity (mulch). In that case, agribusiness **was not defined in the zoning ordinance** (only examples were given) so the dictionary was consulted. It was clear that the proposed use fit the dictionary definition. In the matter at hand, Outdoor Recreational Facility and Park **are defined by the ordinance** (as well as examples given for context), and the Zoning Administrator logically concluded the Enduro Race Event did not fit the definition. Even the common or customary meaning of an outdoor recreational facility under section 2.1(J) of the ordinance - would not include the proposed use - which is a 72-hour overnight camping and 8-hour a day dangerous motorcycle racing event. It is clearly a multiple-day and overnight special event - that does not come close to any of the definitions for uses in the FR district. Again - square peg, round hole.
8. Interestingly, regarding the Section 4.7.2 argument - Mr. Wendling does not even argue **why** he believes the Enduro motorcycle race event would fit the definition of an Outdoor Recreational Facility. He does not give any “dictionary definition” or any common or

customary meanings of the term or make any attempt to explain why the proposed use fits the definition of the Outdoor Recreational Facility. On the other hand, the ZBA record contains numerous letters and exhibits as to why the event **does not** fit the definition of an Outdoor Recreational Facility or Park under section 4.7.2 or the common or customary usage of the terms. (See, ie: Ex 9, Ex 11, Ex 22 – and additional public input).

9. Finally, the Applicants argue that the proposed use is a temporary outdoor use under section 5.13. First, it is clearly NOT a temporary use – since the Applicants want to hold at least 8 events per season (which would each be 3-day overnight weekend events for a total of at least 24 days during the peak summer months). Second, the Applicants’ attorney admits that the use is not similar to permitted uses in the FR district under the first sentence of Section 5.13. Third, the second sentence is clearly invalid under the MZEA specificity requirement and *Galien Township* case as argued in previous letters that are a part of the record. Finally, as argued above, the zoning ordinance provides for the severability of sentences, paragraphs, sections, etc., if they are invalid under the law. This is not uncommon, and is a logical safeguard for local zoning ordinances that are subject to constantly changing state statutory and case law.

In conclusion, Mr. Wendling’s October 25, 2023 Memorandum does not present any new or persuasive legal arguments or proofs to support his clients’ appeal and the ZBA should uphold the Planning Commission and the Zoning Administrator’s decisions.

Sincerely,



Kristyn J. Houle