

## NOTICE OF MEETING

A Regular Meeting of the Leelanau County Planning Commission (LCPC) will be held at **5:30 pm Tuesday, October 25, 2016** at the Leelanau County Government Center.



### LCPC Members

Greg Julian – Chairman  
Victor Goldschmidt – Vice-Chair  
Will Bunek – Chair Pro-Tem  
Fred Cepela  
Dan Hubbell  
Richard Kobetz  
Jessica Lukomski  
David McCulloch  
Jerry Raymor  
Eric Winkelman  
Steve Yoder

### DRAFT AGENDA

### PLEASE TURN OFF AND PUT AWAY ALL CELL PHONES

- CALL TO ORDER
- PLEDGE OF ALLEGIANCE
- ROLL CALL
- CONSIDERATION OF AGENDA
- CONFLICT OF INTEREST
- PUBLIC COMMENT
- STAFF COMMENTS
- CONSIDERATION OF September 27, 2016 Minutes *pgs 2-11*
- UNFINISHED BUSINESS
- NEW BUSINESS
  - A-1 PC13-16-01 Bingham Twn – Section 13.2 Wireless Communication Towers & Equipment *pgs 12-31*
  - A-2 PC14-16-01 Bingham Twn – Article 14 Site Condominium Developments *pgs 32-54*
  - A-3 PC15-16-01 Bingham Twn – Section 11.2 Off Street Parking and Loading *pgs 55-66*
  - A-4 PC16-16-01 Bingham Twn Section 4.6.R.1.h wineries with food service *pgs 67-71*
  - A-5 PC17-16-01 Bingham Twn Housekeeping Amendments *pgs 72-81*
  - B. Recommendation to County Board RE: Appointments *(to be handed out at meeting)*
  - C. Discussion on November 22 & December 13 meeting dates
- REPORTS
  - A. Parks & Recreation Committee *(Julian)*
  - B. Heritage Route *(Lukomski)*
  - C. Education Committee – Report on Annual Fall Session, September 28, 2016 *(Goldschmidt)*
  - D. Report from LCPC members of attendance at township/village meetings, or Other Meetings/Training Sessions
- COMMUNICATIONS
- PUBLIC COMMENTS
- STAFF COMMENTS
- COMMISSIONER & CHAIRPERSON COMMENTS
- ADJOURN

**A REGULAR MEETING OF THE LEELANAU COUNTY PLANNING COMMISSION (LCPC) WAS HELD ON TUESDAY, SEPTEMBER 27, 2016, AT THE LEELANAU COUNTY GOVERNMENT CENTER IN SUTTONS BAY, MICHIGAN.**

**CALL TO ORDER**

Chairman Greg Julian, called the meeting to order at 5:30 p.m. and led the Pledge of Allegiance.

**ROLL CALL**

**Members Present:** Greg Julian, Victor Goldschmidt, Fred Cepela, Dan Hubbell (5:40 PM), Richard Kobetz, Jessica Lukomski, Jerry Raymor, Eric Winkelman, Steve Yoder

**Members Excused:** Will Bunek

**Members Absent:** David McCulloch

**Staff Present:** Trudy Galla, Kristin Holappa

**Public Present:** Sara Kopriva, Don Barrows, Frank Noverr, Toni Tonda

**CONSIDERATION OF AGENDA**

*It was moved by Goldschmidt, seconded by Lukomski, to approve the agenda as presented. On a voice vote, the motion carried, 8 – 0.*

**CONFLICT OF INTEREST**

None

**PUBLIC COMMENT**

Don Barrows, Elmwood Township, discussed a letter sent from Elmwood Township resident Phil Hendges, to Connie Preston on September 18, 2016. The subject of the letter was listed as Referendum Info. The contents of the letter is quoted as follows:

*Clerk Preston,*

*You are aware of my concerns regarding the proposed Elmwood Township Zoning Ordinance...it's length, its complexity and its attempt to micromanage property owners' use of their own property, etc. At face value it appears to be an invitation to challenges and ultimately law suits.*

*Therefore I am asking you, how many valid signatures are required on a petition to put this proposed ETZO to a vote of the electorate in Elmwood Township?*

*I look forward to a timely written response.*

*Respectively yours,*

*Phil Hendges*

Barrows noted Clerk Preston did write back to Mr. Hendges. Barrows stated 294 valid signatures are needed to put Elmwood Township Zoning Ordinance on the ballot, according to Clerk Preston. Barrows felt no matter what the circumstances are on this ordinance, it will most likely be challenged by referendum.

Goldschmidt suggested to Chairman Julian that this not be discussed at this time, but when we get to the agenda item, we align ourselves to the concerns that were raised. Julian noted public comment is not a time for question and answer, but it

may be reiterated under New Business. Goldschmidt suggested discussing the concerns brought forth under the agenda item.

Frank Noverr, 7981 S. Lakeview Rd., Elmwood Township. Mr. Noverr distributed materials regarding Agricultural Tourism. (*Executive Summary: Tourism-Related Benefits in Traverse City's Economy* – Anderson Economic Group, 2013 and *Michigan Agricultural Tourism Advisory Commission, Report of Recommendations, January 2007*). He noted the materials outline how important Ag Tourism is to our area and how important tourism is not only to Leelanau County but to the area in general. He noted there are several things in the Elmwood Township Zoning Ordinance that deal with Agricultural Tourism and it is important to look at Article 9 -19. He noted it is important to go back and look at the old ordinance that is still in effect. The language for wineries and wine related activities is different than from what is in the new ordinance. Wine related activities are held at wineries and there are gatherings for weddings, anniversaries, non-profit gatherings. Wine is usually involved in those activities. The new ordinance has a classification for special events facilities that he sees as different from wineries and wine related activities. Some major changes have been made between the old ordinance and the new ordinance. Now they are all lumped together under Special Event Facilities. Noverr feels these should be separated because they are two different things. Special Event Facilities host events and do not have a license to sell wine or serve wine at those events, whereas a Winery with wine related activities can hold an event as well as sell its product at that event.

Noverr provided examples from Article 9-19 where he believes the ordinance does not work. One requirement, he stated, was all Special Events should be moved inside at 8 pm. The only winery that has been approved in Elmwood Township has a tent for its events that seats up to 150 people. There is no way they can move all of those people at 8 pm into their tasting room. If the ordinance is passed, Brengman Brothers Winery will be non-conforming. Events held on Sunday – Thursday need to be concluded by 8 pm. He has been to many events at Brengman Brothers and when people work until 5:30 or 6 pm there is no way the events can be done by 8 pm. His suggestion is 9am – 10 pm, seven days per week.

Julian noted Noverr would be eligible to speak under New Business on this topic if he cares to do so. At that time, Julian noted there could be dialogue and questions could be addressed. Goldschmidt noted according to procedure the Planning Commission may not address the items brought forward at this point in the meeting. Noverr stated he would hold additional comment until later in the meeting.

#### **STAFF COMMENTS**

Galla noted the final Household Hazardous Waste and Electronics Collection will be held on Saturday, October 8<sup>th</sup> in the Elmwood Township Cherry Bend Park. Please call the Planning Department Office to make a reservation to participate or to volunteer.

#### **CONSIDERATION OF THE AUGUST 23, 2016 MEETING MINUTES**

*It was moved by Goldschmidt, seconded by Winkelman, to approve the August 23, 2016 Minutes as presented On a voice vote, the motion carried, 9 – 0.*

#### **UNFINISHED BUSINESS**

None

#### **NEW BUSINESS**

##### **A. PC12-16-04 Elmwood Township – Zoning Ordinance**

Galla provided a review of the Staff Report. She mentioned the ordinance was divided into chapters and planning commissioners were assigned several chapters (about 30 pages total per member) for in depth review and comment. This is the first time the county planning commission has reviewed a proposed zoning ordinance in this manner. Staff put together a compilation of the comments received after review by commissioners. She noted any additional comments received tonight by members would also be included and sent back to the township for their consideration as well as the Staff Report and minutes from tonight's meeting. She noted the Planning Department obtained consent from Elmwood Township to review the ordinance at tonight's meeting, which was beyond the 30 day review period set forth in the Michigan Zoning Enabling Act (MZEA).

Galla provided a brief history of the Zoning Ordinance in Elmwood Township which was originally adopted in 1969. A new ordinance was introduced in 2002, but after several court cases, it was never put into effect. In 2014 the Elmwood Township Board approved a number of amendments to Definitions, Site Plan Review, Administration and Enforcement, Zoning Board of Appeals and Planned Unit Developments. All were reviewed by the County Planning Commission.

She discussed information in the Michigan Zoning Enabling Act as well as land use information found in the General Plan. While the General Plan serves as a guide, decisions should be made at the local level with regard to regulations. Staff comments include orderly appearance of the zoning ordinance as well as effective use of visual aids in the ordinance. Page 2-9 Gross Floor Area and Gross Leasable Floor Area was cited as an example. The Land Use and Zoning District Table on page 5-2 was also found to be helpful.

Galla noted a typographical error in the table where the minimum lot size in the Rural Residential District was not changed from 5 acres to 1 acre. The township will need to clarify which is correct. The township did have legal counsel review the Zoning Ordinance prior to holding a public hearing.

Staff provided a review of the zoning map in the Staff Report. Galla discussed changes to the legend and districts. Staff recommended adding a north arrow and scale to the Zoning Map. Some labels have also been eliminated including major roads, Cedar Lake, as well as the TART trail.

Galla noted reference is made to the scale on the map in the text of the Zoning Ordinance, but there is no scale on the actual map.

Galla noted significant detail, regarding changes to the ordinance are included in the Staff Report. She briefly reviewed the following items:

- **Definitions: Signs**  
Galla noted the Annual Fall Session on 9/28/16 is devoted to signs and focuses on the requirement of content neutrality when regulating signs. Calling a sign a real estate sign or political sign is not being content neutral. The township still needs some work on this section in order to be compliant with the Supreme Court ruling.
- There are sections in the document that make reference to discretionary decisions and quality of life. Galla noted these are subjective types of determinations. In a zoning ordinance it is better to spell out the requirements.
- Galla briefly discussed the MZEA and the Zoning Board of Appeals. Staff questioned why the township would want to eliminate a possible avenue for citizens to appeal a decision.
- Galla referenced the note at the end of the staff report regarding storm water runoff, native species, buffer areas, etc. She noted the Watershed Center of Grand Traverse Bay, located in Elmwood Township, has numerous resources dealing with these topics and would be happy to provide information to citizens and developers.

Galla referenced an earlier comment regarding a referendum. For people who are not familiar with the MZEA, there is a very short time period in which to file a Notice of Intent. If the Notice of Intent is not filed, it will go no further. Many people do not realize they have this avenue, if they are not satisfied on an amendment or a rezoning request. Galla noted many of the Planning Commissioners have submitted written comments on various sections, which have been put into a compilation and will be shared with the township.

Julian noted written comments have been received by many of the Planning Commissioners. Some commissioners may wish to review their written comments or provide input at this time. Goldschmidt had offered to review the entire ordinance so his comments are on the entire document. Lukowski and McCulloch offered to review the Table of Contents as well as Articles 1 & 2. Bunek and Raymor reviewed Articles 3, 4 & 5. Kobetz and Hubbell reviewed Articles 6 & 7. Julian and Yoder reviewed Articles 8 & 9. Winkelman and Cepela reviewed Articles 10 – 14.

Goldschmidt provided the following general comments. He discouraged the inclusion of definitions in Article 2 that are never found in the ordinance. They should be limited to those used in the ordinance. He felt the ordinance was not really user friendly. As he read it he felt it was more of an attempt to define or convey the regulations. It did not invite the reader to find out what they need to do to get a project approved. He noted this is a matter of perspective, which is very subtle. He noted the statements on lights are whimsy and a little weak, noting a police power ordinance could be considered by the township regarding lighting. He thought Article 14 seemed like an afterthought, inserted after severability. Article 14 is in conflict with the Supreme Court. Goldschmidt said he could not support transfer of the Zoning Ordinance to the Township Board when in violation of the Supreme Court. Goldschmidt discussed confusion with the use of both Special Land Use and Special Use for the same thing. He discussed the use of the term Planned Development instead of Planned Unit Development (PUD). He encouraged the use of PUD as found in the Michigan Zoning Enabling Act. He believes there were issues with capitalization found in the ordinance, including the word Michigan.

Goldschmidt commented on the following parts of his review:

- 15) 2-7, 17 change conservation to production or generation. The purpose of wind turbines is to generate power. Wind turbines are energy generation and energy conversion devices not conservation.
- 16) 2-7, 20-27 Two comments: foster children should be included as part of a "family"; secondly, the fact is that the definition of family unit has been broadened in recent months
- 23) 2-9, 10. Change "average" to "mean"(average of two extremes) - these can be quite different!
- 33) 2-10, 27 and 29 "glare" is defined as "harsh, uncomfortable bright light"; not all light sources produce glare but could be projecting light to a neighbor's window; the shield should eliminate all glare; and also greatly diminishing any illumination.. These two definitions on the draft are begging for clarity. Glare is any uncomfortable bright light. The definition has to be revised. Shields stop all glare.
- 37) 2-11, 45 to intersect means to meet and cross at a point, hence the lot line does not cross the front line, which means it touches the front line, but does not intersect it. Goldschmidt commented a driveway contacts but does not intersect the road. Kobetz believed if it contacts the line (road) it is an intersection.
- 56) 3-1, 26-27 The ZBA may rule on variances for things such as setbacks, minimum height, etc. but has no authority over use variances. However, the ZBA may be asked to interpret words in an ordinance, but definitely not to determine whether a unique use would be acceptable as a follow up of the interpretation. A ZBA may rule on variances for minimum height, but may only interpret variances.
- 62) 3-5, 2 Planning Commissions can't be granted "discretionary" authority, change "at the discretion of the" to simply "by the", if the standards are clear, using them as a criteria for a waiver should be sufficient. Planning Commissions do not have any discretionary authority whatsoever.
- 80) 5-8, 8 The requirement for buildings to be parallel to the road is not sensitive to creativity and aesthetics of buildings sited for a pleasant environment, adaptation to the topography, proper relationship to solar radiation, etc. This should be deleted. Demanding buildings be parallel with roads is boring, commented Goldschmidt. He noted passive solar energy may require building to not be parallel.
- 88) 5-14, 8 Best define penthouse. To some that is a mechanical room, to others the luxurious dwelling of an affluent owner.
- 104) 7-2 What is the density bonus when the open space is 57.5%, 10%, or 20%, ??? or for 70% open space? Actually, it could be given as: density bonus =  $2 \times (\text{percent of open space}) - 100$ ; which gives 0 for 50%, 10 for 55%, 20 for 60%, etc.
- 105) 7-2 .... What does "up to 10%" or "up to 20%, or "up to 30%" mean? How are the criteria quantified? And if we are super in all three, does that then add 60% to the total density bonus? There is a simple equation that can solve it.
- 108) 7-6, 1 remind the reader that all this is the same as what most call PUDs; MZEA speaks about PUDs 30 times, for example: "Site plan submission, review, and approval shall be required for special land uses and planned unit developments. "It never, never, speaks of Planned Developments". (Who has been championing for you to use the word PD, instead of PUD - do they read the MZEA?) Goldschmidt noted the persistence to keep using the word planned development. PUD is more universally used.
- 134) 11-1, 20 This by itself does not stand; suggest that when an applicant submits a request that he signs approval for the Zoning Administrator to make inspections. This is important. There is the issue of writing in the ordinance, the ZA can enter to inspect. Put language 'I authorize the ZA to enter the premise' on permit application.

Goldschmidt noted his major concern was in regard to comments made at the time of the hearing and conversation recorded in the minutes. The township attorney stated there were some excellent public comments, and the Zoning Administrator was to meet with him to discuss them. Goldschmidt wondered if that meeting took place and if the Township Planning Commission reviewed the results of that meeting. If so, we should be seeing a record of that. If not, they need to go back. Goldschmidt noted he was not blaming staff, but the Township Planning Commission should follow up on this.

Lukomski noted her comments pertained to definitions.

p.2-2 **Alteration:** Things can also be made smaller. An alteration can be an *addition or deletion*

p.2-3 **Buffer:** Screening from the *road* should also be included.

p.2-4 **Cluster Residential Development:** It is subjective to say *more efficiently used land*.

p.2-4 **Commercial Use:** It is her understanding if she holds four, 3-day garage sales in a year she would be using her residential land as commercial.

p.2-5 “Means” starts off several of the definitions on this page.

p.2-6 **Decks:** Decks are typically not made of lumber. What if you have a deck with a pergola on it? According to this, it is not a deck. The definition of deck should be enlarged.

p.2-7 **Family Child Care Home:** lists *minor children*. Child Care Center (p.2-4) specifies children under 13 years of age. Nowhere is *minor* defined. The same thing is found under Group Child Care Home (p.2-9).

p. 2-9 **Golf Course:** What about disc golf?

p.2-9 **Housing, Seasonal Help:** It may include tents but doesn’t stipulate you have to have bathroom facilities.

p.2-10 **Launching Ramp, Private:** Lukomski stated she did not understand this definition at all.

p.2-10 **Light Source:** Lukomski noted she has lights that do not produce any glare at all.

p.2-14 **Park:** can be in natural or semi-natural or *planted*. Lukomski suggested using the word *landscaped*, since *planted* suggests crops.

p.2-19 **Signs:** This has been discussed and the definition is not in compliance.

p.2-23 **Wine:** Lukomski found the definitions related to wine interesting. She did not see any definitions related to hops breweries and cideries and felt definitions needed to be expanded to include these other items.

Raymor stated he and Bunek reviewed Sections 3, 4 & 5.

He noted throughout Article 3 there were references made to the Planning Commission. He asked if these references should state the Zoning Administrator. He wanted to confirm the Planning Commission had the authority they were talking about throughout Article 3 and asked for comments and clarification. Goldschmidt noted there are some authorities granted to the Planning Commission in the Michigan Zoning Enabling Act (MZEA) which also specifies authority of the Zoning Administrator. Raymor specifically referenced Section 3.16, C and 3.15, C as examples.

Goldschmidt believed the standards specified were correct in the ordinance.

Kopriva noted Section 3.15 is referring to residential developments which are approved by the Planning Commission. The Planning Commission is reviewing these sections for the fencing and the setbacks. This is why it needs to go to the Planning Commission in this section versus the Zoning Administrator. As the Zoning Administrator she doesn’t approve the development.

Raymor thought it was important to be careful of these terms and to look at them in the ordinance.

He referenced page 3-1 *An incorrect or lack of cross-reference does not relieve a person from complying with all applicable requirements of this Ordinance*. Raymor asked if this was even necessary, as it is self evident.

Kobetz noted he submitted written comments regarding Articles 6 and 7 to staff. He noted the comments were mostly organizational in nature.

Winkelman's comments were submitted in writing. He thought what he had to say was perfunctory or straight forward. He briefly discussed his proposed *Freedom of speech and expression section*.

Cepela noted he had submitted written comments. He did not see a reason to go over the written comments. His major concern regarding the unconstitutional language in the sign section had already been addressed.

Cepela noted there is a definition for commercial and non-commercial wind. He asked Kopriva where commercial wind is addressed in the ordinance. Kopriva noted the use is listed in Article 9. Cepela asked if the use was simply listed or if there were any regulations. Julian referenced Section 9-19. Cepela thought 250 feet was not economically viable for a Wind Energy Conversion System.

Cepela noted Planning Commissioners were assigned sections of the ordinance to review, but he did look at other parts of the ordinance. He asked if stormwater management was included in the ordinance or if low impact development and rain gardens were included. Kopriva noted none of those items are in the ordinance. Cepela said he would encourage the township to consider better management of stormwater. It is critical with the increased severity of storms that we have now. Not managing stormwater is really a threat to our water quality.

In the section on Cluster Development, a 30' buffer is required. He applauded inclusion of this buffer requirement. He did not see any other places in the ordinance where buffering is required along waterfront. He asked if Kopriva recalled any buffer regulations. Kopriva noted there is a setback but not a buffer requirement. Cepela noted he would encourage the township to consider buffering along waterfront instead of just a setback. He noted Michigan State University Extension encourages buffer requirements in order to protect and preserve our water quality.

Yoder noted he submitted written corrections to staff.

Julian discussed his review beginning with Article 8 Site Plan review 8.1 which conveys the purpose of the article in a positive way. Section 8.2 A. Activities Prohibited. He wondered if there was another place to put this section instead of the very first thing that people look at. It was hard to have a section stating how we are going to work together immediately followed by the activities prohibited.

Julian referenced Section 8.3, A, 1 and asked Kopriva if the Chairman of the Planning Commission puts an application for land use permit on the agenda or the Zoning Administrator. Kopriva commented staff receives all applications and forwards them on to the Planning Commission. Julian just wanted confirmation of proper procedure.

Julian referenced 8.3, C, and asked what standards the fire departments use to evaluate the site plan. Kopriva noted it would be whatever ordinance they have in effect and they also use the Michigan Fire Code and International Fire Code. They also look at the road ordinance. Julian wondered if there was a specific standard or things listed, when a fire chief addresses the issue they would have something to go by. Goldschmidt thought the key question would be if emergency vehicles could get in and out. This is something the Fire Chief decides to assure emergency vehicles can get in or out. Kopriva noted access to water is also critical. Goldschmidt noted authority is left to the fire chief. Julian is on the fire board and has discussed this issue with fire chiefs. He thought there could be more specificity in the ordinance in this section.

Julian referenced 9-3, 8. The proposed special land use has met or will meet all requirements of other Township, County, State and Federal ordinance and code requirements. He questioned whether this statement may be overbroad? He wondered if there was another way this could be covered.

Julian briefly discussed the wide range of sizes with fire and emergency vehicles. In Glen Arbor, Winkelman discussed issues with private roads and access to emergency vehicles, particularly in the wintertime. Kopriva noted this section applies more to a subdivision development or commercial uses than single family dwellings or duplexes. Something like a sprinkler system would be found in the building code. A fire chief may recommend a sprinkler system because they have

limited access. Kopriva noted they do not regulate driveways, but if a private road is put in to develop a subdivision, they want to make sure it is wide enough for emergency situations.

Julian discussed Removal of Abandoned Towers 9-10, K, He noted any tower that is not in use for a period of 12 consecutive months is considered abandoned. He questioned whether this is too short of a time period. He believed the wind turbine was out of commission longer than a year. Kobetz noted Centerville's ordinance is only 6 months for a tower to be considered abandoned. Julian thought it might not be enough time to bring the tower back into use.

In section 9-12, Julian questioned how they plan to measure noise, glare, dust and fumes. Unless there is a scientific way this is measured it is too subjective and up to interpretation. Goldschmidt noted it is completely arbitrary.

In reference to 9-13 Kennels, Julian questioned the need to have 5 acres and where they came up with the size. Kopriva noted it is in their current ordinance.

Julian discussed 9-17, H, 1, d Traffic and Circulation, iv. He noted the 'requirement of an attendant' caught his eye. He wondered how many attendants are needed. Kopriva noted it is part of their plan. Lukomski commented if you are going to have a graduation party in Elmwood Township, you will need a parking attendant. Julian asked why an attendant is needed.

Cepela read the commercial wind energy section of the ordinance. He noted it is very inconsistent wording with the non-commercial wind energy section to accomplish the same thing. He thinks consistency would be better. He believes 250 ft. max is overly restrictive. He noted a system is not allowed to produce vibrations that are humanly perceptible. He noted there are scientific ways of measuring this and the township should be using science to determine the vibrations. Cepela's final point references provisions for removal when it is no longer utilized. What is no longer utilized? Is it covered by abandoned tower? If not it needs to be addressed.

Sara Kopriva thanked the members for their detailed review. She appreciated all of the comments. She mentioned hops, cideries and distilleries. The Planning Commission decided to add these items at a later date. The ordinance has been worked on since 2002 and they decided to get the basics down and come back and add newer things coming up. They want to pull these new items all the way through the ordinance and not just slap them in at various locations.

Kopriva appreciated the comments on the childcare definitions. They will go back and look at how they can make them more consistent. Kopriva noted stormwater management and buffers are very hot topics in the township and this is the reason why they do not exist in the ordinance. She noted there was language regarding buffers in the last draft, five or six years ago that went to the Township Board. It was very contentious and was removed by the township board in 2012 or 2013. Cepela did not know why stormwater would be a contentious issue. Kopriva noted they did not want to make it too restrictive for new business or redevelopment of property, but developers still need to deal with it through the state. Kopriva noted they will look at the parking attendant question. Kopriva noted they have had many, many people work on the ordinance including 8 different planners. Kopriva briefly discussed the process.

They had a public hearing in August but they also held a public hearing in October and February. They did discuss the comments received at the August public hearing. She noted a lot of the comments were the same comments they had heard at other public hearings, that they had already addressed or decided they did not need to address or were not reasonable. At one point the Planning Commission went through every letter they received and decided what to do with the suggestions. The Planning Commission was diligent that public comment was reviewed and incorporated when they felt it necessary.

Barrows commented that his wife is a Trustee on the Elmwood Township Board and representative to the Planning Commission. He noted Trustee Barrows would be conveying the information from the county to the Township Board. He commented the work of the Planning Commission is not legal and binding and neither is the Master Plan. They have to be adopted by the Township Board. Goldschmidt noted the County Planning Commission comments go directly to the Township Board. Galla clarified that her office sends all correspondence to the Township Board, the Zoning



Administrator as well as the Planning Commission, (for all members that have email) so they receive the recommendations from the county. It is also available to the public and is posted on the website.

Barrows referenced circumstances to put it on the ballot. He mentioned Rives Township, Jackson County was the most recent township to have their Zoning Ordinance put on the ballot. They are also using information from Steve Mikowski concerning the Leland Township Zoning Ordinance. Galla noted her earlier comments on referendum should not be interpreted as if she was promoting this step. She only pointed out that it is allowed under the Michigan Zoning Enabling Act (MZEAA). It is a decision that is made at the local level whether or not a referendum is pursued. The MZEAA spells out the process. Goldschmidt stated conceptually it happens after the board approves it and it becomes an official document, is when the appeal should come.

Noverr noted it has taken 14 years for the Township Planning Commission to get the document to the County Planning Commission. He does not understand why they need to have it back in 30 days. He encouraged commissioners to take more time. He was impressed with how the commissioners are marking it up. He noted there are 26 wineries in Leelanau County. It is the biggest growth industry in the county in terms of sales and jobs. He implored the LCPC to look at what it has done to wineries. In three or four places, it makes the only winery in Elmwood Township, Brengman Brothers, a non-conforming use. It will affect the growth of that industry in our township. He suggested seeking out other wineries in the county for input on the ordinance and what it would do to the industry. After looking at the ordinance, he believes wineries would not want to operate in Elmwood Township. Sunday through Thursday, the winery needs to close at 8 pm. This does not make any sense. In addition, you can only have one event per week. It is like going to the Cherry Bend Store and telling them they can only be open one day a week. It is anti-business and anti ag tourism. Someone needs to take a look at it and provide feedback to the township. He would like to have the industry look at it and ask them if they think it would be good for the township. It is a huge business that generates a lot of money and jobs. It is a business that really supports ag tourism. Our area has become a destination for weddings and conventions. Within the ordinance, when it comes to wineries, it is not a good thing. He implores the commissioners to talk to the industry and ask if they can live with what is in the ordinance. He is willing to bet they will say "I am not moving my winery to Elmwood Township."

Toni Tonda, Elmwood Township, asked when you look at the wording in this ordinance, who is going to enforce it? At our (Elmwood Township Board) meetings, they say Sara will enforce it as our Zoning Administrator. There are a lot of things in the ordinance that she will have to enforce and it is not feasible. In the winery section, people have to move indoors at 8 pm. If someone goes outside to make a phone call, are they in violation? Is the owner of the facility going to get called in for a violation of the ordinance because a neighbor saw some people outside? She knows it is ridiculous, but it is going to happen. She agrees with Noverr, additional time needs to be spent on a lot of sections in this ordinance.

Goldschmidt appreciates the comments and the study they have gone through. Unfortunately, the commission is a body who has been authorized to review and comment. The comments are to be focused not on whether it is enforceable, but whether an enforceable procedure has been established. We are acting on procedures and fidelity to the zoning act and other state acts. His concern is focused on three parts: The conversation that the attorney was supposed to hold with the Zoning Administrator, was it held and where is the record of it? Language regarding signs needs to comply with the Supreme Court decision. Discretionary authority cannot be placed on the Zoning Administrator or the Township Planning Commission. Goldschmidt added that it was not our job to determine whether an industry gains or loses money.

Julian addressed the public and noted we can receive your comments, even though we may be limited on how we can act on them. This is a good venue in which to come and let your voice be heard, which is what you have done.

Noverr asked if you have a situation where there is only one winery under the new ordinance and the new ordinance makes it a non-conforming use - what does that do? Don't you want to avoid having this happening at all costs?

Goldschmidt noted if this is the case it is capricious and exclusionary. He recommended seeking out an attorney to interpret that.

Winkelman says he is hearing restrictions on wineries and their events versus the concerns of the adjacent neighbors. He likes the idea of getting the wineries together to come up with a plan. Vendors, tasting rooms, the wine industry has become an important element in Leelanau County. At the same time adjacent property owners may feel they have been infringed upon by certain events. He believes it is important for the wine industry to take a look at this ordinance and other township ordinances to see if they are in conflict with their operations. They are an important element of Leelanau County.

Kobetz noted serenity and peacefulness is also a very important part of Leelanau County and it is very important to a lot of people. It needs to be accommodated as well, it is a big draw for the county.

Galla noted there has been a lot of discussion on signage and Article 14 and the definitions. Winkelman talked earlier about signs with uncomfortable language or graphics on a sign and that would determine how you would limit it. She did not believe that would pass the content neutral test, which is what we are stressing. Are we sending conflicting messages to the township on this matter? Regardless of the message on the sign, if you have to read it to determine how it will be regulated, then you are not going to meet the test of 'content neutral'. Winkelman said he was trying to attempt to meet the requirements and protect the general public from things that are distasteful to see. If it is not workable, so be it.

*It was moved by Cepela, seconded by Kobetz, to transfer this review to Elmwood Township along with the Staff Report and Commissioners' Comments. Nothing should be acted upon until the document is in agreement with the Supreme Court ruling.*

*On a voice vote, the motion carried, 9 – 0.*

Barrows commented the sum total of probably less than 30 people will affect 4,000 people. It is the reason why people are so upset. So few people are making decisions for so many people. Please keep that in mind in your own townships.

Julian noted there is often a lack of input from our citizens. It is a representative republic and hopefully the proper representatives are in place to make proper decisions.

## **REPORTS**

### **A. Parks & Recreation Committee**

Julian noted a new 4H Archery program is happening at Myles Kimmerly Park.

### **B. Heritage Route**

Winkelman attended the Heritage Route Meeting. Signs were the topic. The National Park and MDOT are working together. The four segments should have been completed this summer, now they are looking at completion by the middle of October. There were challenges with the bridge at the south end of Narada Lake. Segment 5 of the Sleeping Bear Heritage Trail from Bohemian Rd. to Good Harbor Rd. is still in a court situation with Little Traverse Lake residents. He noted Benzie County is attempting to come up with their own Sleeping Bear Heritage Route. They are at the point in the process where Leelanau County was ten years ago. It would be nice to connect with a trail in Benzie County in the future.

The Sleeping Bear Heritage Route Committee has created a letter in conjunction with the Old Mission Scenic Heritage Route Committee in response to perceived abuse of the Tourist Oriented Directional signs (TODS). There is a list of all of the businesses who have taken advantage of the guidelines for TODS in both Grand Traverse and Leelanau Counties. The letter will be sent to engineer, Mark Bott, of the Michigan Department of Transportation. It is up to them to do something about it. He noted they still need to meet with the Old Mission Scenic Heritage Route committee.

Winkelman noted it is undetermined whether this committee needs to continue once this letter is sent, as the mission of the committee has been accomplished. He said the committee may discontinue meeting, unless services are needed.

Winkelman mentioned the Sleeping Bear Heritage trail is separate from the Heritage Route, maintained by the volunteers of Friends of the Sleeping Bear Dunes and the Park Service who has ultimate supervisory authority.

**C. Education Committee**

Goldschmidt noted there is a great educational opportunity tomorrow night at the Annual Fall Planning Session on signs. Raymor and Lukomski are the social chairs for the evening and will greet the attendees. Commissioners were asked to bring refreshments and make sure everyone feels welcome.

**D. Report from LCPC members of attendance at township/village meetings**

Julian said he attended the Kasson Township Board meetings and Fire Board meetings.

**COMMUNICATIONS**

Housing Summit Oct 24<sup>th</sup>

**PUBLIC COMMENTS**

None

**STAFF COMMENTS**

None

**COMMISSIONER & CHAIRPERSON COMMENTS**

Goldschmidt, Lukomski, Raymor and Winkelman thanked staff for their work on the review of the Elmwood Township Zoning Ordinance. Winkelman noted the guests in attendance at the meeting really appreciated having commissioners listen to what they had to say. He thought it was a positive experience for them.

Julian thanked staff for work on the review of the ordinance and Household Hazardous Waste Collections and encouraged everyone to drive safe!

*It was moved by Winkelman, seconded by Cepela to adjourn the meeting.  
The meeting adjourned at 7:40PM*

**TEXT AMENDMENT REVIEW**  
**PC13-16-01 Bingham Township**  
*Text Amendment – Wireless Communication*

**Reviewing Entity:** Leelanau County Planning Commission  
**Date of Review:** October 25, 2016

Section 1: General Information	
<b>Date Request Received:</b>	October 7, 2016
<b>Last Day of Review Period:</b>	November 6, 2016
<b>Requested Action:</b>	Review and comment on proposed amendments to the Bingham Township Zoning Ordinance.
<b>Applicant:</b>	Bingham Township Planning Commission Mike Park, Chairman

Section 2: Proposed Text
<p>The proposed amendment was submitted by email on October 7, 2016 and are intended to amend Article 13 Quasi Public and Private Utilities, Section 13.2 Wireless Communication Towers and Equipment.</p> <p><i>See Appendix A for 'proposed text'.</i>  <i>For Current text, Link to the Bingham Township Zoning Ordinance: <a href="http://www.leelanau.cc/inghamtwpord.asp">http://www.leelanau.cc/inghamtwpord.asp</a></i></p>

Section 3: Other Planning Input
<p><b>Township Plan: Township Plan:</b> The Township Comprehensive Plan (2015) does not specifically address the proposed amendments.</p>
<p><b>Leelanau General Plan:</b> The Leelanau General Plan (2012) does not specifically address the proposed amendments.</p>
<p><b>Township Planning Commission:</b> At a public hearing held on October 6, 2016, the Bingham Township Planning Commission approved a review by the County Planning Commission.</p>

Section 4: Analysis			
<b>1. Compatibility</b>	<b>Yes</b>	<b>No</b>	<b>NA</b>
A. Is the proposed text <b>compatible</b> with other language in the zoning ordinance?	<b>X</b>		
B. Are there any <b>issues</b> with the proposed text (such as poor wording, confusing text, unenforceable language, etc.)?		<b>X</b>	

C. Do the land uses or other related dimensional standards (height, bulk, area, setback, etc.) in the proposed text amendment(s) <b>conflict</b> with the existing zoning ordinance?		<b>X</b>	
<b>2. Issues of Greater Than Local Concern</b>			
A. Does the proposed text amendment(s) include any issues of greater than local concern? Please list.		<b>X</b>	
<b>3. Comparison with Local Plans or Ordinances</b>			
A. Do the contents in the proposed text amendment(s) conflict with the community's plan? Please list.		<b>X</b>	
<b>4. Comparison with County Plans or Ordinances</b>			
A. Do the contents in the proposed text amendment(s) conflict with the General Plan? Please list.		<b>X</b>	

**Section 5: Staff Comments**

Bingham Township has proposed a Zoning Ordinance Amendment to Article 13 – Quasi Public and Private Utilities, Section 13.2 Wireless Communication Towers and Equipment. The township has noted there have been substantial revisions due to amendments made to the Michigan Zoning Enabling Act on this topic. Most of the language was provided by the Township Attorney. It was also noted by Township Planner, Kathy Egan, several members of the Cherryland Amateur Radio Club reviewed the language as it pertains to Amateur Radio operators. The amendments and the draft township planning commission minutes are attached in the Appendix. The current zoning ordinance can be found online at: <http://leelanau.cc/binghamtwpord.asp>

Attached is a letter from the Township Planner, draft minutes from the township planning commission, and a letter from Bingham Township Attorney, Tom Grier.

**Zoning Ordinance Amendment 16-003 Wireless Communications**

**MICHIGAN ZONING ENABLING ACT (EXCERPT)**  
**Act 110 of 2006**

125.3514 Wireless communications equipment as permitted use of property; application for special land use approval; approval or denial; authorization by local unit of government; definitions.  
 Sec. 3514.

- (1) Wireless communications equipment is a permitted use of property and is not subject to special land use approval or any other approval under this act if all of the following requirements are met:
  - (a) The wireless communications equipment will be collocated on an existing wireless communications support structure or in an existing equipment compound.
  - (b) The existing wireless communications support structure or existing equipment compound is in compliance with the local unit of government's zoning ordinance or was approved by the appropriate zoning body or official for the local unit of government.
  - (c) The proposed collocation will not do any of the following:
    - (i) Increase the overall height of the wireless communications support structure by more than 20 feet or 10% of its original height, whichever is greater.

(ii) Increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation.

(iii) Increase the area of the existing equipment compound to greater than 2,500 square feet.

(d) The proposed collocation complies with the terms and conditions of any previous final approval of the wireless communications support structure or equipment compound by the appropriate zoning body or official of the local unit of government.

(2) Wireless communications equipment that meets the requirements of subsection (1)(a) and (b) but does not meet the requirements of subsection (1)(c) or (d) is a permitted use of property if it receives special land use approval under subsections (3) to (6).

(3) An application for special land use approval of wireless communications equipment described in subsection (2) shall include all of the following:

(a) A site plan as required under section 501, including a map of the property and existing and proposed buildings and other facilities.

(b) Any additional relevant information that is specifically required by a zoning ordinance provision described in section 502(1) or 504.

(4) After an application for a special land use approval is filed with the body or official responsible for approving special land uses, the body or official shall determine whether the application is administratively complete. Unless the body or official proceeds as provided under subsection (5), the application shall be considered to be administratively complete when the body or official makes that determination or 14 business days after the body or official receives the application, whichever is first.

(5) If, before the expiration of the 14-day period under subsection (4), the body or official responsible for approving special land uses notifies the applicant that the application is not administratively complete, specifying the information necessary to make the application administratively complete, or notifies the applicant that a fee required to accompany the application has not been paid, specifying the amount due, the running of the 14-day period under subsection (4) is tolled until the applicant submits to the body or official the specified information or fee amount due. The notice shall be given in writing or by electronic notification. A fee required to accompany any application shall not exceed the local unit of government's actual, reasonable costs to review and process the application or \$1,000.00, whichever is less.

(6) The body or official responsible for approving special land uses shall approve or deny the application not more than 60 days after the application is considered to be administratively complete. If the body or official fails to timely approve or deny the application, the application shall be considered approved and the body or official shall be considered to have made any determination required for approval.

(7) Special land use approval of wireless communications equipment described in subsection (2) may be made expressly conditional only on the wireless communications equipment's meeting the requirements of other local ordinances and of federal and state laws before the wireless communications equipment begins operation.

(8) If a local unit of government requires special land use approval for wireless communications equipment that does not meet the requirements of subsection (1)(a) or for a wireless communications support structure, subsections (4) to (6) apply to the special land use approval process, except that the period for approval or denial under subsection (6) is 90 days.

(9) A local unit of government may authorize wireless communications equipment as a permitted use of property not subject to a special land use approval.

(10) As used in this section:

(a) "Collocate" means to place or install wireless communications equipment on an existing wireless communications support structure or in an existing equipment compound. "Collocation" has a corresponding meaning.

(b) "Equipment compound" means an area surrounding or adjacent to the base of a wireless communications support structure and within which wireless communications equipment is located.

(c) "Wireless communications equipment" means the set of equipment and network components used in the provision of wireless communications services, including, but not limited to, antennas, transmitters, receivers, base stations, equipment shelters, cabinets, emergency generators, power supply cables, and coaxial and fiber optic cables, but excluding wireless communications support structures.

(d) "Wireless communications support structure" means a structure that is designed to support, or is capable of supporting, wireless communications equipment, including a monopole, self-supporting lattice tower, guyed tower, water tower, utility pole, or building.

**Staff Comments:**

Staff questions compliance of *Section 13.2.9 Specific Wireless Tower Special Land Use Standards* regarding signage as to whether it is in compliance with the Supreme Court decision regarding content neutral signs. The size and location of the sign may be regulated, but not the content.

*A. Wireless Towers shall not be used for advertising purposes and shall not contain any signage except signage which shall show the identity of the service provider and emergency telephone numbers.*

Regarding *Section 12.2.11 Special Land Use Conditions of Approval and Decisions Based on Substantial Evidence*, at what point in the process will the conditions outlined in this section be required of the applicant?

# Appendix

- **Letter from Township Attorney**
- **Proposed Amendment**



February 23, 2016

William M. Davison  
Richard W. Ford  
Kent E. Gerberding  
Michael I. Conlon  
Alan J. Couture  
Catherine D. Jasinski  
Thomas A. Grier

Kathy Egan  
Land Use Planner  
Suttons Bay-Bingham Township  
Office of Planning and Zoning  
P.O. Box 457  
Suttons Bay, MI 49682

Of Counsel  
Robert B. Guyot, III  
Keith L. Leak

Re: Zoning Ordinance Amendments Wireless Communication

Harry T. Running  
(1911-1992)

William L. Wise  
(1928-2014)

Dear Kathy:

Miles C. Gerberding, PLC  
(1930-2015)

Enclosed please find the revised Section 13.2 of the Zoning Ordinance that addresses wireless communication (cellular telephone) equipment and towers. The revisions made have been fairly extensive and I have dispensed with a "track changes" draft because of the extent of the changes.

PLEASE REPLY TO:  
☐ TRAVERSE CITY  
326 E. State Street  
P.O. Box 686  
Traverse City, MI  
49685-0686  
Ph. 231.946.2700  
Fax 231.946.0857

In doing the changes, the main focus has been on the statutory requirements of the Zoning Enabling Act ("ZEA") at MCL 125.3514 which apply to cellular – wireless communications.

☐ CHARLEVOIX /  
PETOSKEY \*  
201 State Street  
Suite 200  
Charlevoix, MI 49720  
Ph. 231.547.8990

As a brief recap, MCL 125.3514 has a three-part scheme of regulation:

**Part 1** treats the collocation process as a purely permitted use provided that the act of co-locating new antennae does not increase the height of an existing tower (more than 20 feet or 10 percent of its original height whichever is greater). and does not increase either the width of the tower or the area of the equipment envelope on the ground beyond certain limits.

☐ FRANKFORT \*  
P.O. Box 272  
Frankfort, MI 49635

**Part 2** treats collocation, where there will be an increase of the tower size, ground envelope, etc. beyond the limits in Part 1, as a special land use, but calls for an expedited approval process.

**Part 3** provides for special land use approval for entirely new wireless tower applications, but provides for a longer approval process than Part 2.

☐ GAYLORD \*  
440 W. Main Street  
Suite B  
Gaylord, MI 49735  
Ph. 989.619.5000

MCL 125.3214 further allows townships discretion to treat any wireless equipment applications as a permitted use, rather than a special land use.

The revised Section 13.2 had been approached with the requirements of MCL 125.3214 in mind.

\* By Appointment Only

The following is a summary of the ordinance's organization:

**Sections 13.2.1 and 13.2.2** address the intent of the section and pertinent definitions. Note, many of the definitions now more closely reflect those in MCL 125.3214.

**Section 13.2.3** provides that wireless towers and equipment are allowed as a special land use or a permitted land use in all zoning districts except the Residential District.

**Section 13.2.4** reflects Part 1 of the statute treating collocations as a permitted use.

**Section 13.2.5** reflects Part 2 of the statute for the collocations which require greater modification of existing towers and facilities beyond that of Part 1. This section also lays out the framework for the special land use approval process in general.

**Section 13.2.6** treats the *replacement* of existing wireless towers as a permitted use.

**Section 13.2.7** discusses briefly the requirements for the approval of entirely new wireless towers or equipment cross referencing other sections

**Section 13.2.8** provides for general special use standards - pre-requisite for approval – for wireless towers. For example, there is a discussion about the need for a showing that existing towers do not have sufficient capacity.

**Section 13.2.9** addresses specific special land use dimensional standards for placement of towers.

**Section 13.2.10** addresses standards for the ground level equipment envelope (size of the shelter, setbacks, etc.). Note. There is a distinction between the industrial district and other districts.

**Section 13.2.11** addresses the standards for *conditions* that can be made part of a special land use approval. These conditions are taken from the ZEA. This section also requires that there be substantial evidence when making a special land use determination. This reflects the federal statutory requirement.

**Section 13.2.12** provides for an escrow fee.

**Section 13.2.13** provides for site plan conditions.

**Section 13.2.14** addresses the co-location commitment of an applicant.

**Section 13.2.15** addresses the removal of abandoned towers.

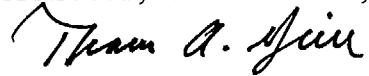
**Section 13.2.16** addresses non-conforming towers.

**Section 13.2.17** addresses variances and appeals.

If you should have any further questions or comments, please contact me.

Sincerely,

RUNNING, WISE & FORD, PLC



Thomas A. Grier

Direct Dial No. (231) 922-1286

TAG/jr

**BINGHAM TOWNSHIP  
ORDINANCE NO. \_\_\_\_\_**

**(Zoning Ordinance Amendment No. 16-003)**

**AN ORDINANCE TO AMEND  
THE BINGHAM TOWNSHIP ZONING ORDINANCE  
AN AMENDMENT TO THE BINGHAM TOWNSHIP PERMANENT ZONING ORDINANCE  
BY AMENDING ARTICLE 13 QUASI PUBLIC AND PRIVATE UTILITIES.**

**BINGHAM TOWNSHIP ORDAINS:**

**Bingham Township Ordinance Section 1: Amendment of Article 13 Quasi Public and Private Utilities**

Section 13.2 of the Bingham Township Zoning Ordinance is hereby amended to read in its entirety as follows:

**SECTION 13.2 WIRELESS COMMUNICATION TOWERS AND EQUIPMENT**

**SECTION 13.2.1 INTENT**

The general purpose and intent of these regulations is to regulate the establishment of Wireless Towers and Wireless Equipment in accordance with MCL 125.3514 of the Michigan Zoning Enabling Act (“ZEA”) and the Federal Telecommunications Act of 1996 (“FTA”) and in recognition of the public need and demand for advanced telecommunication and information technologies and services balanced against the impacts such facilities may have on properties within the Township. It is further the purpose and intent of these regulations to:

- A. Provide for the appropriate location and development criteria for Wireless Towers and Wireless Equipment within the Township.
- B. Minimize the adverse effects of such facilities through careful design and siting; maximize the use of existing and future communication Wireless Towers and encourage the multiple uses of such facilities and protect the character of residential areas throughout the Township by limiting Wireless Towers to non-residential zoning districts.
- C. Promote the public health, safety, and welfare of the Township.

**SECTION 13.2.2 DEFINITIONS**

As used in this Section 13.2, the following terms shall have the meanings set forth below:

- A. "Antenna" means any exterior transmitting or receiving device mounted on a tower, building or structure that radiate or capture electromagnetic waves, digital

signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

- B. "Backhaul network" means the lines that connect a provider's towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.
- C. "Collocate" means to place or install wireless communications equipment on an existing Wireless Tower or in an existing Equipment Compound. "Collocation" has a corresponding meaning.
- D. "Equipment compound" means an area surrounding or adjacent to the base of a wireless communications support structure and within which wireless communications equipment is located
- E. "FAA" means the Federal Aviation Administration.
- F. "FCC" means the Federal Communications Commission.
- G. "Height" means, when referring to a tower or other structure, the distance measured from the finished grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.
- H. "Preexisting Wireless Towers, Antennas and Equipment Compound" means any tower, antenna equipment compound for which a land use and building permit or special use permit has been properly issued prior to the effective date of this ordinance, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.
- I. "Wireless Communication" means wireless, broadband, licensed or unlicensed, terrestrial or satellite, including commercial mobile, private mobile, broadcast, and public safety services, as well as fixed wireless services such as microwave backhaul or fixed broadband, and other such services. Wireless Communication does not include non-commercial amateur ham radio activity.
- J. "Wireless Equipment" means the set of equipment and network components used in the provision of commercial wireless communications services, including, but not limited to, antennas, transmitters, receivers, base stations, equipment shelters, cabinets, emergency generators, power supply cables, and coaxial and fiber optic cables, but excluding Wireless Towers. Wireless Equipment does not include non-commercial amateur ham radio activity.
- K. "Wireless Equipment Shelter" means a small building at the base of a Wireless Tower, located within the Equipment Envelope where Wireless Equipment is stored.

- L. "Wireless Tower" means a structure that is designed to support, or is capable of supporting, wireless communications equipment, including a monopole, self-supporting lattice tower, guyed tower, water tower, utility pole, or building. The term "Wireless Tower" includes "Alternative Tower Structure" including man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers. An AM array, consisting of one or more tower units and supporting ground system which functions as one AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Wireless Tower does not include a tower used for non-commercial amateur ham radio activity.

### **SECTION 13.2.3 ZONING DISTRICT RESTRICTIONS**

Wireless Towers and Wireless Equipment, whether classified as a permitted use, or as a special land use, under the following provisions of this Zoning Ordinance, shall be allowed in all zoning districts in the Township, except for the Residential District.

### **SECTION 13.2.4 WIRELESS EQUIPMENT AS A PERMITTED USE**

- A. To encourage co-location and to minimize the number of Wireless Towers within the Township, Wireless Equipment shall be considered a permitted use of property and is not subject to special land use approval or any other approval under this Zoning Ordinance if all of the following requirements are met:
1. The Wireless Equipment will be collocated on a Pre-existing Wireless Tower or in an Existing Equipment compound.
  2. The proposed collocation will not do any of the following:
    - a. Increase the overall height of the Wireless Tower by more than twenty (20) feet or ten (10) percent of its original height, whichever is greater.
    - b. Increase the width of the Wireless Tower by more than the minimum necessary to permit collocation.
    - c. Increase the area of the Existing Equipment compound to greater than two-thousand-five-hundred (2,500) square feet.
  3. The proposed collocation complies with the terms and conditions of any previous final approval of the Wireless Tower or Equipment Compound under this Zoning Ordinance.
- B. Additional towers within an existing Wireless Tower AM array shall be permitted as a matter of right.

**SECTION 13.2.5 WIRELESS EQUIPMENT AS A PERMITTED USE WITH SPECIAL LAND USE APPROVAL**

Wireless Equipment that meets the requirements of Section 13.2.4 A. 1. but does not meet the requirements of Section 13.2.4. A. 2. shall be a permitted use as long as it receives special land use approval under the following provisions:

- A. An application for special land use approval of wireless communications equipment described in this Section 13.2.5 shall include all of the following:
  - 1. A site plan as required under Section 13.2.13 including a map of the property and existing and proposed buildings and other facilities.
  - 2. Any additional relevant information that is specifically required by other Subsections.
  
- B. After an application for a special land use approval is filed with the Zoning Administrator, the Zoning Administrator shall determine whether the application is administratively complete. Unless the Zoning Administrator proceeds as provided under subsection (3) below, the application shall be considered to be administratively complete when the Zoning Administrator makes that determination or fourteen (14) business days after the Zoning Administrator receives the application, whichever is first.
  
- C. If, before the expiration of the fourteen (14) day period under subsection (4), the Zoning Administrator notifies the applicant that the application is not administratively complete, specifying the information necessary to make the application administratively complete, or notifies the applicant that a fee required to accompany the application has not been paid, specifying the amount due, the running of the fourteen (14) day period under subsection (4) is tolled until the applicant submits to the Zoning Administrator the specified information or fee amount due. The notice shall be given in writing or by electronic notification. A fee required to accompany any application shall not exceed the Township's actual, reasonable costs to review and process the application or one thousand (1,000) dollars, whichever is less.
  
- D. The Planning Commission shall approve or deny the application not more than sixty (60) days after the application is considered to be administratively complete. If the Planning Commission fails to timely approve or deny the application, the application shall be considered approved and the Planning Commission shall be considered to have made any determination required for approval.

**SECTION 13.2.6 REPLACEMENT OF EXISTING COMMUNICATION TOWERS**

An existing wireless tower which was lawful at the time of its construction may be replaced for purposes of accommodating co-location of additional antenna, or otherwise, provided that:

- A. The replacement tower shall not exceed the prior approved height.
- B. The replacement tower shall be located within the same zoning lot as the existing wireless tower and shall be located so as to maximize compliance with existing minimum yard requirements.
- C. The applicant shall cause the existing tower to be removed within ninety (90) days of completion of the replacement tower and the relocation or installation of the antenna. In any event, the existing wireless tower shall be removed within one hundred eighty (180) days of the Township's final construction inspection of the replacement wireless tower.
- D. If the location of the replacement tower is such that the existing tower must be moved before the replacement tower is constructed, temporary portable antenna support facilities may be used, but must be removed within ninety (90) days of the completion of the replacement tower and the relocation or installation of the antenna. In any event, the temporary portable antenna facilities must be removed within one hundred eighty (180) days of the Township's final construction inspection of the replacement wireless tower.
- E. The installation of a replacement tower in any zoning district shall be approved by the Zoning Administrator through the issuance of a land use permit. The Zoning Administrator shall approve such requests that meet the requirements of this section. Review by the Zoning Administrator shall be without notice.
- F. This section shall not exempt the applicant from such other governmental review and permitting procedures (i.e., Federal Communication Commission (FCC), Federal Aviation Administration (FAA), etc.).

**SECTION 13.2.7 NEW WIRELESS TOWERS AND WIRELESS EQUIPMENT APPLICATIONS**

Wireless Towers to be newly-approved, and Wireless Equipment that do not qualify for co-location or for use in an existing Equipment Envelope under Section 13.2.4, and Section 13.2.5 shall require an application for approval under a special land use permit under the procedures in Section 13.2.5 except that the period for approval or denial is ninety (90) days.

**SECTION 13.2.8 GENERAL SPECIAL LAND USE STANDARDS FOR WIRELESS TOWERS**

A new wireless tower shall not be approved unless it can be demonstrated by the applicant that there is a need for the new wireless tower which cannot be met by placing an antenna on an existing wireless tower, or on another structure, or through the replacement of an existing wireless tower. Information concerning the following factors shall be considered in determining that such need exists:



- A. Insufficient structural capacity of existing wireless towers or other suitable structures and infeasibility of reinforcing or replacing an existing wireless tower.
- B. Unavailability of suitable locations to accommodate system design or engineering on an existing wireless tower or other structures.
- C. Radio frequency interference or other signal interference problems at existing wireless towers or others structures.
- D. The refusal of owners or parties who control wireless towers or other structures to permit an antenna to be attached to such wireless towers or structures.
- E. Other factors which demonstrate the reasonable need for the new wireless tower.

**SECTION 13.2.9      SPECIFIC WIRELESS TOWER SPECIAL LAND USE STANDARDS**

The following standards apply to all Wireless Towers requiring a special use permit.

- A. A Wireless Tower may be located on a zoning lot containing other principal uses. The wireless tower may be located within an area smaller than the minimum lot size of the applicable zoning district provided the zoning lot complies with the applicable minimum lot size for the existing principal use or is a legally established nonconforming lot. The area within which the wireless tower is located shall be the area subject to the requirements of this section, rather than the entire zoning lot, unless otherwise provided herein.
- B. The Wireless Tower shall meet all requirements of the zoning district in which it is located which are not inconsistent with this section. Minimum yard requirements shall be measured from the boundary of the zoning lot to the closest portion of the wireless tower, or the accessory equipment or storage area, whichever is closer.
- C. The minimum distance between a Wireless Tower and any property line shall be equal to the height of the proposed tower, unless engineering specifications provided dictate otherwise, as determined through a certification by a licensed and registered professional engineer.
- D. Wireless Towers shall be constructed and maintained in compliance with all applicable construction codes, which include the Electronics Industries Association/ Telecommunications Industry Association (EIA/TIA) Structural Standards of Steel Antenna Towers and Antenna Supporting Structures.
- E. Wireless Towers shall not be used for advertising purposes and shall not contain any signage except signage which shall show the identity of the service provider and emergency telephone numbers.

- F. Fencing shall be required to ensure security and safety of a Wireless Tower with accessory equipment structure or storage area. Fences shall consist of durable wood, vinyl, metal or other similar materials and shall not contain barbed wire, razor wire, electric current, or charge of electricity. Fences shall not exceed a height of eight (8) feet.
- G. The Wireless Tower shall have a landscaped buffer so that the base of the wireless tower and accessory equipment structure or storage area shall be screened from any right-of-way or residential use. Such landscaped buffer shall be placed on the site in a manner which will maximize the aesthetic and environmental benefits, while at the same time providing the visual buffer required herein. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the equipment storage area. Quality and composition of landscape elements shall be of generally acceptable evergreen varieties and species of trees and shrubs hardy to Leelanau County. The buffering requirements outlined herein may be waived by the Zoning Administrator or Planning Commission where existing vegetation to be maintained on the site generally accomplishes the same effect.
- H. Wireless Towers shall not have a shiny or reflective finish.
- I. Wireless Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.
- J. Not less than one off-street parking space shall be provided on-site for use by service and public safety vehicles.
- K. Adequate ingress and egress to the Wireless Tower shall be provided by means of an all-weather durable driveway not less than twelve (12) feet in width.
- L. No Wireless Tower shall be placed within a public right-of-way or within a road easement.
- M. All Wireless Towers over one hundred (100) feet in height shall be designed for co-location. If co-location is not part of the application, then the applicant must demonstrate in the application as to why co-location is not possible.
- N. All Wireless Towers that utilize guy wires shall have those guy wires clearly marked by a colored sleeve.
- O. A Wireless Tower proposed to be located on a National or State registered historic landmark or in a local historic district established in conformance with the Local Historic Districts Act, Public Act 169 or 1970, as amended, may be denied if the antenna would detract from the historic character of the historic landmark or district.

**SECTION 13.2.10 SPECIFIC WIRELESS EQUIPMENT SHELTER  
SPECIAL LAND USE STANDARDS**

- A. Wireless Equipment Shelters in the Agricultural, Rural Residential and Commercial zoning districts shall comply with the following requirements:
1. Shelter Size. The shelter structure shall not contain more than sixteen (16) square feet of gross floor area or be more than six (6) feet in height.
  2. Equipment storage buildings or cabinets shall comply with all applicable building codes.
  3. The Shelter may be located:
    - a. In a front or side yard provided the Shelter is no greater than four (4) feet in height or sixteen (16) square feet of gross floor area. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of at least forty-two to forty-eight (42-48) inches and a planted height of at least thirty-six (36) inches, with eighty-five (85) percent opacity throughout the year.
    - b. In a rear yard, provided the Shelter is no greater than six (6) feet in height or sixteen (16) square feet in gross floor area. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least thirty-six (36) inches, with eighty-five (85) percent opacity throughout the year.
- B. Wireless Equipment Shelters in the Industrial zoning district shall comply with the following requirements:
1. The equipment cabinet or structure shall be no greater than twelve (12) feet in height or one hundred (100) square feet in gross floor area and shall be located in accordance with the minimum yard requirements of the Industrial zoning district in which located.
  2. The structure or cabinet shall be screened by an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least thirty-six (36) inches, with eighty-five (85) percent opacity throughout the year. In all other instances, structures or cabinets shall be screened from view of all residential properties which abut or are directly across the street from the structure or cabinet by a solid fence eight (8) feet in height or an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least thirty-six (36) inches, with eighty-five (85) percent opacity throughout the year.

**SECTION 13.2.11 SPECIAL LAND USE CONDITIONS OF APPROVAL AND DECISIONS BASED ON SUBSTANTIAL EVIDENCE**

A. Conditions may be added that are:

1. Designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
2. Related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
3. Necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in the zoning ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

B. The Decision to grant or to deny a special land use shall be in writing and shall be based upon substantial evidence in the record.

**SECTION 13.2.12 ESCROW FEE REQUIRED**

Each applicant for administrative approval shall apply to the Zoning and Planning Office providing the information required by this Section 13.2 of this Zoning Ordinance and a non-refundable fee and escrow deposit as established by resolution of Bingham Township Board in order to reimburse Bingham Township for the costs of reviewing the application, along with the required signed and notarized "ACKNOWLEDGMENT OF RECEIPT & AGREEMENT OF COMPLIANCE" form.

**SECTION 13.2.13 SITE PLAN REVIEW AS PART OF SPECIAL LAND USE APPROVAL**

A. The following requirements shall be part of the site plan review requirements for Wireless Towers and antenna in addition to those found in Article 17 Special Land Use Permits and Article 16 Site Plan Review, respectively:

1. Applications for site plan review under this sub-section shall be subject to the procedures and requirements of Article 17 Special Land Use Permits and Article 16 Site Plan Review, except as modified in this sub-section.
2. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.
3. A scaled site plan, elevation drawings, and narratives clearly indicating:

- a. the location, type and height of the proposed tower; on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities);
  - b. adjacent roadways, proposed means of access;
  - c. setbacks from property lines;
  - d. elevation of the proposed tower and any other structures;
  - e. topography;
  - f. parking; and
  - g. other information deemed by the Zoning and Planning Office or Planning Commission to be necessary to assess compliance with the intent of this zoning ordinance.
4. Legal description of the parent tract and leased parcel (if applicable).
  5. The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties, including those within the commercial and agricultural districts.
  6. A landscape plan showing specific landscape materials.
  7. Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
  8. A descriptive narrative of compliance with the special land use standards:
    - a. Inventory of Existing Site;
    - b. Aesthetics;
    - c. Lighting;
    - d. State or Federal Requirements;
    - e. Building Codes/Safety Standards;
    - f. Franchises;
    - g. Signs;
    - h. Buildings & Support Equipment
    - i. Setbacks;
    - j. Separation;
    - k. Security Fencing;
    - l. Landscaping; and
    - m. all applicable federal, state or local laws.

9. Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the coverage area which have an impact on this application.

B. No part of this Section 13.2 shall exempt the applicant from such other governmental review and permitting procedures (i.e., Federal Communication Commission (FCC), Federal Aviation Administration (FAA), etc.).

#### **SECTION 13.2.14 CO-LOCATION COMMITMENT**

The applicant must include a statement in the application of its good faith intent to allow the co-location of Antennae and of other wireless equipment of other entities, provided that the cost of modifying the wireless tower to accommodate the co-location is borne by the co-locating entity.

#### **SECTION 13.2.15 REMOVAL OF ABANDONED COMMUNICATION TOWERS**

Any wireless tower which is abandoned shall immediately be removed or demolished. For the purposes of this section, abandoned shall mean that no antenna or other commercial antenna has been operational and located on the wireless tower for one hundred eighty (180) days or more. Where the removal or demolition of an abandoned wireless tower has not been lawfully completed within sixty (60) days of the applicable deadline, and after at least thirty (30) days written notice, the Township may remove or secure the removal of the facility or required portions thereof. The Township may place a lien on the property to cover costs for the removal of the wireless tower. A lien on the property shall be superior to all other liens except taxes.

#### **SECTION 13.2.16 NONCONFORMING TOWER USES**

- A. Not Expansion of Nonconforming Use. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.
- B. Preexisting towers. Preexisting towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this ordinance.
- C. Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas. Notwithstanding Section 13.2.15, bona fide nonconforming towers or antennas that are damaged or destroyed may be rebuilt without having to first obtain administrative approval or a special use permit. The type, height, and location of the tower on-site shall be of the same type and intensity as the original facility approval. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit

expires, the tower or antenna shall be deemed abandoned as specified in Section 13.2.15.

**SECTION 13.2.17 VARIANCES AND APPEALS**

Variances from this section may be requested from the Zoning Board of Appeals. Requests for additional height to any permitted or previously approved wireless tower may be granted by the Planning Commission to provide for the co-location of additional antenna so long as such additional height does not exceed thirty (30) feet. Appeals of a Planning Commission decision shall be taken to the Zoning Board of Appeals.

**Bingham Township Ordinance Section 2. Severability.**

If any section, provision or clause of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any remaining portions or application of this Ordinance, which can be given effect without the invalid portion or application.

**Bingham Township Ordinance Section 3. Effective Date.**

This Ordinance shall become effective eight (8) days following publication of a synopsis in a newspaper of general circulation within the Township, as provided by law.

Ordinance No. \_\_\_\_ was adopted on the \_\_\_\_th day of \_\_\_\_2016 by Bingham Township Board of Trustees, as follows:

Motion By:

Support By:

Roll Call Vote: Yeas:

Nays:

Absent:

Motion Carried.

I certify that this is a true copy of Ordinance No. 02-042015 was adopted at a regular meeting of the Bingham Township Board of Trustees on April 20, 2015 and published in the Leelanau Enterprise on April 30, 2015.

BINGHAM TOWNSHIP

\_\_\_\_\_By:  
Midge Werner, Supervisor

\_\_\_\_\_By:  
Peggy Core, Clerk

Date of Township Approval:

Date of Publication:

Effective Date:

**TEXT AMENDMENT REVIEW**  
**PC14-16-01 Bingham Township**  
*Text Amendment – Article 14 Site Condominium Dev.*

**Reviewing Entity:** Leelanau County Planning Commission  
**Date of Review:** October 25, 2016

Section 1: General Information	
<i>Date Request Received:</i>	October 7, 2016
<i>Last Day of Review Period:</i>	November 6, 2016
<i>Requested Action:</i>	Review and comment on proposed amendments to the Bingham Township Zoning Ordinance.
<i>Applicant:</i>	Bingham Township Planning Commission Mike Park, Chairman

Section 2: Proposed Text
<p>The proposed amendment was submitted by email on October 7, 2016 and is intended to amend Article 14 Site Condominium Developments.</p> <p><i>See Appendix A for 'proposed text'.</i>  <i>For Current text, Link to the Bingham Township Zoning Ordinance: <a href="http://www.leelanau.cc/inghamtwpord.asp">http://www.leelanau.cc/inghamtwpord.asp</a></i></p>

Section 3: Other Planning Input
<p><b>Township Plan:</b> <i>Township Plan:</i> The Township Comprehensive Plan (2015) does not specifically address the proposed amendments.</p>
<p><b>Leelanau General Plan:</b> The Leelanau General Plan (2012) does not specifically address the proposed amendments.</p>
<p><b>Township Planning Commission:</b> At a public hearing held on October 6, 2016, the Bingham Township Planning Commission approved a review by the County Planning Commission.</p>

Section 4: Analysis			
<b>1. Compatibility</b>	<b>Yes</b>	<b>No</b>	<b>NA</b>
A. Is the proposed text <b>compatible</b> with other language in the zoning ordinance?	<b>X</b>		
B. Are there any <b>issues</b> with the proposed text (such as poor wording, confusing text, unenforceable language, etc.)?		<b>X</b>	



C. Do the land uses or other related dimensional standards (height, bulk, area, setback, etc.) in the proposed text amendment(s) <b>conflict</b> with the existing zoning ordinance?		<b>X</b>	
<b>2. Issues of Greater Than Local Concern</b>			
A. Does the proposed text amendment(s) include any issues of greater than local concern? Please list.		<b>X</b>	
<b>3. Comparison with Local Plans or Ordinances</b>			
A. Do the contents in the proposed text amendment(s) conflict with the community's plan? Please list.		<b>X</b>	
<b>4. Comparison with County Plans or Ordinances</b>			
A. Do the contents in the proposed text amendment(s) conflict with the General Plan? Please list.		<b>X</b>	

**Section 5: Staff Comments**

**Zoning Ordinance Amendment 16-004 Article 14 Site Condominium Developments**

Bingham Township has proposed a Zoning Ordinance Amendment to Article 14 – Site Condominium. The township has noted it is a review of the entire article, and they have rearranged the Article to match other Articles in the zoning ordinance. This has been reviewed by the Township Attorney.

The Township provided a number of supporting documents including information from the Planning Commission to the Township Board about approving Site Condominium Developments and the Township Board minutes related to the memo. A highlighted version of Article 14 was also included to go along with the legal review. The amendments and the draft township planning commission minutes are attached in the Appendix. The current zoning ordinance can be found online at: <http://leelanau.cc/binghamtwpor.asp>

Section 14.3 Project Considerations and Requirements, H. – it states “The proposed condominium subdivision plan shall conform to the various elements of the Township’s Master Plan”. What does this mean? What ‘elements’ of the Township’s Master Plan would apply?

Section 14.4. Plan Preparation and Contents – first sentence, remove the comma after ‘**described in,...**’ and change the semi-colon after ‘**requirements;**’ to a colon (:).

Section 14.4.D.1. requires the “Layout of streets indicating proposed street names, whether public or private...” The Leelanau County Planning & Community Development department is the official agency for approving road names in the County for public and private roads, per the Leelanau County Address Ordinance adopted December 19, 1989, as amended. The Department has dealt with developments in the past which have been ‘approved’ by a local municipality and includes road names only for the developer to find out that some of the road names are duplicates and will not be approved by the Department. This has caused delay and additional time for the developer to submit new road names for approval to the Department, and then to amend the plans with the Township. Staff suggests a requirement be put into this section for the developer to submit the proposed Layout, including road names, to the Department so this step can be completed early in the process and avoid future delays and additional expenses.

Section 14.4, D. 5. – remove the dash (-) after “**..has an interest,-...**”

Section 14.7 Condition and Duration of Approval, 2<sup>nd</sup> line, remove the second ‘comma’ **after PA 59**. Section 14.7.C.1, first line – remove the dash (-) **before the word ‘request’**.

# Appendix

- **Letter from Township Attorney**
- **Proposed Amendment with legal review highlighted**
- **Proposed Amendment**

William M. Davison  
Richard W. Ford  
Kent E. Gerberding  
Michael J. Conlon  
Alan J. Couture  
Catherine D. Jasinski  
Thomas A. Grier

April 13, 2016

Kathy Egan  
Land Use Planner  
Suttons Bay-Bingham Township  
Office of Planning and Zoning  
P.O. Box 457  
Suttons Bay, MI 49682

Of Counsel  
Robert B. Guyot, III  
Keith L. Leak

Re: Zoning Ordinance Amendment Site Condo Changes

Harry T. Running  
(1911-1992)

William L. Wise  
(1928-2014)

Miles C. Gerberding, PLC  
(1930-2015)

Dear Kathy:

Enclosed please find the revised Article 14 of the Zoning Ordinance that addresses the site condominium provisions of the Zoning Ordinance. Two versions are attached. One version shows my changes in yellow hi-lighting (as opposed to a "track changes" mode). A second version is a clean version.

PLEASE REPLY TO:  
 TRAVERSE CITY  
326 E. State Street  
P.O. Box 686  
Traverse City, MI  
49685-0686  
Ph. 231.946.2700  
Fax 231.946.0857

My review of the ordinance language focused on a number of areas: First, whether key terms in the draft conformed with the same or similar terms utilized in the Condominium Act (PA 59 of 1978). Second, whether there were any conflicts with PA 59. Notably, there is a section of PA 59 which prohibits a local government from treating site condominiums differently from other land uses based solely on the condominium status of property. For that reason, for example, I deleted one reference to special land use procedures. While site plan review/approval of a site condominium would appear to be acceptable, making acceptance contingent on other approvals – such as a special land use – however, appears discriminatory. Lastly, I sampled several other site condominium ordinances statewide in order to determine whether, as a matter of practice, certain other sections should be added, and in a number of instances, new sections have been added based on that review.

CHARLEVOIX /  
PETOSKEY \*  
201 State Street  
Suite 200  
Charlevoix, MI 49720  
Ph. 231.547.8990

FRANKFORT \*  
P.O. Box 272  
Frankfort, MI 49635

My revisions can be summarized as follows:

GAYLORD \*  
440 W. Main Street  
Suite B  
Gaylord, MI 49735  
Ph. 989.619.5000

### Section 14.2

More specific references have been made to the provisions of the Condominium Act PA 59 of 1978.

### Section 14.3

A number of new subsections have been added: addressing conformance with the Master Plan, the further division of common areas, and the further division of condominium lots.

\* By Appointment Only

#### **Section 14.4**

Several new sections have been added addressing the content of the site plan. These include the requirement for: 1) a storm water and grading plan, 2) a requirement that easements be dedicated to public utilities 3) corresponding utility plan 4) street construction and paving plan and 5) a requirement that all of the components of a site condominium project, including the condominium lots, common areas and limited common areas, etc. be shown on the plan.

#### **Section 14.5**

An entirely new section, titled "Monumentation" has been added. These involve the survey staking of the dimensions of condominium lots and other aspects of the condominium. This reflects the practice of other ordinances that I have reviewed.

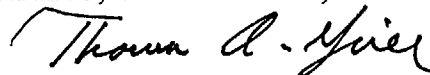
#### **Section 14.6**

New review subsections have been added dealing with attorney review and the need for permits from other agencies before final approval.

If you should have any further questions or comments, please contact me.

Sincerely,

RUNNING, WISE & FORD, PLC



Thomas A. Grier

Direct Dial No. (231) 922-1286

TAG/ta

**ARTICLE 14**  
**SITE CONDOMINIUM DEVELOPMENTS**

*Added in its entirety 4-19-95*

**SECTION 14.1 INTENT**

It is the intent of this Article to establish and implement the goals of the Bingham Township Comprehensive Master Plan, which directs the Township to retain the rural atmosphere of Bingham Township, and to protect the wetlands, farmlands, woodlands, and other open space by encouraging clustering for residential and commercial uses. The greater flexibility afforded by allowing site condominium developments should make development of difficult sites easier and more aesthetically pleasing.

**SECTION 14.2 GENERAL PROVISIONS**

For the purpose of this section, a Site Condominium Subdivision shall include any residential or commercial development proposed under the provisions of the Condominium Act [Public Act 59 of 1978, as amended (“PA 59”)] consisting of two (2) or more single family detached/attached residential structures and/or commercial units on a single parcel, including single family residential structures developed as "clustered housing developments", as reviewed and approved through the Article 15 Clustered Housing Development, when ownership is "condominium" rather than "fee simple". The Township's zoning review of condominium projects is based upon MCL 559.141 of PA 59.

**SECTION 14.3 PROJECT CONSIDERATIONS AND REQUIREMENTS**

- A. Condominium Lots - The Condominium Subdivision Plan shall indicate specific parcel dimensions with front, rear and side condominium lot lines allocated to each condominium dwelling unit intended for separate ownership. For the purpose of this Article, and to assure compliance with the provisions herein, condominium units as defined in PA 59, shall be referred to as condominium lots.
  
- B. Area and Bulk Requirements - Each condominium dwelling unit shall be located within a condominium lot.
  - 1. Each site condominium lot, with regard to lot size, building heights, setbacks, and lot coverage shall conform with the requirements of the zoning district in which it is located, as indicated in Section 3.6 Schedule of Area, Height, and Placement Regulations of this Ordinance.

2. The condominium lot size and the required setbacks shall be measured from the designated front, rear and side condominium lot lines.
  3. A twenty (20) foot wide landscaped easement shall be maintained on all condominium lots which border primary roads, to restrict access to the primary road, to minimize noise, and to protect outdoor living areas.
  4. Unless the circumstances are such that the land area is not of sufficient size to develop secondary roads, all condominium lots shall front on secondary roads. Condominium lots along M-22 and other County Primary Roads shall either back up to such roads or shall front onto a service drive.
- C. Streets - All condominium lots shall front upon a public road, or private road which complies with the **road standards of this Ordinance**. All public streets within a condominium subdivision shall be constructed as required by the Leelanau County Road Commission. All private roads within a site condominium shall meet the requirements of Section 11.3 Private Roads Standards and Procedures.
- D. Water Supply and Sewage Disposal Systems - Water Supply and Sewage Disposal Systems shall comply with the requirements of the Benzie/Leelanau District Health Department and/or State of Michigan.
- E. Landscaping - The condominium subdivision development shall comply with applicable requirements of Section 3.12 Landscaping, Greenbelts, Buffers, Screens and Fences.
- F. Lighting – All outdoor lighting shall meet the standards of Section 3.14 Outdoor Lighting Standards.
- G. Storm Water - Stormwater runoff shall be contained and handled on the site. Adequate and full measures shall be taken to accommodate the storm water runoff of the condominium subdivision on site.
- H. **The proposed condominium subdivision plan shall conform to the various elements of the Township’s Master Plan.**
- I. **No common area or element shall be further divided or changed in use without the express review and approval of the Planning Commission under site plan review, and otherwise in compliance with the standards of this Ordinance.**
- J. **The further division of a condominium lot shall be prohibited unless approved following application to the Planning Commission. The application shall be filed with the Zoning Administrator and shall state the reasons for the proposed division. The resulting lots shall**

conform with the requirements of Section 3.6 of this Ordinance. No land use permit shall be issued, nor any building construction commenced, until the division has been approved by the Planning Commission, and the suitability of the land for building sites has been approved by the County Health Department.

#### **SECTION 14.4 PLAN PREPARATION AND CONTENTS**

Site Plan submittal requirements for Site Condominium Subdivisions shall conform to MCL 559.166 of PA 59 and shall be as described in, Article 16 Site Plan Review, and this Article, with the following additional/concurrent requirements;

- A. The preliminary plan shall be designed and drawn by a Registered Civil Engineer, a Registered Land Surveyor, a Registered Architect or a Registered Landscape Architect.
- B. Identification and Description:
  - 1. Proposed name of the project.
  - 2. Full legal description to adequately describe the parcel or parcels of land in question.
  - 3. Names and addresses of the applicant, owners, and the planner, architect, design engineer, surveyor, or landscape architect who designed the project layout. The applicant shall also indicate his interest in the land.
- C. Existing Conditions:
  - 1. Boundary lines of proposed project, section or corporation lines within or adjacent to the tract and overall property dimensions.
  - 2. Property lines of adjacent tracts of subdivided and un-subdivided land shown in relation to the tract being proposed for site condominium subdivision including those areas across abutting roads.
  - 3. Location, widths, and names of existing or prior easements of record, public and/or private.
  - 4. Location of existing sewers, water mains, storm drains and other underground facilities within or adjacent to the tract being proposed for site condominium subdivision.
  - 5. Topography drawn at contours with an interval of not more than two (2) feet. Topography to be based on USGS datum.

6. The location of significant natural features such as natural water courses, bodies of water, and stands of trees.

D. Proposed Conditions: Site Condominium Subdivisions shall meet the project plan considerations and requirements of Section 14.3 Project Considerations and Requirements and the following additional/concurrent requirements:

1. Layout of streets indicating proposed street names, whether public or private, right of way widths, and connections and adjoining streets, and also the widths of and locations of alleys, easements, public walkways, bike paths and other transportation related elements.
2. Layouts, numbers and dimensions of lots, including building setback lines showing dimensions and finished grade elevations of buildings first floor elevation.
3. Proposed topography, including contour lines at the same interval as shown for existing topography.
4. Indication of the parcels of land and/or easements intended to be dedicated or set aside for public use and a description of the common elements of the project and the use and occupancy restrictions as will be contained in the master deed.
5. An indication of the ownership and existing and proposed use of any parcels identified as "excepted" on the-preliminary plan (indicating whether or not it is future "convertible area" or part of an "expandable condominium" under PA 59.). If the applicant has an interest,- or owns any parcel so identified as "excepted," the preliminary plan shall indicate how this property could be developed in accordance with the requirements of the existing zoning district in which it is located and with an acceptable relationship to the layout of the proposed preliminary plan.
6. Statement describing the sewage system and method to be approved by the Benzie/Leelanau District Health Department and/or State of Michigan. If private individual septic systems are to be utilized, such systems shall be contained within the lot area and shall be limited to the exclusive use of the owner of the condominium unit.
7. Statement describing water supply system, with applicable agency(s) approval.
8. Schematic indication, run off calculation and description of storm drainage proposed that prevents any additional storm water run off to other properties and is acceptable to the County Soil Erosion Officer and County Drain Commission.



9. In the case where the applicant wishes to develop a given area, but wishes to begin with only a portion of the total area, the preliminary plan shall include the proposed general layout for the entire area. The part which is proposed to be developed first shall be clearly superimposed upon the overall plan in order to illustrate clearly the method of development which the applicant intends to follow. Each subsequent development shall follow the same procedure until the entire area controlled by the applicant is subdivided. Each phase of the development shall not exceed, on a cumulative basis, the average density allowed for the entire development.
10. An indication of the means by which and extent that significant natural features such as water courses, bodies of water, and stands of trees are to be preserved in conjunction with the development of the proposed project.
11. Indication of the approximate area for all site improvements including roads, utilities, drains, and all building activity that will have to be cleared and graded in order to develop the proposed project.
12. The Preliminary Site Condominium Subdivision Plan will also indicate the significant ecological areas that are to be preserved in their natural state. The intent is not to require a detailed grading plan at this time but to ensure that the developer's consultant has given sufficient thought to the clearing and grading requirements in preparing the Preliminary Plan.
13. Condominium Protective Covenants and Deed Restrictions which hold harmless the Township for improvements within the site condominium subdivision and requires conformance of all conditions and requirements of site plan approval and this Ordinance. All deed restrictions, restrictive covenants or other proposed regulations for the layout, use and maintenance of public or common areas and structures shall be incorporated into the site plan as detail sheets and notes.
14. A grading and storm water drainage plan that shows proposed finished floor elevations, finished grades at structures, proposed storm water collection system, storm outlet(s), ultimate downstream outlet, all necessary off-site drainage easements, and, when required, retention/detention basin design calculations. Any areas of filled or reclaimed land shall be identified and all development shall detain storm water so that the runoff from the property does not negatively impact upon adjacent properties or public and private rights-of-way.
15. The condominium subdivision shall provide for the dedication of easements to the appropriate public agencies for the purposes of construction, operation, maintenance, inspection, repair, alteration, replacement and/or removal of pipelines, conduits,

mains, and other installations of a similar character for the purpose of providing public utility services, including conveyance of sewage, potable water and stormwater runoff across, through, and under the property subject to said easement, and excavation and refilling of ditches and trenches necessary for the location of such installations. Easement dedication documentation may be reviewed by the Township Attorney and Engineer.

16. A utility plan shall show all existing and proposed utilities and easements located on or serving the site, including sizes of water and sewer lines, wells, proposed hydrants, proposed meter size, and proposed fire suppression line into building. Proposed sanitary leads, proposed sanitary sewers or on-site disposal systems must also be shown, as applicable.
17. A street construction and paving plan showing types of surfacing, method of drainage, and grade elevations. For private streets, a maintenance plan must also be provided.
18. Limited common elements, common elements, condominium lots, preservation areas, convertible areas and any other designated ownership areas shall be clearly delineated on the site plan.

## **SECTION 14.5 MONUMENTATION**

Monumentation Required. All condominium subdivisions which consist in whole or in part of condominium lots which are building envelopes shall be marked with monuments and iron stakes as required below, provided that the application of this section shall be in addition to the requirements of PA 59 and where the provisions of this section and PA 59 conflict, the more restrictive provision shall apply.

- A. Monuments shall be located in the ground and made according to the following requirements, but it is not intended or required that monuments be placed within the traveled portion of a street to mark angles in the boundary of the condominium project if the angle points can be readily reestablished by reference to monuments along the sidelines of the streets.
- B. All monuments used shall be made of solid iron or steel bars at least one-half (1/2) inch in diameter and thirty-six (36) inches long and completely encased in concrete at least four (4) inches in diameter.
- C. Monuments shall be located in the ground at all corners and angles of deflection in the boundaries of the condominium project; at the intersection lines of streets with the

boundaries of the condominium project and at the intersection of alleys with the boundaries of the condominium project, and at all angles of an intermediate traverse line.

- D. All condominium unit corners, minor boundary corners, points of curvature, points of tangency, points of compound curvature, points of reverse curvature and angle points in the side lines of streets and alley that are not on the boundary of the Condominium project, shall be established in the field by iron or steel bars or iron pipes at least eighteen (18) inches long and one-half (½) inch in diameter or other approved markers.
- E. If the required location of a monument is in an inaccessible place, or where the locating of a monument would be clearly impracticable, it is sufficient to place a reference monument nearby and the precise location thereof be clearly indicated on the condominium project and referenced to the true point.
- F. If a point required to be established is on a bedrock outcropping, a steel rod at least one-half (½) inch in diameter, shall be drilled and grouted into solid rock to a depth of at least eight (8) inches.
- G. All required monuments and iron or steel bars shall be placed flush with the ground where practicable.
- H. All condominium unit corners shall be established in the field by iron or steel bars or iron pipes at least eighteen (18) inches long and one-half (½) inch in diameter or other approved markers.
- I. The Township Board may waive the placing of any of the required monuments and markers for a reasonable time, not to exceed one (1) year, on the condition that the proprietor deposits with the Township cash, a certified check or irrevocable bank letter of credit naming the municipality in an amount sufficient to cover any cost associated with the monumentation. The performance guarantee shall be returned to the proprietor upon receipt of a certificate by a surveyor that the monuments and markers have been placed as required within the time specified.

## **SECTION 14.6      REVIEW PROCEDURES**

- A. Distribution to Authorities - The Zoning Administrator shall deliver the proposed condominium subdivision plan to the Commission for review. The Zoning Administrator shall retain one copy, and send one copy to the Township Fire Chief.
- B. Staff Review - The Township Zoning Administrator and/or Planner or consultant shall send recommendations to the Commission at least seven (7) days prior to Commission meeting.

- C. Attorney Review - The master deed, condominium bylaws, restrictive covenants, and related condominium documents shall be provided for Township Attorney review.
- D. Planning Commission –
  - 1. The Commission shall review the condominium subdivision plan and the reports of the County Road Commission, the County Drain Commissioner, the County Soil Erosion Officer, the County Health Department, and the Township Zoning Administrator. An independent consultant(s) may be hired, at the applicant's expense, to review the project and make recommendations to the Commission.
  - 2. The Commission shall hold a public hearing on the proposed condominium subdivision plan, for the purpose of reviewing and approving, approving with conditions, or denying the application.
  - 3. The Commission shall either approve the site condominium subdivision plan with or without conditions, reject the plan and give its reasons, or table the proceedings pending changes to the plan to make it acceptable to the Commission.
- E. Outside Agency Permits or Approvals - The applicant shall be responsible for obtaining all necessary permits or approvals from applicable outside agencies, prior to final approval.

**SECTION 14.7      CONDITION AND DURATION OF APPROVAL**

- A. Conditions - The approval of the Commission will indicate that the proposed site condominium subdivision plan meets the provisions of this Article 14. and PA 59, , but does not cover additional permits that may be required after the Master Deed has been recorded.
- B. Duration - Upon approval the applicant shall have one (1) year from date of approval to complete common area infrastructure of roads and utilities. The Commission may extend the one year period upon written petition for extension. Such extension, if granted, shall cover only the material contained in the original approval process. Not more than three one-year extensions shall be granted.
- C. Condominium Subdivision Plan Approval Contract -
  - 1. If the Commission approves the site condominium subdivision plan, it may –request that the township attorney review a contract setting forth the conditions upon which such approval is based; such contract, after approval by the Township Board, shall be entered into between the township and petitioner prior to the issuance of a land use permit for any construction in accordance with the approved site condominium

subdivision plan. All reasonable costs, as established by the Township Board, related to the preparation of said contract shall be paid by the petitioner to the Township Treasurer prior to issuance of any land use permits.

2. If the Commission determines that the basic zoning application fees will not cover the actual costs of the application review, or if the Commission determines that review of the application and/or participation in the review process by qualified professional planners, engineers, attorneys, or other professionals is necessary, then the applicant shall deposit with the Township Treasurer such additional zoning fees in an amount determined by the Commission equal to the estimated additional costs.

#### **SECTION 14.8      DESIGN LAYOUT STANDARDS, IMPROVEMENTS**

Construction of Development in Phases. For developments where construction is to occur in phases, that portion which is constructed shall conform with all laws, ordinances and regulations of all governmental bodies having jurisdiction, and be capable of functioning independently without further improvements, including, without limitation, without the necessity of constructing any additional roads, drainage or utilities.

#### **SECTION 14.8      INTERPRETATION**

- A. Minimum Requirements. The provisions of these regulations shall be held to be minimum requirements adopted for the promotion and preservation of public health, safety, and general welfare of Bingham Township.
- B. Application of Traditional Definitions. In the review of preliminary and final plans, as well as engineering plans, it is recognized that it may not be feasible to precisely apply traditional definitions and measures of "fee simple" development to the condominium subdivision. However, the review of plans submitted under this article shall be accomplished with the objective and intent of achieving results which are in harmony with the existing development of the adjacent properties and are consistent with the intent of the Township's Master Plan, and are in conformance with all requirements of Section 3.6 Schedule of Area, Height, Placement and Regulations of this Ordinance, as amended.
- C. Conflict with Existing Regulations. These regulations are not intended to repeal, abrogate, annul or in any manner interfere with existing regulations or laws of the Township, nor conflict with any statutes of the State of Michigan or Leelanau County except that these regulations shall prevail in cases where these regulations impose a greater restriction than is provided by existing statutes, laws or regulations. Nothing in this Ordinance shall be construed as requiring a Site Condominium Subdivision to obtain plat approval under the Subdivision Control Act.

**BINGHAM TOWNSHIP  
ORDINANCE NO. \_\_\_\_\_**

**(Zoning Ordinance Amendment No. 16-004)**

**AN ORDINANCE TO AMEND  
THE BINGHAM TOWNSHIP ZONING ORDINANCE  
AN AMENDMENT TO THE BINGHAM TOWNSHIP PERMANENT ZONING ORDINANCE  
BY AMENDING ARTICLE 14 SITE CONDOMINIUM DEVELOPMENTS.**

**BINGHAM TOWNSHIP ORDAINS:**

**Bingham Township Ordinance Section 1: Amendment of Article 14 Site Condominium Developments**

Article 14 of the Bingham Township Zoning Ordinance is hereby amended to read in its entirety as follows:

**ARTICLE 14  
SITE CONDOMINIUM DEVELOPMENTS**

*Added in its entirety 4-19-95*

**SECTION 14.1 INTENT**

It is the intent of this Article to establish and implement the goals of the Bingham Township Comprehensive Master Plan, which directs the Township to retain the rural atmosphere of Bingham Township, and to protect the wetlands, farmlands, woodlands, and other open space by encouraging clustering for residential and commercial uses. The greater flexibility afforded by allowing site condominium developments should make development of difficult sites easier and more aesthetically pleasing.

**SECTION 14.2 GENERAL PROVISIONS**

For the purpose of this section, a Site Condominium Subdivision shall include any residential or commercial development proposed under the provisions of the Condominium Act [Public Act 59 of 1978, as amended ("PA 59")] consisting of two (2) or more single family detached/attached residential structures and/or commercial units on a single parcel, including single family residential structures developed as "clustered housing developments", as reviewed and approved through the Article 15 Clustered Housing Development, when ownership is "condominium" rather than "fee simple". The Township's zoning review of condominium projects is based upon MCL 559.141 of PA 59.

**SECTION 14.3 PROJECT CONSIDERATIONS AND REQUIREMENTS**

- A. Condominium Lots - The Condominium Subdivision Plan shall indicate specific parcel dimensions with front, rear and side condominium lot lines allocated to each condominium unit intended for separate ownership. For the purpose of this

Article, and to assure compliance with the provisions herein, condominium units as defined in PA 59, shall be referred to as condominium lots.

- B. Area and Bulk Requirements - Each condominium dwelling unit shall be located within a condominium lot.
1. Each site condominium lot, with regard to lot size, building heights, setbacks, and lot coverage shall conform with the requirements of the zoning district in which it is located, as indicated in Section 3.6 Schedule of Area, Height, and Placement Regulations of this Ordinance.
  2. The condominium lot size and the required setbacks shall be measured from the designated front, rear and side condominium lot lines.
  3. A twenty (20) foot wide landscaped easement shall be maintained on all condominium lots which border M-22 and other County Primary Roads, to restrict access to the primary road, to minimize noise, and to protect outdoor living areas.
  4. Unless the circumstances are such that the land area is not of sufficient size to develop secondary roads, all condominium lots shall front on secondary roads. Condominium lots along M-22 and other County Primary Roads shall either back up to such roads or shall front onto a service drive.
- C. Streets - All condominium lots shall front upon a public road, or private road which complies with the road standards of this Ordinance. All public streets within a condominium subdivision shall be constructed as required by the Leelanau County Road Commission. All private roads within a site condominium shall meet the requirements of Section 11.3 Private Roads Standards and Procedures.
- D. Water Supply and Sewage Disposal Systems - Water Supply and Sewage Disposal Systems shall comply with the requirements of the Benzie/Leelanau District Health Department and/or State of Michigan.
- E. Landscaping - The condominium subdivision development shall comply with applicable requirements of Section 3.12 Landscaping, Greenbelts, Buffers, Screens and Fences.
- F. Lighting – All outdoor lighting shall meet the standards of Section 3.14 Outdoor Lighting Standards.
- G. Storm Water - Stormwater runoff shall be contained and handled on the site. Adequate and full measures shall be taken to accommodate the storm water runoff of the condominium subdivision on site.

- H. No condominium lot, common area or element shall be further divided or changed in use without the express review and approval of the Planning Commission under site plan review, and otherwise in compliance with the standards of this Ordinance.

**SECTION 14.4 PLAN PREPARATION AND CONTENTS**

Site Plan submittal requirements for Site Condominium Subdivisions shall conform to MCL 559.166 of PA 59 and shall be as described in Article 17 Special Land Use Permits, Article 16 Site Plan Review, and this Article, with the following additional/concurrent requirements;

- A. The preliminary plan shall be designed and drawn by a licensed Civil Engineer, a licensed Land Surveyor, a licensed Architect or a licensed Landscape Architect.

B. Identification and Description:

- 1. Proposed name of the project.
- 2. Full legal description to adequately describe the parcel or parcels of land in question.
- 3. Names and addresses of the applicant, owners, and the planner, architect, design engineer, surveyor, or landscape architect who designed the project layout. The applicant shall also indicate his interest in the land.

C. Existing Conditions:

- 1. Boundary lines of proposed project, section or corporation lines within or adjacent to the tract and overall property dimensions.
- 2. Property lines of adjacent tracts of subdivided and un-subdivided land shown in relation to the tract being proposed for site condominium subdivision including those areas across abutting roads.
- 3. Location, widths, and names of existing or prior easements of record, public and/or private.
- 4. Location of existing sewers, water mains, storm drains and other underground facilities within or adjacent to the tract being proposed for site condominium subdivision.
- 5. Topography drawn at contours with an interval of not more than two (2) feet. Topography to be based on USGS datum.



6. The location of significant natural features such as natural water courses, bodies of water, and stands of trees.

D. Proposed Conditions: Site Condominium Subdivisions shall meet the project plan considerations and requirements of Section 14.3 Project Considerations and Requirements and the following additional/concurrent requirements:

1. Layout of streets indicating proposed street names, whether public or private, right of way widths, and connections and adjoining streets, and also the widths of and locations of alleys, easements, public walkways, bike paths and other transportation related elements.
2. Layouts, numbers and dimensions of lots, including building setback lines showing dimensions and finished grade elevations of buildings first floor elevation.
3. Proposed topography, including contour lines at the same interval as shown for existing topography.
4. Indication of the parcels of land and/or easements intended to be dedicated or set aside for public use and a description of the common elements of the project and the use and occupancy restrictions as will be contained in the master deed.
5. An indication of the ownership and existing and proposed use of any parcels identified as "excepted" on the-preliminary plan (indicating whether or not it is future "convertible area" or part of an "expandable condominium" under PA 59.). If the applicant has an interest,- or owns any parcel so identified as "excepted," the preliminary plan shall indicate how this property could be developed in accordance with the requirements of the existing zoning district in which it is located and with an acceptable relationship to the layout of the proposed preliminary plan.
6. Statement describing the sewage system and method to be approved by the Benzie/Leelanau District Health Department and/or State of Michigan. If private individual septic systems are to be utilized, such systems shall be contained within the lot area and shall be limited to the exclusive use of the owner of the condominium unit.
7. Statement describing water supply system, with applicable agency(s) approval.
8. Schematic indication, run off calculation and description of storm drainage proposed that prevents any additional storm water run off to other properties and is acceptable to the County Soil Erosion Officer and County Drain Commission.

9. In the case where the applicant wishes to develop a given area, but wishes to begin with only a portion of the total area, the preliminary plan shall include the proposed general layout for the entire area. The part which is proposed to be developed first shall be clearly superimposed upon the overall plan in order to illustrate clearly the method of development which the applicant intends to follow. Each subsequent development shall follow the same procedure until the entire area controlled by the applicant is subdivided. Each phase of the development shall not exceed, on a cumulative basis, the average density allowed for the entire development.
10. An indication of the means by which and extent that significant natural features such as water courses, bodies of water, and stands of trees are to be preserved in conjunction with the development of the proposed project.
11. Indication of the approximate area for all site improvements including roads, utilities, drains, and all building activity that will have to be cleared and graded in order to develop the proposed project.
12. The Preliminary Site Condominium Subdivision Plan will also indicate the significant ecological areas that are to be preserved in their natural state. The intent is not to require a detailed grading plan at this time but to ensure that the developer's consultant has given sufficient thought to the clearing and grading requirements in preparing the Preliminary Plan.
13. Condominium Protective Covenants and Deed Restrictions which hold harmless the Township for improvements within the site condominium subdivision and requires conformance of all conditions and requirements of site plan approval and this Ordinance. All deed restrictions, restrictive covenants or other proposed regulations for the layout, use and maintenance of public or common areas and structures shall be incorporated into the site plan as detail sheets and notes.
14. A grading and storm water drainage plan that shows proposed finished floor elevations, finished grades at structures, proposed storm water collection system, storm outlet(s), ultimate downstream outlet, all necessary off-site drainage easements, and, when required, retention/detention basin design calculations. Any areas of filled or reclaimed land shall be identified and all development shall detain storm water so that the runoff from the property does not negatively impact upon adjacent properties or public and private rights-of-way.
15. The condominium subdivision shall provide for the dedication of easements to the appropriate public agencies for the purposes of construction, operation, maintenance, inspection, repair, alteration, replacement and/or removal of pipelines, conduits, mains, and other

installations of a similar character for the purpose of providing public utility services, including conveyance of sewage, potable water and stormwater runoff across, through, and under the property subject to said easement, and excavation and refilling of ditches and trenches necessary for the location of such installations. Easement dedication documentation may be reviewed by the Township Attorney and Engineer.

16. A utility plan shall show all existing and proposed utilities and easements located on or serving the site, including sizes of water and sewer lines, wells, proposed hydrants, proposed meter size, and proposed fire suppression line into building. Proposed sanitary leads, proposed sanitary sewers or on-site disposal systems must also be shown, as applicable.
17. A street construction and paving plan showing types of surfacing, method of drainage, and grade elevations. For private streets, a maintenance plan must also be provided.
18. Limited common elements, common elements, condominium lots, preservation areas, convertible areas and any other designated ownership areas shall be clearly delineated on the site plan.
19. Prior to the issuance of any land use permit the site shall be marked with monuments per PA 59 and administrative rules, and a certified copy of the survey shall be filed with the Township.

#### **SECTION 14.5 REVIEW PROCEDURES**

- A. Distribution to Authorities - The Zoning Administrator shall deliver the proposed condominium subdivision plan to the Commission for review. The Zoning Administrator shall retain one copy, and send one copy to the Township Fire Chief.
- B. Staff Review - The Township Zoning Administrator and/or Planner or consultant shall send recommendations to the Commission at least seven (7) days prior to Commission meeting.
- C. Planning Commission –
  1. The Commission shall review the condominium subdivision plan and the reports of the County Road Commission, the County Drain Commissioner, the County Soil Erosion Officer, the County Health Department, and the Township Zoning Administrator. An independent consultant(s) may be hired, at the applicant's expense, to review the project and make recommendations to the Commission.

2. The Commission shall hold a public hearing on the proposed condominium subdivision plan, for the purpose of reviewing and approving, approving with conditions, or denying the application.
  3. The Commission shall either approve the site condominium subdivision plan with or without conditions, reject the plan and give its reasons, or table the proceedings pending changes to the plan to make it acceptable to the Commission.
- D. Attorney Review - The master deed, condominium bylaws, restrictive covenants, and related condominium documents shall be provided for Township Attorney review.
- E. Outside Agency Permits or Approvals - The applicant shall be responsible for obtaining all necessary permits or approvals from applicable outside agencies.

**SECTION 14.6      CONDITION AND DURATION OF APPROVAL**

- A. Conditions - The approval of the Commission will indicate that the proposed site condominium subdivision plan meets the provisions of this Article 14. and PA 59, , but does not cover additional permits that may be required after the Master Deed has been recorded.
- B. Duration - Upon approval the applicant shall have one (1) year from date of approval to complete common area infrastructure of roads and utilities. The Commission may extend the one year period upon written petition for extension. Such extension, if granted, shall cover only the material contained in the original approval process. Not more than three one-year extensions shall be granted.
- C. Condominium Subdivision Plan Approval Contract -
1. If the Commission approves the site condominium subdivision plan, it may request that the township attorney review a contract setting forth the conditions upon which such approval is based; such contract, after approval by the Township Board, shall be entered into between the township and petitioner prior to the issuance of a land use permit for any construction in accordance with the approved site condominium subdivision plan. All reasonable costs, as established by the Township Board, related to the preparation of said contract shall be paid by the petitioner to the Township Treasurer prior to issuance of any land use permits.
  2. If the Commission determines that the basic zoning application fees will not cover the actual costs of the application review, or if the Commission determines that review of the application and/or participation in the review process by qualified professional planners, engineers, attorneys, or other professionals is necessary, then the applicant shall deposit with the

Township Treasurer such additional zoning fees in an amount determined by the Commission equal to the estimated additional costs.

#### **SECTION 14.7 DESIGN LAYOUT STANDARDS, IMPROVEMENTS**

Construction of Development in Phases. For developments where construction is to occur in phases, that portion which is constructed shall conform with all laws, ordinances and regulations of all governmental bodies having jurisdiction, and be capable of functioning independently without further improvements, including, without limitation, without the necessity of constructing any additional roads, drainage or utilities.

#### **SECTION 14.8 INTERPRETATION**

- A. Minimum Requirements. The provisions of these regulations shall be held to be minimum requirements adopted for the promotion and preservation of public health, safety, and general welfare of Bingham Township.
  
- B. Application of Traditional Definitions. In the review of preliminary and final plans, as well as engineering plans, it is recognized that it may not be feasible to precisely apply traditional definitions and measures of "fee simple" development to the condominium subdivision. However, the review of plans submitted under this article shall be accomplished with the objective and intent of achieving results which are in harmony with the existing development of the adjacent properties and are consistent with the intent of the Township's Master Plan, and are in conformance with all requirements of Section 3.6 Schedule of Area, Height, Placement and Regulations of this Ordinance, as amended.
  
- C. Conflict with Existing Regulations. These regulations are not intended to repeal, abrogate, annul or in any manner interfere with existing regulations or laws of the Township, nor conflict with any statutes of the State of Michigan or Leelanau County except that these regulations shall prevail in cases where these regulations impose a greater restriction than is provided by existing statutes, laws or regulations. Nothing in this Ordinance shall be construed as requiring a Site Condominium Subdivision to obtain plat approval under the Subdivision Control Act.

#### **Bingham Township Ordinance Section 2. Severability.**

If any section, provision or clause of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any remaining portions or application of this Ordinance, which can be given effect without the invalid portion or application.

**Bingham Township Ordinance Section 3. Effective Date.**

This Ordinance shall become effective eight (8) days following publication of a synopsis in a newspaper of general circulation within the Township, as provided by law.

Ordinance No. \_\_\_\_\_ was adopted on the \_\_\_\_<sup>st</sup> day of \_\_\_\_ 2016 by Bingham Township Board of Trustees, as follows:

Motion By:

Support By:

Roll Call Vote: Yeas:

Nays:

Absent:

Motion Carried.

I certify that this is a true copy of Ordinance No. \_\_\_\_\_ was adopted at a regular meeting of the Bingham Township Board of Trustees on \_\_\_\_\_, 2016 and published in the Leelanau Enterprise on \_\_\_\_\_, 2016.

BINGHAM TOWNSHIP

\_\_\_\_\_  
By:  
Midge Werner, Supervisor

\_\_\_\_\_  
By:  
Peggy Core, Clerk

Date of Township Approval:

Date of Publication:

Effective Date:

**TEXT AMENDMENT REVIEW**  
**PC15-16-01 Bingham Township**  
*Text Amendment –Section 11.2 Off Street Parking & Loading*

**Reviewing Entity:** Leelanau County Planning Commission  
**Date of Review:** October 25, 2016

Section 1: General Information	
<i>Date Request Received:</i>	October 7, 2016
<i>Last Day of Review Period:</i>	November 6, 2016
<i>Requested Action:</i>	Review and comment on proposed amendments to the Bingham Township Zoning Ordinance.
<i>Applicant:</i>	Bingham Township Planning Commission Mike Park, Chairman

Section 2: Proposed Text
<p>The proposed amendment was submitted by email on October 7, 2016 and is intended to amend Article 11 Driveways, Parking and Private Roads, Section 11.2 Off Street Parking and Loading</p> <p><i>See Appendix A for 'proposed text'.</i>  <i>For Current text, Link to the Bingham Township Zoning Ordinance: <a href="http://www.leelanau.cc/binghamtwpord.asp">http://www.leelanau.cc/binghamtwpord.asp</a></i></p>

Section 3: Other Planning Input
<p><b>Township Plan:</b> <i>Township Plan:</i> The Township Comprehensive Plan (2015) does not specifically address the proposed amendments.</p>
<p><b>Leelanau General Plan:</b> The Leelanau General Plan (2012) does not specifically address the proposed amendments.</p>
<p><b>Township Planning Commission:</b> At a public hearing held on October 6, 2016, the Bingham Township Planning Commission approved a review by the County Planning Commission.</p>

Section 4: Analysis			
<b>1. Compatibility</b>	<b>Yes</b>	<b>No</b>	<b>NA</b>
A. Is the proposed text <b>compatible</b> with other language in the zoning ordinance?	<b>X</b>		
B. Are there any <b>issues</b> with the proposed text (such as poor wording, confusing text, unenforceable language, etc.)?		<b>X</b>	

C. Do the land uses or other related dimensional standards (height, bulk, area, setback, etc.) in the proposed text amendment(s) <b>conflict</b> with the existing zoning ordinance?		<b>X</b>	
<b>2. Issues of Greater Than Local Concern</b>			
A. Does the proposed text amendment(s) include any issues of greater than local concern? Please list.		<b>X</b>	
<b>3. Comparison with Local Plans or Ordinances</b>			
A. Do the contents in the proposed text amendment(s) conflict with the community's plan? Please list.		<b>X</b>	
<b>4. Comparison with County Plans or Ordinances</b>			
A. Do the contents in the proposed text amendment(s) conflict with the General Plan? Please list.		<b>X</b>	

**Section 5: Staff Comments**

**Zoning Ordinance Amendment 16-005 – Section 11.2 Off Street Parking and Loading**

Bingham Township has proposed a Zoning Ordinance Amendment to Article 11 Driveways, Parking and Private Roads, Section 11.2 Off Street Parking and Loading. The amendment deals with parking standards and the township has included the original discussion points outlining the changes made. A review has also been provided by the Township Attorney.

The amendments are in the Appendix. The current zoning ordinance can be found online at: <http://leelanau.cc/binghamtwpod.asp>

Attached is a letter from the Township Planner, draft minutes from the township planning commission, and a letter from Bingham Township Attorney, Tom Grier.

The “Notes for Discussion from March 3, 2016” (attached) outline the changes that have been made to Article 11 of the zoning ordinance.

Section 11.2.1.4, G. delete the extra ‘period’ at the end of the sentence.

The Chart for Dimensional Standards is difficult to read due to the red coloring, and the font. Staff suggests a modification to color and font on this page.



# Appendix

- **Letter from Township Attorney**
- **Notes for Discussion**
- **Proposed Amendment**

August 9, 2016

William M. Davison  
Richard W. Ford  
Kent E. Gerberding  
Michael I. Conlon  
Alan J. Couture  
Catherine D. Jasinski  
Thomas A. Grier

Kathy Egan  
Land Use Planner  
Suttons Bay-Bingham Township  
Office of Planning and Zoning  
P.O. Box 457  
Suttons Bay, MI 49682

Of Counsel  
Robert B. Guyot, III  
Keith L. Leak

Harry T. Running  
(1911-1992)

William L. Wise  
(1928-2014)

Miles C. Gerberding, PLC  
(1930-2015)

Re: Zoning Ordinance Amendments Parking

Dear Kathy:

My comments and revisions to the new draft parking section of the Township Zoning Ordinance are contained within the "track changes" draft attached for review. It should be noted that the Township has the authority to regulate parking under MCL 41.181 of the General Township Act.

I apologize for the delay in sending these to you, and thank you for your consideration and patience. If you should have any further questions or comments, please contact me.

PLEASE REPLY TO:  
 TRAVERSE CITY  
326 E. State Street  
P.O. Box 686  
Traverse City, MI  
49685-0686  
Ph. 231.946.2700  
Fax 231.946.0857

Sincerely,

RUNNING, WISE & FORD, PLC



Thomas A. Grier  
Direct Dial No. (231) 922-1286

CHARLEVOIX /  
PETOSKEY \*  
201 State Street  
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FRANKFORT \*  
P.O. Box 272  
Frankfort, MI 49635

GAYLORD \*  
440 W. Main Street  
Suite B  
Gaylord, MI 49735  
Ph. 989.619.5000

\* By Appointment Only

**Bingham Township Planning Commission  
Review of Offstreet Parking and Loading Standards  
Notes for Discussion  
March 3, 2016**

Section 11.2.4.A Handicap Parking

Added a sentence to confirm that handicap spaces are counted in the total required parking spaces.

Section 11.2.4B Residential Parking

Added sentence to residential parking to say that the spaces can be interior (garage) or exterior (driveway).

Section 11.2.4D Non-residential Uses

Added that the PC may impose a maximum number of spaces at a site.

Section 11.2.4.D.3 Nonresidential Uses

Added a section allowing for shared parking

Section 11.2.4 E-Q Parking Spaces Required

Matched to SB Twp

Section 11.2.4.P Wineries

Reworded to apply to all agritourism businesses instead of just wineries.

Section 11.2.9 Rear/Side Yard Required

New language - requires parking in the rear or side yards

Section 11.2.10.A Design Standards

Emergency vehicle access is new language. It used to be added to all special use permits.

Section 11.2.4.C Dimensional Standards

Chart is new to Bingham Twp. And copied from SB Twp. Current languages references a diagram that doesn't exist.

Section 11.2.13 Space for Snow Storage Required

Snow storage requirement is new to Bingham Twp.

**BINGHAM TOWNSHIP  
ORDINANCE NO. \_\_\_\_\_**

**(Zoning Ordinance Amendment No. 16-005)**

**AN ORDINANCE TO AMEND  
THE BINGHAM TOWNSHIP ZONING ORDINANCE  
AN AMENDMENT TO THE BINGHAM TOWNSHIP PERMANENT ZONING ORDINANCE  
BY AMENDING ARTICLE 11 DRIVEWAYS, PARKING AND PRIVATE ROADS**

**BINGHAM TOWNSHIP ORDAINS:**

**Bingham Township Ordinance Section 1: Amendment of Article 11 Driveways, Parking and Private Roads**

Section 11.2 of the Bingham Township Zoning Ordinance is hereby amended to read in its entirety as follows:

**SECTION 11.2 OFF STREET PARKING AND LOADING**

**SECTION 11.2.1 INTENT**

The intent of this section is to provide adequate space for parking, standing, loading and unloading of motor vehicles on private property; to avoid undue interference with public use of roads or exits therefrom; and to lessen any conflict with neighboring uses of land.

**SECTION 11.2.2 PARKING TO BE ON PROPERTY**

Required parking shall be provided off the public road right-of-way and on the lot to which it pertains, or on a contiguous lot unbroken by easement, right-of-way, or thoroughfare. The Bingham Township Board, upon receiving evidence that parking is taking place on road shoulders because of a lack of adequate parking, may (upon recommendation of the Commission and following a public hearing) require additional parking as the Township Board determines appropriate.

**SECTION 11.2.3 LANDSCAPING AND BUFFERING**

All parking and loading and unloading areas (except for single family residential units) shall be subject to the provisions of Section 3.12 Landscaping, Greenbelts, Buffers, Screens and Fences.

**SECTION 11.2.4 NUMBER OF PARKING SPACES REQUIRED**

A. Handicap parking required by Federal, State and Local standards must be met. These spaces may be included in the total number of spaces required.

B. Residential Use:

Two (2) parking spaces per dwelling unit. These spaces may consist of a parking strip, parking apron, driveway, carport, and/or garage or some combination thereof.

C. Non-Residential Use:

The following parking formulas listed below (D-Q) are to be used as guidelines for non-residential site plans. A maximum number of parking spaces may be imposed by the Commission at site plan review. The Commission may, at their discretion, depart from these guidelines and allow fewer parking spaces if the following conditions are met:

1. Applicant must present a parking analysis indicating that less parking is necessary for the proposed use(s). A parking study or data from recognized traffic engineering references may be required.
2. A reserve parking area is provided on the Site Plan to be used if the initial parking area is not adequate or the use is such that a reserve area is needed. The Planning Commission has the discretion to determine that a reserve parking area is not necessary.

D. Shared parking, or an arrangement in which two or more nonresidential uses with different peak parking demands (hours of operation) uses the same off-street parking spaces to meet their off-street parking requirements, may be allowed.

1. The Zoning Administrator may approve an adjustment to the parking requirements allowing shared parking arrangements for nonresidential uses with different hours of operation.
2. Applicant must provide that there is no substantial conflict in the principle operating hours of the uses for which the shared parking is proposed.
3. Shared parking must be within fifty (50) feet walking distance, measured from the entrance of the use to the nearest parking space in the shared lot.
4. An agreement providing for the shared use of the parking, executed by the parties involved, must be filed with the Zoning Administrator, in a form approved by the Zoning Administrator upon consultation with the township attorney.

E. Professional Office Buildings (non-medical): One (1) parking space for each two hundred fifty (250) square feet of gross floor area.

F. Retail Stores and Personal Service Shops: One (1) space for each two hundred fifty (250) square feet of gross floor area.

- G. Manufacturing and/or Processing: One (1) space per employee, plus additional spaces required for necessary business operations such as loading docks, etc..
- H. Automobile Repair and Automobile Service Stations: Three (3) spaces per service bay, plus one (1) space per three hundred (300) square feet of gross floor area.
- I. Golf Courses: Four (4) spaces for each golf hole, plus one (1) space for every two (2) employees.
- J. Tourist Homes: One (1) space for each rental room.
- K. Motels: One and one half (1 1/2) spaces for each rental room.
- L. Churches: One (1) space for each three (3) seats within the main auditorium. Where pews or benches are provided, one (1) space for every six (6) lineal feet of pew or bench.
- M. Restaurants: One (1) space for each three (3) occupants, using the maximum number permitted by the Fire Marshall.
- N. Group Day Care Homes: Two (2) spaces for every three (3) children under care and not in the resident family.
- O. Medical Offices, Dental Offices, and Health Clinics: Three (3) spaces per examining room, plus one (1) space per practitioner and per employee, plus one (1) space per two hundred (200) square feet of gross area.
- P. Wineries, Cideries and uses in the Agricultural District open to the public: One (1) space per employee, plus one (1) space for each one hundred (100) square feet of floor area used for retail sales or other public use including office reception areas. A minimum of five (5) automobile parking spaces are required. One (1) parking space for oversize vehicles is required for each three hundred (300) square feet of floor area used for retail sales or other public use with a minimum of one (1) space required. Parking for oversize vehicles shall be designed to allow drive through parking (no backing required.)
- Q. Adult and Sexually Oriented Businesses: One (1) space per two hundred fifty (250) square feet of gross floor area plus one (1) space per employee.

**SECTION 11.2.5 MIXED USES**

Where uses within individual buildings is mixed, the number of parking spaces for each specific use shall be provided, and the space for one use shall not be considered as providing spaces for any other use, except for churches.

Mixed-use developments shall comply with Section 11.2.4 Number of Parking Spaces Required.

**SECTION 11.2.6 USES NOT MENTIONED**

In the case of uses not specifically mentioned in Section 11.2.4 Number of Parking Spaces Required, but which are allowed under this Ordinance, off-street parking requirements shall be those applied to the mentioned use which is most similar in terms of parking demand.

**SECTION 11.2.7 FRACTIONAL SPACES**

Where the calculation of parking spaces required results in a fraction, any fraction less than one half (1/2) shall be disregarded, and any fraction of one half (1/2) or more shall require one (1) space.

**SECTION 11.2.8 PARKING ONLY**

The use of any required parking space for the storage of any motor vehicle for sale, or for any purpose other than the parking of motor vehicles, is prohibited.

**SECTION 11.2.9 PARKING IN REAR OR SIDE YARDS REQUIRED**

For all uses other than single family residential, and unless otherwise approved by the Planning Commission during site plan review, all parking shall be in the rear or on sides of buildings.

**SECTION 11.2.10 MINIMUM DESIGN STANDARDS FOR PARKING AREAS**

**A. EMERGENCY VEHICLE ACCESS**

There shall be clear access for emergency vehicles at all times.

**B. SURFACING**

Unless otherwise approved by the Planning Commission during site plan review, primary parking areas for non-residential uses shall be surfaced with a hard, stable, non-erodable surface such as bituminous asphalt mixture or concrete.

Site Plans are encouraged to use water permeable parking surfaces, especially for non-primary or reserve parking areas.

**B. PARKING LOT LANDSCAPING**

Parking areas that contain in excess of five (5) parking spaces shall comply with Section 3.12.6 Parking Lot Landscaping.


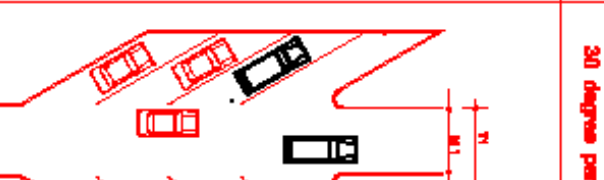

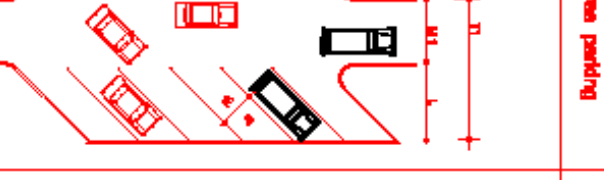

**C. DIMENSIONAL STANDARDS**

The following minimum design standards, as shown in the attached tables, shall be observed in designing off-street parking facilities:

## MINIMUM PARKING LAYOUT STANDARDS

Parking Angle In degrees	Minimum maneuvering Lane Width		Parking Lane Width In Ft.	Parking Space Length In Ft.	Total Minimum Width of 1-Story plus Maneuvering Lane (One-Way Traffic) T1 In Ft.	Total Minimum Width of 2-Story plus Maneuvering Lane (Two-Way Traffic) T2 In Ft.
	1 Way Traffic M 1 In Ft.	2 Way Traffic M 2 In Ft.				
parallel	12	18	8	23	20	34
30	14	18	9	19	33	55
45	18	20	9	18	38	68
60	20	22	9	18	38	68
80	22	24	9	18	42	80

**NOTE:** During the Site Plan Review the Planning Commission may approve alterations to these standards if it is determined that emergency vehicular access is adequate.

parallel parking	30 degree parking	45 degree parking	60 degree parking	80 degree parking
				



**SECTION 11.2.11 LOADING AND UNLOADING**

All non-residential Site Plans shall provide adequate loading/unloading areas and shall indicate the proposed loading and unloading areas on the Site Plan.

**SECTION 11.2.12 CHANGE IN USE**

Any change in use of an existing structure shall meet Ordinance standards for the new use. All changes of occupancy or use of existing commercial or industrial sites shall be reviewed by the Zoning Administrator, and may require Site Plan review to determine that parking requirements comply with this Ordinance.

**SECTION 11.2.13 SNOW STORAGE**

An area for snow storage shall be shown on site plan. If snow removal to an area off site is planned, a statement detailing the snow removal plan shall be required on the site plan.

**Bingham Township Ordinance Section 2. Severability.**

If any section, provision or clause of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any remaining portions or application of this Ordinance, which can be given effect without the invalid portion or application.

**Bingham Township Ordinance Section 3. Effective Date.**

This Ordinance shall become effective eight (8) days following publication of a synopsis in a newspaper of general circulation within the Township, as provided by law.

Ordinance No. \_\_\_\_\_ was adopted on the \_\_\_\_\_th day of \_\_\_\_\_ 2016 by Bingham Township Board of Trustees, as follows:

Motion By:

Support By:

Roll Call Vote: Yeas:

Nays:

Absent:

Motion Carried.

I certify that this is a true copy of Ordinance No. \_\_\_\_\_ was adopted at a regular meeting of the Bingham Township Board of Trustees on \_\_\_\_\_, 2016 and published in the Leelanau Enterprise on \_\_\_\_\_, 2016.

BINGHAM TOWNSHIP

\_\_\_\_\_By:  
Midge Werner, Supervisor

\_\_\_\_\_By:  
Peggy Core, Clerk

Date of Township Approval:

Date of Publication:

Effective Date:

**TEXT AMENDMENT REVIEW**  
**PC16-16-01 Bingham Township**  
*Text Amendment –Section 4.6.R.1.h Wineries with food service*

**Reviewing Entity:** Leelanau County Planning Commission  
**Date of Review:** October 25, 2016

Section 1: General Information	
<b>Date Request Received:</b>	October 7, 2016
<b>Last Day of Review Period:</b>	November 6, 2016
<b>Requested Action:</b>	Review and comment on proposed amendments to the Bingham Township Zoning Ordinance.
<b>Applicant:</b>	Bingham Township Planning Commission Mike Park, Chairman

Section 2: Proposed Text
<p>The proposed amendment was submitted by email on October 7, 2016 and are intended to amend Article 4 Agricultural District, Section 4.6.R.1.h Wineries with food service.</p> <p><i>See Appendix A for 'proposed text'.</i>  <i>For Current text, Link to the Bingham Township Zoning Ordinance: <a href="http://www.leelanau.cc/binghamtwzord.asp">http://www.leelanau.cc/binghamtwzord.asp</a></i></p>

Section 3: Other Planning Input
<p><b>Township Plan: Township Plan:</b> The Township Comprehensive Plan (2015) does not specifically address the proposed amendments.</p>
<p><b>Leelanau General Plan:</b> The Leelanau General Plan (2012) does not specifically address the proposed amendments.</p>
<p><b>Township Planning Commission:</b> At a public hearing held on October 6, 2016, the Bingham Township Planning Commission approved a review by the County Planning Commission.</p>

Section 4: Analysis			
<b>1. Compatibility</b>	<b>Yes</b>	<b>No</b>	<b>NA</b>
A. Is the proposed text <b>compatible</b> with other language in the zoning ordinance?	<b>X</b>		
B. Are there any <b>issues</b> with the proposed text (such as poor wording, confusing text, unenforceable language, etc.)?		<b>X</b>	

C. Do the land uses or other related dimensional standards (height, bulk, area, setback, etc.) in the proposed text amendment(s) <b>conflict</b> with the existing zoning ordinance?		<b>X</b>	
<b>2. Issues of Greater Than Local Concern</b>			
A. Does the proposed text amendment(s) include any issues of greater than local concern? Please list.		<b>X</b>	
<b>3. Comparison with Local Plans or Ordinances</b>			
A. Do the contents in the proposed text amendment(s) conflict with the community's plan? Please list.		<b>X</b>	
<b>4. Comparison with County Plans or Ordinances</b>			
A. Do the contents in the proposed text amendment(s) conflict with the General Plan? Please list.		<b>X</b>	

**Section 5: Staff Comments**

Bingham Township has proposed a Zoning Ordinance Amendment to Article 4 Agricultural District, Section 4.6.R.1.h Wineries with food service.

The amendments are in the Appendix. The current zoning ordinance can be found online at: <http://leelanau.cc/binghamtwpord.asp>

Attached is a letter from the Township Planner, draft minutes from the township planning commission, and a letter from Bingham Township Attorney, Tom Grier.

**Zoning Ordinance Amendment 16-006 – Wineries with food service**

**Staff Comments:**

Cideries have become an important component in agritourism in Leelanau County. It is fitting cideries be included in the same capacity as wineries. Staff questions whether the township has also considered allowing microbreweries and distilleries to operate a restaurant directly related to farm operation. Perhaps the grapes, grains or hops used by a microbrewery or distillery are grown on site and used in production of their products. What would prevent them from being afforded the same opportunities as wineries and cideries?

Under this ordinance would microbreweries or distilleries that also produce cider or wine be allowed to operate a restaurant related to the farm operation?

# Appendix

- **Proposed Amendment**

**BINGHAM TOWNSHIP  
ORDINANCE NO. \_\_\_\_\_**

**(Zoning Ordinance Amendment No. 16-006)**

**AN ORDINANCE TO AMEND  
THE BINGHAM TOWNSHIP ZONING ORDINANCE  
AN AMENDMENT TO THE BINGHAM TOWNSHIP PERMANENT ZONING ORDINANCE  
BY AMENDING ARTICLE 4 AGRICULTURAL DISTRICT**

**BINGHAM TOWNSHIP ORDAINS:**

**Bingham Township Ordinance Section 1: Amendment of Article 4 Agricultural District**  
Section 4.6.R.1.h of the Bingham Township Zoning Ordinance is hereby amended to read in its entirety as follows:

- h. Only wineries and cideries may operate a restaurant that is directly related to the farm operation subject to the following conditions:
  - i. The kitchen is within a permanent structure and must meet all local, state, and federal regulations.
  - ii. The area serving food shall be determined by the Planning Commission at Site Plan Review. The area serving food includes both indoor and outdoor seating.
  - iii. Initial site plan approval shall be for no more than twenty (20) patrons. Applicant may seek an increase, not to exceed fifty (50) patrons. This review shall be based on such factors as parcel size, topography, neighboring uses, road access, and other services provided.
  - iv. Must be licensed to prepare and serve food by the appropriate health agency.
  - v. All food and beverage service shall end by 10:00 PM.
  - vi. There shall be no outdoor amplified sounds or music.
  - vii. Operation under a Class C liquor license is not allowed.

**Bingham Township Ordinance Section 2. Severability.**

If any section, provision or clause of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any remaining portions or application of this Ordinance, which can be given effect without the invalid portion or application.

**Bingham Township Ordinance Section 3. Effective Date.**

This Ordinance shall become effective eight (8) days following publication of a synopsis in a newspaper of general circulation within the Township, as provided by law.

Ordinance No. \_\_\_\_\_ was adopted on the \_\_\_\_th day of \_\_\_\_ 2016 by Bingham Township Board of Trustees, as follows:

Motion By:

Support By:

Roll Call Vote: Yeas:

Nays:

Absent:

Motion Carried.

I certify that this is a true copy of Ordinance No. \_\_\_\_\_ was adopted at a regular meeting of the Bingham Township Board of Trustees on \_\_\_\_\_, 2016 and published in the Leelanau Enterprise on \_\_\_\_\_, 2016.

BINGHAM TOWNSHIP

\_\_\_\_\_ By:  
Midge Werner, Supervisor

\_\_\_\_\_ By:  
Peggy Core, Clerk

Date of Township Approval:

Date of Publication:

Effective Date:

**TEXT AMENDMENT REVIEW**  
**PC17-16-01 Bingham Township**  
*Text Amendment –Housekeeping Amendments*

**Reviewing Entity:** Leelanau County Planning Commission  
**Date of Review:** October 25, 2016

Section 1: General Information	
<i>Date Request Received:</i>	October 7, 2016
<i>Last Day of Review Period:</i>	November 6, 2016
<i>Requested Action:</i>	Review and comment on proposed amendments to the Bingham Township Zoning Ordinance.
<i>Applicant:</i>	Bingham Township Planning Commission Mike Park, Chairman

Section 2: Proposed Text
<p>The proposed amendment was submitted by email on October 7, 2016 and are intended as housekeeping amendments</p> <p><i>See Appendix A for 'proposed text'.</i>  <i>For Current text, Link to the Bingham Township Zoning Ordinance: <a href="http://www.leelanau.cc/binghamtwzord.asp">http://www.leelanau.cc/binghamtwzord.asp</a></i></p>

Section 3: Other Planning Input
<p><b>Township Plan: Township Plan:</b> The Township Comprehensive Plan (2015) does not specifically address the proposed amendments.</p>
<p><b>Leelanau General Plan:</b> The Leelanau General Plan (2012) does not specifically address the proposed amendments.</p>
<p><b>Township Planning Commission:</b> At a public hearing held on October 6, 2016, the Bingham Township Planning Commission approved a review by the County Planning Commission.</p>

Section 4: Analysis			
1. Compatibility	Yes	No	NA
A. Is the proposed text <b>compatible</b> with other language in the zoning ordinance?	<b>X</b>		
B. Are there any <b>issues</b> with the proposed text (such as poor wording, confusing text, unenforceable language, etc.)?		<b>X</b>	



C. Do the land uses or other related dimensional standards (height, bulk, area, setback, etc.) in the proposed text amendment(s) <b>conflict</b> with the existing zoning ordinance?		<b>X</b>	
<b>2. Issues of Greater Than Local Concern</b>			
A. Does the proposed text amendment(s) include any issues of greater than local concern? Please list.		<b>X</b>	
<b>3. Comparison with Local Plans or Ordinances</b>			
A. Do the contents in the proposed text amendment(s) conflict with the community's plan? Please list.		<b>X</b>	
<b>4. Comparison with County Plans or Ordinances</b>			
A. Do the contents in the proposed text amendment(s) conflict with the General Plan? Please list.		<b>X</b>	

**Section 5: Staff Comments**

Bingham Township has proposed a Zoning Ordinance Amendments to Article 3 General Provisions, Article 4 Agricultural District, Article 5 Rural Residential, Article 11 Driveways, Parking and Private Roads and Article 16 Site Plan Review.

The amendments and notes on housekeeping changes are in the Appendix. The current zoning ordinance can be found online at: <http://leelanau.cc/binghamtwpord.asp>

**Zoning Ordinance Amendment 16-007 – Housekeeping Amendments**

**Staff Comments:**

In Staff Report PC16-16-01 Bingham Twp. Section 4.6.R.1.h, staff questions why microbreweries and distilleries were removed from Section 2, amendments of Articles 4 & 5 and Section 3, amendment of Article 4 in first place. However, since they were removed it makes sense to delete them from these sections as housekeeping amendments.

The other items in the housekeeping amendments are for clarification purposes. Staff has no additional comments.

# Appendix

- **Notes on Housekeeping changes**
- **Proposed Amendment**

**BINGHAM TOWNSHIP  
ORDINANCE NO. \_\_\_\_\_**

**(Zoning Ordinance Amendment No. 16-007)**

**AN ORDINANCE TO AMEND  
THE BINGHAM TOWNSHIP ZONING ORDINANCE  
AN AMENDMENT TO THE BINGHAM TOWNSHIP PERMANENT ZONING ORDINANCE  
BY AMENDING ARTICLE 3 GENERAL PROVISIONS, ARTICLE 4 AGRICULTURAL DISTRICT,  
ARTICLE 5 RURAL RESIDENTIAL, ARTICLE 11 DRIVEWAYS, PARKING AND PRIVATE  
ROADS, AND ARTICLE 16 SITE PLAN REVIEW.**

**BINGHAM TOWNSHIP ORDAINS:**

**Bingham Township Ordinance Section 1: Amendment of Article 3**

Section 3.12.10 Plant Size and Spacing, is hereby amended by striking the section in its entirety.

**Bingham Township Ordinance Section 2: Amendment of Articles 4 and Article 5**

Section 4.6.R and Section 5.5.I are hereby amended to read in their entirety:

Wineries and cideries, are welcomed by Bingham Township as appropriate farm activities. It is the intent of this section to promote local agriculture production by allowing construction of a tasting room and retail sale of associated products in the Agricultural District subject to this ordinance. It is also the intent of this section to encourage the growing of crops and production as an integral component of the rural and agricultural ambiance of Bingham Township, and to maintain the viability of farming through value added processing and direct sales beverages made from locally grown crops.

**Bingham Township Ordinance Section 3: Amendment of Article 4**

Section 4.6.S.1 is hereby amended to read in its entirety:

Special Events and Activities are limited to wineries, cideries, and Commercial Farms. The minimum parcel size for a commercial farm is forty (40) acres. The minimum parcel size for silviculture is one-hundred (100) acres with an active forest management plan.

**Bingham Township Ordinance Section 4: Amendment of Article 4 and Article 5**

Section 4.6.S.4 and Section 5.5.J.4 are hereby amended to read in their entirety:

The operator must have a written statement from the County Health Department or appropriate agency indicating the maximum number of persons that can be

*removed  
microbreweries &  
distilleries*

*added  
words*

accommodated with existing toilet facilities and additional portable toilets must be provided for any guests exceeding the aforementioned number.

**Bingham Township Ordinance Section 5: Amendment of Article 4 and Article 5**

Section 4.6.S.8.a and Section 5.5.J.8.a are hereby amended to read in their entirety:

Existing and proposed structures with maximum capacity of each building where guests have access as established by the Fire Marshall or appropriate agency.

**Bingham Township Ordinance Section 6: Amendment of Article 11**

Section 11.1 is hereby amended to read in its entirety:

For the safety, protection and welfare of the residents of the Township of Bingham, driveways shall be so constructed as to permit free and easy access by fire-fighting apparatus and other equipment needed for such purposes, also adequate parking for all vehicles, so they will be off the road right-of-way. A minimum clearance width of twelve (12) feet shall be required.

Shared driveways are allowed for a maximum of two lots that have legal frontage on a public or private road. A shared driveway agreement must be submitted to Bingham Township before a Land Use Permit is issued.

**Bingham Township Ordinance Section 7: Amendment of Article 16**

Section 16.4 is hereby amended to read in its entirety:

Type of Project	Administrative Site Plan Review	Abbreviated Site Plan Review	Detailed Site Plan Review
Land Use Permits	X		
Clustered Housing Development			X
Commercial Site Plan (over 3000 sft)			X
Commercial Site Plan (less than 3000 sft and change of use)			X
Commercial Site Plan (less than 3000 sft and no change of use, or accessory building)	X		
Industrial Site Plan (over 3000 sft or change of industrial use)			X
Industrial Site Plan (less than 3000 sft and no change of use)	X		
Winery/Cidery		X	
Agricultural Special Events		X	
Home Business		X	
All Other Special Land Uses			X
Dimensional Variances -ZBA		X	

there was a gap for projects between 1,000 and 3,000 sqft. closed that gap

**Bingham Township Ordinance Section 8: Amendment of Article 16**

Section 16.7 is hereby amended to add a new subsection 16.7.D.1 and the existing subsection 16.7.D shall be re-designated as subsections 16.7.D.2 through 16.7.D. 16.

The following information shall be on the site plan: the applicant; the preparer; the date, including revisions; the signature; and seal (if applicable).

- added word

**BINGHAM TOWNSHIP  
ORDINANCE NO. \_\_\_\_\_**

**(Zoning Ordinance Amendment No. 16-007)**

**AN ORDINANCE TO AMEND  
THE BINGHAM TOWNSHIP ZONING ORDINANCE**

**AN AMENDMENT TO THE BINGHAM TOWNSHIP PERMANENT ZONING ORDINANCE  
BY AMENDING ARTICLE 3 GENERAL PROVISIONS, ARTICLE 4 AGRICULTURAL DISTRICT,  
ARTICLE 5 RURAL RESIDENTIAL, ARTICLE 11 DRIVEWAYS, PARKING AND PRIVATE  
ROADS, AND ARTICLE 16 SITE PLAN REVIEW.**

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**Bingham Township Ordinance Section 4: Amendment of Article 4 and Article 5**

Section 4.6.S.4 and Section 5.5.J.4 are hereby amended to read in their entirety:

The operator must have a written statement from the County Health Department or appropriate agency indicating the maximum number of persons that can be

accommodated with existing toilet facilities and additional portable toilets must be provided for any guests exceeding the aforementioned number.

**Bingham Township Ordinance Section 5: Amendment of Article 4 and Article 5**

Section 4.6.S.8.a and Section 5.5.J.8.a are hereby amended to read in their entirety:

Existing and proposed structures with maximum capacity of each building where guests have access as established by the Fire Marshall or appropriate agency.

**Bingham Township Ordinance Section 6: Amendment of Article 11**

Section 11.1 is hereby amended to read in its entirety:

For the safety, protection and welfare of the residents of the Township of Bingham, driveways shall be so constructed as to permit free and easy access by fire-fighting apparatus and other equipment needed for such purposes, also adequate parking for all vehicles, so they will be off the road right-of-way. A minimum clearance width of twelve (12) feet shall be required.

Shared driveways are allowed for a maximum of two lots that have legal frontage on a public or private road. A shared driveway agreement must be submitted to Bingham Township before a Land Use Permit is issued.

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Section 16.4 is hereby amended to read in its entirety:

Type of Project	Administrative Site Plan Review	Abbreviated Site Plan Review	Detailed Site Plan Review
Land Use Permits	X		
Clustered Housing Development			X
Commercial Site Plan (over 3000 sft)			X
Commercial Site Plan (less than 3000 sft and change of use)			X
Commercial Site Plan (less than 3000 sft and no change of use, or accessory building)	X		
Industrial Site Plan (over 3000 sft or change of industrial use)			X
Industrial Site Plan (less than 3000 sft and no change of use)	X		
Winery/Cidery		X	
Agricultural Special Events		X	
Home Business		X	
All Other Special Land Uses			X
Dimensional Variances -ZBA		X	

**Bingham Township Ordinance Section 8: Amendment of Article 16**

Section 16.7 is hereby amended to add a new subsection 16.7.D.1 and the existing subsection 16.7.D shall be re-designated as subsections 16.7.D.2 through 16.7.D. 16.

The following information shall be on the site plan: the applicant; the preparer; the date, including revisions; the signature; and seal (if applicable).



**Bingham Township Ordinance Section 9. Severability.**

If any section, provision or clause of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not effect any remaining portions or application of this Ordinance, which can be given effect without the invalid portion or application.

**Bingham Township Ordinance Section 10. Effective Date.**

This Ordinance shall become effective eight (8) days following publication of a synopsis in a newspaper of general circulation within the Township, as provided by law.

Ordinance No. \_\_\_\_ was adopted on the \_\_\_\_th day of \_\_\_\_ 2016 by Bingham Township Board of Trustees, as follows:

Motion By:

Support By:

Roll Call Vote: Yeas:

Nays:

Absent:

Motion Carried.

I certify that this is a true copy of Ordinance No. \_\_\_\_ was adopted at a regular meeting of the Bingham Township Board of Trustees on \_\_\_\_, 2016 and published in the Leelanau Enterprise on \_\_\_\_, 2016.

BINGHAM TOWNSHIP

\_\_\_\_\_  
By:  
Midge Werner, Supervisor

\_\_\_\_\_  
By:  
Peggy Core, Clerk

Date of Township Approval:

Date of Publication:

Effective Date: