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Kasson Township Zoning Board of Appeals
P.O. Box 62
Maple City, MI 49664

SUBJECT: Definition of Outdoor Recreation Establishment

Dear Zoning Board of Appeals members:

As you are aware, part of the appeal of my client's application for Enduro Races on his property included the denial of the ability of my client to utilize his property at appropriate seasonal times for occasional Enduro Races. As you are aware, the property is located in the Forested District (FR). Under Section 4.7.2 Special Land Uses, a special land use permit can be obtained for "public or private outdoor recreation or park facilities." The Kasson Township Zoning Ordinance defines outdoor recreation establishment as:

" . . . a facility designed and equipped for the conduct of sports, amusement or leisure time activities, and other customary recreational activities outdoors (outside of an enclosed building) and operated as a business and open for use by the public for a fee such as tennis courts, archery ranges, golf courses, miniature golf courses, gold driving ranges, and children's amusement parks."

Part of the reason for this appeal was a determination by the Zoning Administrator that while the definition of *Outdoor Recreation Establishment* is valid and includes language encompassing a special use in the FR zoning District as an Outdoor Recreation Facility, the uses of such a facility are limited to tennis courts, archery ranges, golf courses, miniature golf courses, golf driving ranges and children's amusement parks. However, the rules of grammar to the English language do not support this position. A review of the Cambridge Dictionary online provides as follows: "We can use *such as* to introduce an example or examples of something we mention. We normally use a comma before *such as* when we present a list of examples. Where there is just one example, we do not need a comma:

The shop specializes in tropical fruits **such as** pineapples, mangoes and papayas. (. . . for example, pineapples, mangoes and papayas.)
Countries, **such as** Sweden, have along record of refugees from all over the world.

Such as is similar to *like* for introducing examples, but is more formal and is used more in writing than the word *like*:

She has worked in several countries where English is spoken as a first language, ***such as*** Australia, New Zealand, Canada and so on . (or less formal . . . ***like*** Australia, New Zealand, Canada and so on.)

The rules of grammar are not subject to interpretation. The rules of grammar as well as Michigan's rules of statutory construction apply to zoning and police power ordinances. (See *Gora v City of Ferndale* 456 Mich 704,711; 576 NW 2nd141 1998). If reasonable minds can differ with respect to a meaning to a statute, judicial construction is appropriate. (*Adrian School District v Michigan Public School Employees Retirement System* 458 Mich 326, 332 582 NW 2nd 767 1998). Regardless, courts do not make such changes or allow for or engage in judicial construction and neither should the ZBA if the rule of grammar and thus construction of the language of the ordinance is clear and unassailable.

In the case of *Yankee Springs v Fox* 264 Mich App 604 602 NW 2nd 728 (2004) the issue was the word "or". In reviewing the zoning ordinance in that case, the Michigan Court of Appeals noted that the term *or* is a disjunctive term between two or more things. Accordingly, applying basic grammar rules in rules of statutory construction, the introductory paragraph set forth in Section 15.14.2 of the Zoning Ordinance can only correctly be interpreted in one way. Consequently, there can be no question that for a parcel of land to be used as access property, it must comply with the conditions listed in Section 15.14.2 including:

Said parcel of land shall contain 70 lineal feet of water frontage and a lot depth of at least 100 feet for each dwelling unit **or** each single family unit to which such privileges are extended or dedicated." (Emphasis added on word "or").

In short, the rules of grammar are not subject to interpretation. The phrase *such as* has been clearly utilized in the Kasson Township Zoning Ordinance under the definition of Outdoor Recreation Establishment to provide for examples of such facilities which are **examples only** and are not exclusive to what constitutes an Outdoor Recreation Establishment under the Kasson Township Zoning Ordinance. This application still requires processing by the Planning Commission as a special use permit under Section 4.5.2 of the Kasson Township Zoning Ordinance. Whether or not the standards for the special use permit are met by the applicant is something that must be decided by the Planning Commission. My client cannot be denied access to the Planning Commission by the Zoning Administrator given the unequivocal language of the Kasson Township Zoning Ordinance, including a facility which my client proposes as an outdoor recreation establishment.

Similarly, under Section 5.13 entitled Temporary Outdoor Uses, my clients proposed seasonal Enduro races. Section 5.13 states as follows:

Temporary outdoor uses may be permitted in any zoning district provided that the temporary use is similar in nature to those uses that are allowed by right in the district. **Any other temporary outdoor uses require a review by the Planning Commission and may require an approved site plan at the Commission's discretion in accordance with Chapter 8.** (Emphasis added) A Land Use Permit identifying the location, sponsoring group or individual, and the beginning and ending dates of the use must be obtained from the Zoning Administrator by the event sponsor. The Zoning Administrator shall determine the off street parking requirements for the event.

It is important for the ZBA to note the distinction under Section 5.13. Clearly the Outdoor Recreation Establishment is a special use in the FR district. Therefore the first sentence of Section 5.13 "Temporary Outdoor Uses" would not apply to my client's proposed use. However, the second sentence of Section 5.13 states "**Any other temporary uses . . .**" This means that other uses can still be approved by the Planning Commission, but may require an approved site plan at the commission's discretion in accordance with Chapter 8. It is also clear that Section 5.13, Temporary Outdoor Uses applies to all zoning districts. This issue is also subject to an appeal to the ZBA although other than through a telephone conversation, neither my office nor my client has received a direct ruling on the part of the Zoning Administrator with respect to the application of Section 5.13 for the temporary use proposed by my client. Regardless, I thought it was important to address the application of Section 5.13 to my client's proposed temporary use of this property and bring it to the attention of the ZBA to ensure its consideration as part of the appeal. I will follow up with additional information once I actually receive in writing any specific opinion or reasoning related to Section 5.13 either from the Zoning Administrator or from the township's legal counsel.

Respectfully Submitted,



Peter R. Wendling

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