

NOTICE OF MEETING

A Regular Meeting of the Leelanau County Planning Commission (LCPC) will be held at **5:30 pm Tuesday, JUNE 22, 2021** in the Leelanau County Government Center and by zoom.

A live streaming of this meeting will be available for viewing via the following link –
https://www.youtube.com/channel/UCNQTglgcTedF2qB8floC1GQ?view_as=subscriber

If you would like to provide comment during the meeting, please watch the livestreamed video, and call in during one of the two public comment portions on the agenda, to **231-256-8109**. There will be no queue, and calls will be taken in the order they are received. Emailed comments are also welcome prior to the meeting, and can be addressed to:
planning@leelanau.gov

Due to COVID-19, this session will be held virtually via Zoom, AND in the Commissioners Meeting Room, Leelanau County Government Center, Suttons Bay, Michigan.

(Please silence any unnecessary cellular/electronic devices)

DRAFT AGENDA - REVISED

CALL TO ORDER & PLEDGE OF ALLEGIANCE

ROLL CALL

CONSIDERATION OF AGENDA

CONFLICT OF INTEREST (*refer to Section 3.7 of the Bylaws*)

PUBLIC COMMENT (Call 231-256-8109)

STAFF COMMENTS

CONSIDERATION OF MAY 25, 2021 MEETING MINUTES *pgs 2-7*

NEW BUSINESS

- A. PC04-2021-08 Leelanau Township, Text Amendment – Temporary Moratorium *pgs 8-24*
- B. PC05-2021-06 Glen Arbor Township – Text Amendment RE: Single Family in Business District *pgs 25-41*
- C. PC06-2021-04 Elmwood Township – Text Amendment RE: Rural Resort District
- D. Capital Improvement Program (CIP) – DRAFT *(sent separately)*
- E. Update: Training session for Fall 2021

REPORTS

- 1. Education Committee
- 2. Housing Action Committee (*Lautner*)
- 3. Parks & Recreation Committee (*Noonan*)
- 4. Report from LCPC members of attendance at township/village meetings, or Other Meetings/Trainings

COMMUNICATIONS

PUBLIC COMMENTS (Call 231-256-8109)

STAFF COMMENTS

COMMISSIONER & CHAIRPERSON COMMENTS

ADJOURN

LCPC Members

Steve Yoder, Chairman
Casey Noonan, Vice-Chairman
Melvin Black, Chair Pro-Tem
Dan Hubbell
Melinda Lautner
Gail Carlson
Robert Miller
Tom Nixon
Kim Todd
Nathan Griswold
Amy Trumbull

A REGULAR MEETING OF THE LEELANAU COUNTY PLANNING COMMISSION WAS HELD ON TUESDAY, MAY 25, 2021, AT THE LEELANAU COUNTY GOVERNMENT CENTER.

Proceedings of the meeting were recorded and are not the official record of the meeting. The formally approved written copy of the minutes will be the official record of the meeting.

Meeting was called to order at 5:32 p.m. by Chairman Yoder who led the Pledge of Allegiance. The Meeting was held at the Leelanau County Government Center, 8527 E. Government Center Dr., Suttons Bay, MI and via ZOOM.

ROLL CALL

Members Present: T. Nixon (Suttons Bay Twp.), K. Todd (Leelanau Twp.)
(via ZOOM) N. Griswold (Elmwood Twp.)

Members Present: S. Yoder, G. Carlson, M. Black, M. Lautner
(At Government Center)

Members Absent: R. Miller, C. Noonan

Members Absent: D. Hubbell, A. Trumbull
(prior notice)

Staff Present: T. Galla, Director, G. Myer, Senior Planner
(At Government Center)

Public Present: None
(At Government Center)

Public Present: None.
(via ZOOM)

CONSIDERATION OF AGENDA

Galla added "Support Letter for Grant" as "Item C" under "New Business."

Motion by Lautner, seconded by Black, to accept the agenda as amended. Motion carried 7-0.

CONFLICT OF INTEREST

Griswold mentioned that he had previously consulted with the owners of Snowbird Inn back in 2013, regarding site plans, but has not been involved with them since then. The commission agreed that this would not constitute a conflict of interest.

PUBLIC COMMENT

The phone number for public comment was announced. No public comment.

STAFF COMMENTS

Galla mentioned the Capital Improvement Program (CIP) and stated that Parks and Recreation may now have something to add. The County Board hasn't started their budget review yet, so this will not be an issue.

CONSIDERATION OF APRIL 27, 2021 MEETING MINUTES

Motion by Black, seconded by Lautner, to accept the minutes as presented. Motion carried 7-0.

NEW BUSINESS

PC03-21-08 Conditional Rezoning (Psenka/Snowbird Inn), Leland Township.

Galla reviewed the conditional rezoning request submitted on May 12, 2021 from Leland Township. This review is for The Snowbird Inn, which consists of approximately 18.4 acres and is located on M-22, just north of N. Birch Landing Dr. and directly south of N. Birdsong Rd. This parcel is currently zoned Agricultural Residential (A/R) Low Density as is most of the surrounding property. Galla noted that they did receive the site plan with the request, but that was not being reviewed, as stated in the staff report. Good Harbor Vineyard located south of the subject property opened in 1980 and sells wine and hard ciders.

Galla continued, explaining that back in 2013, the County Planning Commission reviewed text amendments to the Leland Township Zoning Ordinance. One of the proposed amendments modified Section 18.25 Wineries. The prior Section 18.25 allowed wineries as a Use Permitted by Right in the Agricultural Conservation (A/C) District and the Agricultural Residential (A/R) District with a minimum lot area of ten (10) acres required. The 2013 amendment removed wineries from the A/R District. Galla mentioned that the township minutes show the history of when Psenka went before the township board and was interested in doing something on his property having to do with cideries. It looked like at some point he was going to submit an application to amend the zoning ordinance, but that did not happen. According to the township minutes, Psenka was to pay an application fee of \$1500.00 to amend the zoning ordinance March of 2019, and then another motion was made in September of 2019 to set up an escrow account in the amount of \$1500.00. Galla said it is not clear if those fees were paid twice or exactly what they were for. At the February 2021 Township Planning Commission meeting, Chris Grobbel, presented the application on behalf of Psenka, the applicant. The township held their public hearing April 7, 2021 at which time, several members of the public voiced their concerns.

Galla gave a brief definition of rezoning, which means you are actually reclassifying a property from one district to another district. Under the Michigan Zoning Enabling Act (MZEA), Act 110 of 2006: 125.3405 there is language for conditions to rezoning and it states that the development of the land is done as a condition to a rezoning of the land. Galla continued, saying that it is legal in Michigan to have conditional rezoning. The owner of the land voluntarily offers, in writing, conditions to the rezoning of the land or an amendment to a zoning map. The conditions must be proposed by the applicant, not the local unit of government.

Galla continued, saying when Grobbel presented Psenka's request on February 3, 2021, to the Leland Township Planning Commission, he stated the applicant's original application was for a cidery and that he was advised to re-apply for a condition of rezoning. On March 3, 2021, Grobbel presented Psenka's request again, addressing issues of concern that were raised at the February 3, 2021 meeting. A public hearing was set for April 7, 2021. This is an unusual request that staff has received and is somewhat

similar to a conditional rezoning in another township in Leelanau County a few years ago where the property was not being rezoned to a new district. As part of the preparation for completing this staff report, staff reached out to Corporate Counsel, as well as two planners in the state. Input and suggestions received were in agreement with staff's assessment of the request and were taken into consideration in the writing of this staff report.

Galla pointed out the following issues with the proposed application:

- The application is incomplete. The application from Mr. Psenka does not list the current zoning district OR the proposed zoning district for conditional rezoning.
- The Notice for the Public Hearing did not state what district the parcel is being requested to be rezoned to. The notice stated: "Joseph Psenka, d/b/a/ The Snowbird Inn, respectfully requests a conditional rezoning of his property to allow for a Cidery, in conformance with Zoning Ordinance Article 18.25. The property is located in the AR: Low Density Agricultural – Residential District." A conditional rezoning proposes changing the zoning district to a new district, and the applicant offers conditions. The township cannot offer or suggest conditions, and the township is not required to accept the conditions that have been offered as part of the application. The request for conditional rezoning has to be for a rezoning to a new district.
- The applicant has not requested rezoning the property to a new district, thus there is no 'conditional rezoning'. While there may be concerns that conditional rezoning is 'spot zoning', the use is limited to what has been requested by the applicant and the conditions offered and accepted which are then set forth in a recorded agreement between the parties.
- The application is asking for approval of a use which is allowed in the A/C district, but is not permitted in the current A/R district. In essence, what they are doing is either asking for a use variance or a creation of a special use currently prohibited in the AR District. Staff suggests they don't do either one of these because it would set a precedent for future requests.
- There is no reason to request that the use be 'in perpetuity' as stated in the application. Since zoning runs with the land, if the conditional rezoning is approved and the applicant meets the timelines established by the township, the use can continue.

Due to recurring technical issues with the live Zoom, Galla quickly summarized the remaining portion of the staff report saying staff does not think the township followed proper procedures, and suggests they take this back to their township attorney for review. The proper way to do this would be to back up a little and make sure they have a full application to conditional rezoning, make sure the applicant is offering conditions they can consider, not something that takes away the township's authority. And then proceed with the public hearing again.

Todd questioned what the reason was for the amendment back in 2013 and will those concerns be impacted by this proposed change. She commended staff and suggested the three options given to the township for consideration (Page 13) should include a public hearing. Galla stated that would automatically be required if they chose one of those options. Todd suggested that townships include the rationale for their decisions when making amendments. This makes it easier to track the history.

Nixon commended staff on an exemplary job and stated that it appears they are attempting to use conditional rezoning for a new use. Through his experience in Suttons Bay Township, he was led to believe what staff has clearly pointed out. Conditional rezoning is for rezoning, not for a use. Nixon

said is seems like they got very tied up in their discussions without a clear understanding. Staff has made this point clear enough to them, and they should be able to go back and start this process over again following proper procedures.

Carlson agrees with the comments made and the staff report. The township should go back and follow proper procedures, with a proper application for rezoning rather than re-use. Lautner agreed, the township needs to go through the proper steps and get this rezoned.

Black said if and when it goes to public hearing, any negativity needs to be explained. So often good projects get held up by public comment.

Yoder stated he concurs with staff findings and thought they did an exemplary job

Motion by Nixon, seconded by Lautner, to forward staff report, minutes and all comments to Leland Township Planning Commission. Motion carried 7-0.

Training Topics for fall session/Referral to Education Committee

Galla said she reached out to Mary Reilly, from MSU Extension, about presenting and she is willing to just charge mileage from Manistee and back, which would be around \$90.00. Based on last months discussion, she sent Reilly the two proposed topics. Reilly said they partnered with the University of Michigan to create a sample zoning ordinance for solar energy. They have been working on it for almost and year and it will be done this summer. This would be great resource and they would like to get it out to as many local units of government as possible. The other topic is Generally Accepted Agricultural Management Practices (GAAMPS), and Reilly said they do have some programming for it. Usually when you look at GAAMPS you also need to look at the Michigan Right to Farm Act as well. Galla concluded by saying members needed to decide on how the session will be held. Do they want both topics covered in one session? They could spend 30 minutes on a topic with a break in between.

Discussion ensued.

Members agree that only paying for the mileage was a good deal, and they would like both topics covered. Carlson questioned if 30 minutes on a topic was enough time for follow up questions. Galla said they could collect the follow up questions and answers to post them on the website or send out in an email. Nixon said that they've had two-hour sessions before and he would hope that would be enough time for questions and answers.

SUPPORT LETTER FOR GRANT

Galla stated that Homestretch was purchasing property on Marek Rd. to put in rental units and they would like a letter of support from the County Planning Commission to include with their application for grant funds. The letter is needed by June 1st, so if members are in agreement, Galla will draft a general letter, listing the data from their target market analysis. Lautner questioned who owned the property. Galla said it was in the Land Bank. Todd asked if they were committing themselves to decide zoning or planning issues. Galla said it was already zoned and that they would not be committing any funds.

Nixon stated he would be voting on this topic at his township and was advised to abstain from voting.

Griswold asked about restrictions on the property. Can they show support and also show that they want long-term year-round housing? Carlson said for clarification, they are supporting the notion of this

project going forward, obviously everything hasn't been hammered out yet.

Motion by Black, seconded by Carlson, to give Homestretch a letter of support. Motion carried 6-0. Nixon abstained.

REPORTS

Education Committee

Nothing to report.

Housing Action Committee

Lautner mentioned a 40-acre parcel in Solon Township that was going to be rezoned for a commercial business, but there was a referendum, and voters said no. This parcel will now be turned into housing. Also, there are up to 300 homes being proposed off of Lautner Rd.

Parks & Recreation Committee

Lautner said they were granted a gift from the county to help clean up the disc golf course at Myles Kimmerly and the Pat Hobbins walking trail, which are impassable in some areas. They will hire a company to widen trails and chip all of the downed trees. This money is a gift back for not spending all of their money over the years. Lautner concluded by saying that they will still be stocking Veronica Valley park with fish even though the fish day has been cancelled. Also, the Poor Farm Barn across from the Myles Kimmerly park was awarded "barn of the year!"

Reports from LCPC members of attendance at township/village meetings, or other meetings/trainings.

Lautner stated that last month at the Solon Township Board Meeting it was announcement that a large development off Lautner Rd. was going in. Yoder added that it was 80-acres, and is currently in front of the board to approve for the density.

COMMUNICATIONS

Galla stated that Long Lake Township was updating their plan and when it is opened up for public comment, they will be able to review it and send comments back to them.

Lautner commented that a public hearing was being held tonight in Long Lake Township for housing that is going in on the corner of Cedar Run Rd. and Tilton Rd. These are homes that could work for people who work in Leelanau County.

PUBLIC COMMENT

The phone number for public comment was announced. No public comment.

No public comments received.

STAFF COMMENTS

Galla mentioned the upcoming tire collection and Household Hazardous Waste & Electronic Collection (HHW) in June at the Glen Lake School. Also, she sent out some information on a new proposed bill

that will take away a municipalities right to regulate short term rentals. They will no longer be considered commercial and be allowed in all residential districts.

Galla asked what these large developments, that were mentioned, are doing for sewer. Yoder said the one in Cedar was a Part 41. The 80-acre piece is in a rural farm field, but he doesn't know all the details. Lautner thinks it might adjoin another larger piece, so probably individual septic systems.

Discussion ensued on Part 41.

COMMISSIONER & CHAIRPERSON COMMENTS

Black stated he is waiting to hear what Elmwood Township is going to do about STR's.

ADJOURN

Meeting adjourned at 6:33 p.m.

TEXT AMENDMENT REVIEW
PC05-2021-08 Leelanau Township
Text Amendments – Article 10.9 - Temporary Moratorium

Reviewing Entity: Leelanau County Planning Commission
Date of Review: June 22, 2021

SECTION 1: GENERAL INFORMATION

Date Request Received: May 14, 2021
Last Day of Review Period: June 13, 2021 - 30-day review period under the Michigan Zoning Enabling Act (MZEA)

NOTE: The request was received on May 14. The MZEA provides a 30-day review period for the county to review and report to the township after receiving its amendment. The township wishes to have the review and report from the county.

Requested Action: Review and comment on proposed amendment to add Section 10.9 - Temporary Moratorium to the Leelanau Township Zoning Ordinance.

Applicant:
Leelanau Township Planning Commission
Steve Kalchik, Chairman

SECTION 2: PROPOSAL

See Appendix for a copy of the proposed text amendment and minutes.

SECTION 3: OTHER PLANNING INPUT

Township Plan: The Leelanau Township Master Plan (updated 2010) does not specifically address this amendment.

Leelanau General Plan: The Leelanau General Plan (2020) does not specifically address this amendment.

Township Planning Commission:

A Public Hearing was held on April 8, 2021, and at that time, a new Public Hearing was scheduled for May 13, 2021. After the public hearing on May 13, 2021, the following motion was unanimously passed by the township planning commission.

Motion by Mulvahill to recommend to the Leelanau Township Board the adoption of the zoning amendment to add Section 10.9 – Temporary Moratorium, as presented, that would apply to the application of certain provisions of the township zoning ordinance, and send the amendment to the Leelanau County Planning Commission for review.

Seconded by Harder.

Discussion:

The PC wants to see the review comments from the Leelanau County Planning Commission, staff, and other officials before it is acted upon by the township board.

Roll Call Vote:

Yes: Harder, M, R, M, W, K

NO: None

Absent: Sampson

SECTION 4: ANALYSIS

Compatibility

A. Is the proposed text compatible with other language in the zoning ordinance? Yes

B. Are there any issues with the proposed text (such as poor wording, confusing text, unenforceable language, etc.)? See staff comments.

C. Do the land uses or other related dimensional standards (height, bulk, area, setback, etc.) in the proposed text amendment(s) conflict with the existing zoning ordinance? No

Issues of Greater Than Local Concern

A. Does the proposed text amendment(s) include any issues of greater than local concern? Please list.
No

Comparison with Local Plans or Ordinances

A. Do the contents in the proposed text amendment(s) conflict with the community’s plan? Please list.
No

Comparison with County Plans or Ordinances

A. Do the contents in the proposed text amendment(s) conflict with the General Plan? Please list.
No

Current Zoning District:

For Current text, Link to the Township Sign Ordinance at: <https://www.leelanau.cc/leelanautwp.asp>

SECTION 5: HISTORY

On March 17, 2021, the Leelanau Township Board unanimously approved Ordinance No. 2 of 2021 which established a temporary moratorium on any application for a special land use permit for RV Resorts and Campgrounds in the Commercial Resort Zoning District. It is listed on the township website at: https://www.leelanau.gov/downloads/notice_of_adoption_ordinance_no.pdf While the township’s legal counsel has determined that this moratorium is enforceable, they recommended that there also be a section in the zoning ordinance that addresses **temporary moratorium**. Township minutes of April 8, 2021 state “during the temporary moratorium, the township would review its zoning ordinance as it relates to RV Resorts and Campgrounds in the Commercial Resort Zoning District. (Note: There are only 4 pages of minutes posted online for the April 8, 2021 meeting – they seem to be in complete.)

SECTION 6: STAFF COMMENTS

Leelanau Township is proposing adding a **NEW** Section 10.9 -Temporary Moratorium to its township zoning ordinance, which reads as follows:

**SECTION II
ZONING ORDINANCE TEXT AMENDMENT ARTICLE 10
AUTHORITY TO IMPOSE A TEMPORARY MORATORIUM OF
ZONING ORDINANCE PROVISIONS.**

Article 10, of the Leelanau Township Zoning Ordinance is hereby amended by adding a new Section 10.9,
Temporary Moratorium, which reads as follows:

A. The Township Planning Commission has the authority to recommend the establishment of a temporary moratorium as to the application of certain provisions of the Township Zoning Ordinance to the Township

Board, by majority vote of the Planning Commission. The recommended temporary moratorium shall not initially be longer than 180 days. The Planning Commission shall present findings of fact showing that such a moratorium is necessary to protect the public health, safety, and welfare.

- B. The Township Board, with or without the recommendation of the Township Planning Commission, may impose a temporary moratorium as to the application of certain provisions of the Township Zoning Ordinance by resolution or ordinance of the Township Board. The temporary moratorium shall not initially be longer than 180 days. The Township Board shall present findings of fact showing that such a moratorium is necessary to protect the public health, safety, and welfare.
- C. Such temporary moratorium may be extended for up to another 180 days by approval of the Township Board, based upon new findings of fact, to allow additional time for Township review and consideration of the application, revision, review or repeal/replacement of zoning ordinance provisions.

SECTION III
SEVERABILITY

The provisions of this ordinance are hereby declared to be severable. If any clause, sentence, word, section or provision is hereafter declared void or unenforceable for any reason by a court of competent jurisdiction, it shall not affect the remainder of such ordinance which shall continue in full force and effect.

SECTION IV
EFFECTIVE DATE / REPEAL

This Ordinance shall take effect eight days after publication. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed. Ordinance 2 of 2021 is specifically found not to be in conflict with this Ordinance and is not repealed, replaced or revised by the adoption of this Ordinance.

Ordinance No. 2 of 2021 was adopted March 17, 2021 and imposes a moratorium on recreational vehicle parks and campgrounds for 180 days or until an amendment to the Zoning Ordinance is adopted, whichever occurs first. Ordinance No. 2 also allows for the Township (by resolution) to extend the moratorium. It is important to remember that the county review is for an amendment to add a new Section 10.9 to Article 10, Administration, Permits and Appeals, of the Leelanau Township Zoning Ordinance. This amendment is for temporary moratoriums and the county review is on this amendment, not on Ordinance No. 2 which is already in place and deals more specifically with a moratorium on recreational vehicle parks and campgrounds.

The following excerpt is from “A zoning moratorium should only be done with caution”, Brad Neumann, Michigan State University Extension, April 8, 2020:

https://www.canr.msu.edu/news/zoning_moratoriums_should_only_be_done_with_caution

Local units of government sometimes adopt a moratoria to prevent anyone from developing or building something until regulations concerning the activity are developed and adopted. This has occurred in Michigan with medical marijuana dispensaries, signs and billboards, scrapyards, and wind and solar energy generation systems, to name a few. In Michigan, there is no statutory authority for a local government to adopt a moratorium in the first place. This is a problem because there is no specific procedure or process for enacting a moratorium-leading to questions about how it is done.

The U.S. Supreme Court has recognized the legitimate use of moratoria (*Tahoe-Sierra, U.S. (2002)*), and there are appellate level court cases in Michigan that provide support for the idea that moratoria can be done (e.g. *Central Advertising Co. v St. Joseph Township* 125 Mich App 548, 554-555 (1983).) In one case, “a moratorium on the issuance of building permits in a particular district of the city for a reasonably limited time” was not voided by the court (*Heritage Hill v Grand Rapids, 48 Mich App 765, 768 (1973)*). Nor did the Michigan Court of Appeals find it to be legally offensive for a township to declare a “brief moratorium on all sewer connections” (*BPA II v Harrison Township, 73 Mich App 731, 733-734 (1977)*).

While courts have not struck down moratoria in Michigan, there is no appellate court that has upheld a moratorium in Michigan for longer than six months. Moratoria are supposed to be short, tied to direct threat to public health, safety and general welfare, given a specific start and end date, and then removed at the end of the date.

The serious and important point is that a local government should never enact a moratorium without the direct involvement of the government's corporate attorney, who should be experienced in municipal and land use law. This is particularly important because there may be question over the government's authority to do so. There may also be question on how it is done. Normally, one would find such direction in enabling legislation, but this is lacking in Michigan. Therefore, it is important that a moratorium is enacted in a way that the attorney is comfortable with, because he or she will be the one to stand to defend the local government if challenged.

The *Metamora Township v. American Aggregates of Michigan, Inc.*, 349069 was decided on April 1, 2021. It is an unpublished opinion, so it does not constitute legal precedent. Nevertheless, Courts frequently adopt the reasoning in unpublished opinions. Below is the quote from the *Metamora* case:

5. LEGALITY OF THE MORATORIUM

Counterplaintiffs argue that the moratorium was not a proper exercise of the Township's authority because it was an illegal attempt to amend its zoning ordinance by resolution and because passing moratoria is not authorized by the ZEA. We disagree.

"An ordinance or resolution cannot be amended, repealed, or suspended by another act by a council of less dignity than the ordinance or resolution itself." *McCarthy v Village of Marcellus*, 32 Mich.App. 679, 688-689; 189 N.W.2d 80 (1971).

"[T]he difference between municipal ordinances and resolutions is in what the actions do, rather than in the manner in which they are passed. Resolutions are for implementing ministerial functions of government for short-term purposes. Ordinances are for establishing more permanent influences on the community itself." *Rollingwood Homeowners Corp v City of Flint*, 386 Mich. 258, 264; 191 N.W.2d 325 (1971) (quotation marks and citation omitted).

"Normally when faced with the fact of a resolution passed by a city government in an area where an ordinance is required, this Court would respond by declaring the resolution void." *Id.* (quotation marks and citation omitted).

In this case, the moratorium was approved for an initial four-month period and then later extended by three months, clearly making it temporary and short-term. Furthermore, the moratorium did not establish a procedure for reviewing petitions for mining approval, but rather delayed consideration of petitions until the Township could study the applicable statutory standards and procedures for processing and considering requests for approval of gravel mining in *Metamora Township*.

Thereafter, the Township duly adopted original Article 12A, which prescribed the requirements and procedures for obtaining approval of a gravel mining application. The moratorium did not deny counterplaintiffs a right to apply for a mining permit, **but merely temporarily delayed a decision on applications until the Township could study and determine how such applications were required to be reviewed under evolving statutory standards.** Because the moratorium did not establish any permanent changes or alter the way that applications were decided, we conclude that the moratorium did not operate as a de facto ordinance. (emphasis added)

Counterplaintiffs also argue that the ZEA "is the Township's sole source of zoning authority, and it establishes interim zoning-not moratoria-as the sole means to delay reviewing and granting land use applications that a municipality would otherwise be required to process." In so arguing, however, counterplaintiffs do not specifically cite to a portion of the ZEA to support their position. Instead, counterplaintiffs cite *Lake Twp v Sytsma*, 21 Mich.App. 210; 175 N.W.2d 337 (1970), which is not binding precedent and is factually distinguishable from the facts herein. MCR 7.215(J)(1). Consequently,

because counterplaintiffs' argument that the moratorium was not authorized by the ZEA is unsupported, we conclude that the trial court did not err by granting summary disposition on this claim.

(<https://law.justia.com/cases/michigan/court-of-appeals-unpublished/2021/349069.html>)

The procedure Leelanau Township is following for establishing a moratorium is consistent with the decision of Judge Philip E. Rodgers, Jr. in *case No. 02-22228-AZ, Great Northern Broadcasting System, Inc. v. Long Lake Township, Long Lake Township Zoning Board of Appeals, Long Lake Township Board of Trustees, and Long Lake Township Planning Commission (2003)*. In that decision, Judge Rodgers outlined the process for either amending an ordinance, or adopting an interim ordinance. Judge Rodgers ruled that the resolution passed by the Township Board for a moratorium failed because it did not conform with the statutory requirements as either an amendment to the Township Zoning Ordinance or as an interim ordinance. The moratorium was declared null and void.

Leelanau Township has chosen to adopt a moratorium as you would an amendment to the zoning ordinance. This involves the same public hearing procedures, public notices, etc. Leelanau Township has worked with its attorney on drafting this document, and complied with the requirements to amend its zoning ordinance. If the Township Board approves the amendment to the zoning ordinance, it will become effective 8 days after publication (unless challenged under Sec. 402 of the MZEA). It will allow for moratoriums of 180 days, and will allow for such temporary moratorium to be extended for up to another 180 days by approval of the Township Board. Do the words 'up to **another**' mean this will only allow one (1) extension?

Note: the online version of the zoning ordinance Table of Contents, lists Sections 10.1 through 10.7. It should also list the current Section 10.8 Public Notice.

Appendix - Transmittals from Leelanau Township

Gail Myer

From: Steve Patmore <zoningadmin@suttonsbaytwp.com>
Sent: Friday, May 21, 2021 9:23 AM
To: Gail Myer
Subject: RE: Leelanau Township Zoning Amendment

That's fine with us

From: Gail Myer <gmyer@leelanau.gov>
Sent: Thursday, May 20, 2021 2:56 PM
To: Steve Patmore <zoningadmin@suttonsbaytwp.com>; Trudy Galla <tgalla@leelanau.gov>
Subject: RE: Leelanau Township Zoning Amendment

Hi Steve,
This is going to take significant time and research.. If it could be held until the June 22 Planning Commission Meeting that would really be helpful.

Gail Myer

Senior Planner
Planning & Community Development
8527 E. Government Center Dr. Ste. 108
Suttons Bay, MI 49682
231-256-9812



From: Steve Patmore <zoningadmin@suttonsbaytwp.com>
Sent: Friday, May 14, 2021 9:41 AM
To: Gail Myer <gmyer@leelanau.gov>; Trudy Galla <tgalla@leelanau.gov>
Subject: Leelanau Township Zoning Amendment

Gail & Trudy,

Last night the Leelanau Township Planning Commission recommended approval of the attached zoning amendment that would add a new Section 10.9 to the Leelanau Township Zoning Ordinance.

I am working on the draft minutes and some background to send to you Monday.

This is really not time sensitive, so you can place it on the June agenda if you have a busy May agenda.

Steve

**TOWNSHIP OF LEELANAU
COUNTY OF LEELANAU, STATE OF MICHIGAN**

ORDINANCE NO. ___ of 2021

ADOPTED: _____, 2021

EFFECTIVE: _____

**AN ORDINANCE TO AMEND THE LEELANAU TOWNSHIP ZONING ORDINANCE
TO CREATE A NEW SECTION ON TEMPORARY MORATORIUM**

An Ordinance to protect the public health, safety, and welfare by establishing regulations relating to a moratorium on zoning ordinance provisions while the Township completes a study of the zoning regulations pertaining thereto and possible subsequent revisions to the current Zoning Ordinance; to provide for severability; to repeal all ordinances or parts of ordinances in conflict therewith; and to provide an effective date.

**THE TOWNSHIP OF LEELANAU
LEELANAU COUNTY, MICHIGAN**

ORDAINS:

**SECTION I
FINDINGS**

The Township finds that imposing a moratorium upon the consideration of a zoning ordinance provision on a limited temporary basis, is reasonable and necessary for, among other reasons, the following reasons:

- A. Michigan courts have recognized that a moratorium is a common and legitimate planning tool to preserve the status quo while formulating a development strategy.
- B. The temporary moratorium would allow study of the public health, safety, and welfare concerns of any zoning ordinance provision, and allow for any needed zoning ordinance update and implementation process to occur.
- C. The temporary moratorium would allow the study and possible implementation of revisions to the zoning ordinance to occur with citizen input and involvement, public debate, and full consideration of all issues and points of view.
- D. The temporary moratorium would allow for consideration of changes in land use that have occurred since the provisions in the zoning ordinance were established.

RECOMMENDED FOR APPROVAL BY THE
LEELANAU TWP PLANNING COMMISSION
ON 5/13/2021 SP

SECTION II
ZONING ORDINANCE TEXT AMENDMENT ARTICLE 10
AUTHORITY TO IMPOSE A TEMPORARY MORATORIUM OF
ZONING ORDINANCE PROVISIONS

Article 10, of the Leelanau Township Zoning Ordinance is hereby amended by adding a new Section 10.9, Temporary Moratorium, which reads as follows:

- A. The Township Planning Commission has the authority to recommend the establishment of a temporary moratorium as to the application of certain provisions of the Township Zoning Ordinance to the Township Board, by majority vote of the Planning Commission. The recommended temporary moratorium shall not initially be longer than 180 days. The Planning Commission shall present findings of fact showing that such a moratorium is necessary to protect the public health, safety, and welfare.
- B. The Township Board, with or without the recommendation of the Township Planning Commission, may impose a temporary moratorium as to the application of certain provisions of the Township Zoning Ordinance by resolution or ordinance of the Township Board. The temporary moratorium shall not initially be longer than 180 days. The Township Board shall present findings of fact showing that such a moratorium is necessary to protect the public health, safety, and welfare.
- C. Such temporary moratorium may be extended for up to another 180 days by approval of the Township Board, based upon new findings of fact, to allow additional time for Township review and consideration of the application, revision, review or repeal/replacement of zoning ordinance provisions.

SECTION III
SEVERABILITY

The provisions of this ordinance are hereby declared to be severable. If any clause, sentence, word, section or provision is hereafter declared void or unenforceable for any reason by a court of competent jurisdiction, it shall not affect the remainder of such ordinance which shall continue in full force and effect.

SECTION IV
EFFECTIVE DATE/REPEAL

This Ordinance shall take effect eight days after publication. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed. Ordinance 2 of 2021 is specifically found not to be in conflict with this Ordinance and is not repealed, replaced or revised by the adoption of this Ordinance.

Leelanau Township, Monica Diaz, Clerk
P.O. Box 338, 119 E Nagonaba St., Northport, MI 49670
(231) 386-5138

LEELANAU TOWNSHIP PLANNING COMMISSION

Zoning Amendment to add Section 10.9 – Temporary Moratorium to the Leelanau Township Zoning Ordinance

May 2021

Background:

- This Zoning Amendment was recommended by the legal counsel for Leelanau Township.
- In March 2021, the Leelanau Township Board, with the guidance of their legal counsel, adopted a 180-day temporary moratorium on any applications for Special Land Use Permits for RV Parks and Campgrounds in the Commercial Resort Zoning District.
- While the township’s legal counsel has determined that this moratorium is enforceable, they recommended that there also be a section in the zoning ordinance that addresses temporary moratorium.
- The township’s legal counsel drafted the proposed amendment, which was edited slightly by the planning commission with the edits approved by legal counsel.
- Suttons Bay Township has a similar provision in their zoning ordinance.
- MSU Extension Staff, in an article published in 2020, also recommends that if a township was considering a zoning amendment, they should consider having suitable language in their zoning ordinance.
- Several townships in Leelanau County adopted temporary moratoriums on medical marijuana facilities after the statewide referendum first passed, and the state was developing rules for permitting such facilities.
- The Leelanau Township Planning Commission found that a zoning moratorium can be a useful zoning tool, but must be used carefully, for a limited period of time, and under the guidance of legal counsel.
- *This Amendment does not recommend or establish any particular temporary moratorium, it merely establishes new language in the zoning ordinance.*

Amendment Process:

- An amendment was first presented to the Planning Commission by the Township Board for a Public Hearing on April 8, 2021.
- The Planning Commission requested that the proposed amendment be edited to only add a Section 10.9, and eliminate any references to any particular moratorium. They scheduled a new Public Hearing for May 13, 2021.
- After the Public Hearing on May 13, 2021, the Planning Commission recommended unanimously that the zoning amendment be approved by the township board.

Prepared by:
Steve Patmore
Zoning Administrator
Leelanau Township

EXCERPT
DRAFT MINUTES
LEELANAU TOWNSHIP PLANNING COMMISSION
REGULAR MEETING
Thursday, May 13, 2021
7:00 p.m.
Meeting by Electronic Remote Access
Zoom Meeting ID: 881 0982 5018 Passcode: 496700

1. PLANNING COMMISSION CALL TO ORDER, ROLL CALL, NOTATION OF QUORUM:

The meeting was called to order remotely by Chair Kalchik at 7:00 p.m.

He asked each member to introduce themselves remotely.

Members Present: Kalchik, Harder, Mulvahill, Rebori, Mitchell, Weber

Absent: Sampson

Quorum Established

Staff: Zoning Administrator Steve Patmore (ZA)

Public: 20 others via Zoom Electronic Remote Access

6. DISCUSSION/ACTION ITEMS:

A. Public Hearing & Consideration – Zoning Ordinance Amendment to add Section 10.9 – Temporary Moratorium to the Leelanau Township Zoning Ordinance.

Chair Kalchik opened the Public Hearing, and asked ZA Patmore to introduce the topic.

ZA Patmore introduction:

- The Planning Commission (PC) reviewed a draft of this amendment on April 22, 2021 and suggested minor changes subject to the township attorney’s review.
- This amendment was made a priority by the PC at their April 8, 2021 meeting.
- This zoning ordinance amendment would add a new Section 10.9 – Temporary Moratorium to the zoning ordinance, which establishes criteria for creating future zoning moratorium.
- This amendment does not establish or recommend any particular moratorium, it just establishes the new section in the zoning ordinance.
- The township attorney prepared the original document and has reviewed and approved the draft in front of you tonight.
- If the Planning Commission recommends approval of this amendment, it would then be sent for review by the County Planning Commission, then forwarded to the township board for consideration.

Planning Commission questions & discussion:

- The PC would like to learn if the County Planning Commission has any significant comments on the proposed ordinance.
- It was noted that in Section 2, Item B, the word “the” was removed to make sure that no one could construe that any moratorium would suspend the entire zoning ordinance.
- The PC was glad to see that language was added to require that any extension must include a new findings of fact.

- There was discussion on where the new section would fit in the zoning ordinance.
- There was discussion on when the amendment could go into effect. Once an amendment is adopted by the Township Board, the amendment would go into effect 8 days after publication. Depending on scheduling and circumstances, that could be 40 days or more.

Chair Kalchik opened the floor to public comment on this proposed zoning amendment:

- Gerald Schatz, 505 Mill Street, Northport. Wants to point out that, at least in his opinion, there are drafting problems with this. It is very important that the minutes reflect the clear intent of the planning commission as to what it's doing and what it wants. Because he believes that, as drafted, the language lends itself to an interpretation, probably not yours, and that the ordinance itself is suspended when, in fact, you are talking about suspending certain actions that would be considered pursuant to the ordinance. That's a drafting problem and it won't get solved here tonight. For that reason, please make your intention very explicit. Thank-you.
- Scott Walker, no address given. This draft gives the planning commission and township board a blank check to pretty much do whatever you want at any time. Specifically, the 180-day term in section 2, paragraph a, is excessive. If you can do a survey in 9 days, 180 days is 20 times longer and seems incredible. Echo's comment about the language regarding findings of fact. Would like to see that language expanded to be more explicit about what evidence is required. Paragraph B gives away your authority to the township board. Why is the planning commission needed if, as we have already seen, the township board acts prematurely without even your counsel and advice? Paragraph C gives the board another 6 months, that makes this moratorium a full year. If you want to kill all development in the future, this is a pretty good way.
- Gary Fredrickson, no address given. Someone made a comment that you have to wait 60 days for it to come back to the planning commission, so is this thing in effect now? Because the township board made a motion to put this moratorium in place already, but now we are going to write it into the ordinance and we have to wait for it to be published in the paper, so who's doing what here? There is two parallel things going on at the same time. The board has already put in motion and passed it. He believes there is a moratorium, but now your going to put moratorium in the zoning ordinance where it should have been to begin with, and you should have been the one making the decision. Agrees with Tom VanPelt, that this gives the board more authority than the planning commission. Just a comment.
- Richard Edmonds, no address given. Wants to point out to the public and commission that the effective date could be impacted by a citizen petition for a referendum on this ordinance to be considered at a special election. That could delay the effective date too, if once the township board adopts the ordinance a citizen petition files a petition challenging the ordinance and require it be presented to the public at a referendum at an election. Thank-you.

There being no further comment, Chair Kalchik asked if there was any written correspondence on this topic. ZA Patmore stated that he has received no new correspondence for the Public Hearing.

Chair Kalchik closed the Public Hearing

Planning Commission Deliberation:

- It is clearly the intent of the PC that a moratorium established under this section would cover certain provisions of the zoning ordinance and not suspend the entire ordinance.
- This amendment would not be taking authority away from the Planning Commission, nor does it give the township board more authority. It would give authority & direction to the PC.
- This should be a rarely used, but potentially useful tool for the township.
- The township attorney has reviewed and approved this draft.
- We should consider PC's years down the road – this gives them a tool that they can use.

- The Minutes should reflect that a moratorium established under this amendment would be specific to certain conditions and not suspend the entire zoning ordinance.

Motion by Mulvahill to recommend to the Leelanau Township Board the adoption of the zoning amendment to add Section 10.9 – Temporary Moratorium, as presented, that would apply to the application of certain provisions of the township zoning ordinance, and send the amendment to the Leelanau County Planning Commission for review.

Seconded by Harder.

Discussion:

- ***The PC wants to see the review comments from the Leelanau County Planning Commission, staff, and other officials before it is acted upon by the township board.***

Roll Call Vote:

Yes: Harder, M, r M, W, K

No: None

Absent: Sampson

ZA Patmore stated that he would transmit the amendment to the Leelanau County Planning Commission tomorrow, but was not certain that this item would make the agenda of their May meeting.

Excerpt of Draft Meeting Minutes prepared by Steve Patmore, Zoning Administrator

DRAFT MINUTES
LEELANAU TOWNSHIP PLANNING COMMISSION
REGULAR MEETING

Thursday, April 8, 2021
7:00 p.m.

Meeting by Electronic Remote Access

Zoom Meeting ID: 881 0982 5018 Passcode: 496700

1. PLANNING COMMISSION CALL TO ORDER, ROLL CALL, NOTATION OF QUORUM:

The meeting was called to order remotely by Chair Kalchik at 7:00 p.m.
He asked each member to introduce themselves remotely.

Members Present: Kalchik, Harder, Mulvahill, Rebori, Sampson, Mitchell

Absent: None

1 Vacancy on Planning Commission

Quorum Established

Staff: Zoning Administrator Steve Patmore (ZA)

Public: 75 others via Zoom Electronic Remote Access

2. APPROVAL OF AGENDA: Chair Kalchik asked if there were any additions or changes to the draft Agenda.

Motion by Rebori to approve the draft Agenda as amended.

Seconded by: Sampson

Discussion: None

Roll Call Vote

Ayes: Mulvahill, Mitchell, Sampson, Rebori, Harder, Kalchik

Nays: None

Absent: None

One Vacancy

Motion Carried

3. DECLARATION OF CONFLICT(S) OF INTEREST:

Chair Kalchik asked each Commissioner if they had any conflict of interest on any item on this agenda.
All commissioners individually stated that there was no conflict of interest.

4. ANNOUNCEMENTS / CORRESPONDENCE – ZA PATMORE

Zoning Administrator Patmore stated that he did not have any announcements, however, there was some correspondence. Any correspondence related to the Public Hearing will be addressed during the Public Hearing. There was one written correspondence from Phil Hallstedt regarding the Farm Stay agenda item, and that this correspondence was distributed to the PC and will be part of the Record.

5. PUBLIC COMMENT:

Chair Kalchik opened the floor to public comment and asked that comments be kept to three minutes, that each speaker will be allowed to speak once, and asked one of the other Commissioners to be a timer. ZA Patmore noted that this was not the time for the Public Hearing on the Zoning Ordinance Moratorium language, and asked that those who wished to speak on that topic would do so during the hearing.

- Gerald Shatz, Northport, stated that he noticed that the Township Zoning Map had not been updated in 11 years, and that there was no up-to-date planning documents for the Village on the website.

- ZA Patmore responded that there have been no map amendments (rezonings) in the past 11 years to his knowledge, so the zoning districts are accurate. He stated that the zoning map could be revised to reflect new properties and parcel lines created in the past 11 years. He added that Leelanau Township does not have zoning or planning jurisdiction in the Village of Northport, and can not post planning documents for the village.
- Elizabeth Malleck – We support the Planning Commission and their moratorium. From a community perspective, taking a pause right now & looking at the Master Plan is admirable and commendable.

There was no other Public Comment at this time.

6. **DISCUSSION/ACTION ITEMS:**

A. **Public Hearing & Consideration – Proposed Zoning Ordinance Amendment that would impose a 180-day moratorium on the acceptance of any application for permits for RV Parks and Campgrounds in the Commercial Resort Zoning District in Leelanau Township.**

Chair Kalchik opened the Public Hearing, and asked ZA Patmore to introduce the topic.

ZA Patmore explained that this Public Hearing is on a proposed zoning ordinance amendment that would include the following:

1. Add a new Section 10.9 on Temporary Moratorium, and;
2. Under the new Section 10.9, Establish a temporary moratorium on any application for a special land use permit for RV Resorts and Campgrounds in the Commercial Resort Zoning District.

On March 17, 2021, the Leelanau Township Board unanimously approved Ordinance No. 2 of 2021 which established a temporary moratorium on any application for a special land use permit for RV Resorts and Campgrounds in the Commercial Resort Zoning District.

The Ordinance is on the township website, a Notice of Adoption was prepared and published.

The temporary moratorium is already in effect.

This Public Hearing is on a proposed amendment that was recommended by the township legal counsel. According to the attorney, this is a secondary step which puts the township in a better legal position.

The township board, at the recommendation of the legal counsel, is asking the planning commission to consider this amendment. The planning commission is a recommending body. This amendment must be reviewed by the planning commission, a public hearing held, and a recommendation made to the township board. This amendment will eventually go back to the township board regardless of the recommendation of the planning commission.

During the temporary moratorium, the township would review its zoning ordinance as it relates to RV Resorts and Campgrounds in the Commercial Resort Zoning District.

The township board has approved the hiring of a Professional Planner to work with the planning commission and the Township Attorney during this review process. You have a team to work with.

ZA Patmore then read through the proposed ordinance, which would be Leelanau Township Ordinance No. 3 of 2021. The proposed ordinance was part of the meeting packet and posted on-line prior to the meeting.

PC Member and Township Trustee Harder was asked if she wanted to add any comments, since the request was coming from the township board. She commented that the PC has been overwhelmed with everything lately and there have been a lot of distractions. This moratorium gives us the time we need to make sure the ordinance and approvals are consistent with the community and Master Plan.

The Planning Commission was asked if they had any questions on the proposed ordinance or procedure:

- How many times can the moratorium be renewed? The proposed ordinance does not say how many times it can be renewed – just that the township board can renew the moratorium by resolution or ordinance.

There were no other questions from the Planning Commission at this time.

Chair Kalchik opened the floor to public comment. He asked everyone to state their name and address, and stated that comments would be limited to three minutes. Comments should be directed to the Planning Commission and this is not a question and answer session. If there is an easy answer to a question it may be answered by the commission or staff. The public was asked to be patient and orderly considering the Zoom meeting format.

- Walter Johnson, represents NM Investments as project coordinator for Timber Shores. The moratorium and amendment comes to them out of the blue without pre discussion. Believe that this is a targeted effort to derail plans for the Timber Shores development. He is strongly opposed to the delay. This is contrary to well established procedure and is an assault on property rights. The 2010 Master Plan update recommended an RV campground as a permissible special use. The property is zoned Commercial Resort and the current owner has owned the property for 20 years. 19 months ago they presented plans for an RV park, and it was never claimed that the master plan, zoning ordinance, or agency permitting process can't protect public health and safety. Public had a year and a half to make legitimate case that Timber Shores poses any harm to public health, safety or the environment. We have engaged expert engineers and scientists that have reviewed the property, the plans for the waste water treatment plant and there is nothing that suggests that there is any public harm to public health or safety. We believe that the proposed amendment will just prolong a repetitive discussion that takes county, state, and federal experts out of the discussion. We believe that the moratorium will provide significant economic damage to the community and at a minimum the delay will result in a lost year and higher construction costs and lost job opportunities, lost taxes, and economic stimulus to other businesses in the community. We have posted further comments to the township on our website. Please refer to www.timbershoresrvpark.com for further information. Thank-you.
- Kristi Hallett, 12488 E. Tatch Rd., Omena, Want's to second Steve Kalchik's comment that there needs to be an end to this. It can't go on. Need an end date. Can't change the game mid stream as Mr. Johnson has said. If anyone had been here when Timber Shores was functioning before, it did no damage. It was the greatest thing to ever happen to this area and you all need to let it happen again. I don't know why everyone needs to come here and shut the gate. Open the gate and let this area thrive. I don't know why you want to kill it. There needs to be an ending date to the moratorium that is in effect. You can't keep pushing it. That's ridiculous and no one in their right mind does business this way.
- Richard Edmonds, no address given. First of all, wants to mention that he has seen some correspondence regarding the status of the Timber Shores application and he wants to make sure any documentation coming in regarding the status is out of order for this meeting and should not be

included in any presentation at this meeting. Can review in another venue at another time. Would like both sides addressing that issue to be out of order.

On to comments about the moratorium: As Mr. Johnson said, this property has been this way, and the other lady said that the campground was there for 50 years or more with no noted problems, and as Ms. Harter said, you guys did a master plan update in 2010, and during that master plan you were given little cards, and on the back of the cards you said what you wanted to see for the township in the next ten years, next fifteen years. What you said is that you wanted to promote job opportunities. You wanted to make goals and objectives for the township that would be implemented through the zoning ordinance. You said that ten years ago. At the time, one of your goals was to encourage development of a balanced community land use pattern with recreational uses, agricultural uses, and residential uses. Here is the important thing; How did you say you were going to do that? You're going to do that by preserving the rights and promote the responsibility of the individual property owners, that's on page 48 of the Master Plan. You went on to say that you have a goal for the environment; strive for the protection of important natural resources and open spaces. You're going to do that with groundwater quality control, zoning ordinance regulations, and regulations by state, county, and even federal organizations. One of the things that you created was a future land use area called Commercial Resort, and in that area you included campgrounds and RV parks as special uses; as permitted with approvals by agencies from the state, county, and federal governments.

THE THREE MINUTE TIME LIMIT EXPIRED AT THIS POINT.

- John Sentell, property owner at 3580 N. Cove Trail. Wants to thank and commend the planning commission for their leadership and foresight to recommend a review of the zoning ordinance in regards to RV parks and campgrounds in the Commercial Resort District. The past year has demonstrated that it is essential to reconsider the future of how growth and development will come to our county and local community.

TEXT AMENDMENT REVIEW

PC06-2021-06 Glen Arbor Township

Text Amendment – Article VIII Business District

Reviewing Entity: Leelanau County Planning Commission
Date of Review: June 22, 2020

Section 1: General Information

Date Request Received: June 9, 2021
Last Day of Review Period: July 9, 2021 (30-day review period under the Michigan Zoning Enabling Act)

Requested Action: Review and comment on proposed text amendment to the township zoning ordinance Article VIII – Business District.

Applicant:
Glen Arbor Township Planning Commission
Lance Roman, Chairman

Section 2: Proposal

See Appendix for a copy of the proposed text amendments.

Section 3: Other Planning Input

Township Plan: The Glen Arbor Township Master Plan (2019), makes a number of recommendations regarding the proposed text. See Staff Comments below.

Leelanau General Plan: The Leelanau General Plan (2020) does not specifically address this amendment.

Township Planning Commission:

A public hearing was held on June 3, 2021. The minutes of June 3 indicate the discussion was opened to participants on Zoom (page 3), comments were received and then the following motion was made:

Peppler moved that the Planning Commission adopt an amendment to allow single family dwellings a use by right in the Business District and forward the proposed amendment to the Leelanau County Planning Commission for review.

Motion was supported by Thompson.

Peppler aye, Thompson aye, Ihme aye, Roman aye, Plessner nay. Motion carried.

Section 4: Analysis

Compatibility

A. Is the proposed text compatible with other language in the zoning ordinance? Yes

B. Are there any issues with the proposed text (such as poor wording, confusing text, unenforceable language, etc.)? See staff comments.

C. Do the land uses or other related dimensional standards (height, bulk, area, setback, etc.) in the proposed text amendment(s) conflict with the existing zoning ordinance? No

Issues of Greater Than Local Concern

A. Does the proposed text amendment(s) include any issues of greater than local concern? Please list.
No

Comparison with Local Plans or Ordinances

A. Do the contents in the proposed text amendment(s) conflict with the community’s plan? Please list.

No

Comparison with County Plans or Ordinances

A. Do the contents in the proposed text amendment(s) conflict with the General Plan? Please list.

No

Current Zoning District:

For Current text, Link to the Township Zoning Ordinance at:

<https://www.glenarbortownship.com>

Section 5: History

The Leelanau County Planning Commission reviewed case PC06-07-06 in 2007 which was a request from Glen Arbor Township to remove single family dwellings as a permitted use in the Business District. The township planning commission minutes from June 3, 2021, indicate that at that time, the township feared running out of places to put businesses in the Business District. PC06-07-06 staff report referenced the Glen Arbor Master Plan which had recommendations to remove single family dwellings in the Business District, unless associated with a commercial business on the same lot.

Township minutes from June 3, 2021 also indicate about 100 phone calls and 18 letters were received stating concerns over this proposed amendment.

Section 6: Staff Comments

Glen Arbor Township planning commission has proposed eliminating the words ‘except single family dwellings’ from Section VIII.1 Use Regulations in Article VIII, Business District.

The **current** text under Article VIII Business District reads as follows:
Section VIII. 1 Use Regulations

A. Any used permitted in the Recreational District as described under Article VII of This Ordinance, except single family dwellings, will be permitted in this District.

The proposed amendment will **delete** “except single family dwellings” from this sentence.

The Township Master Plan provides the following information and recommendations:

There is a mix of homes and businesses in the central part of the village with a slow conversion of most homes to businesses. This is in part a response to market demand, and in part because the Township Zoning Ordinance has most of the property in the village core in a business classification. In order to preserve adequate land that is well suited for business use, it is important that the Township keep the existing lands zoned business, whether they are presently used that way or not. The Zoning Ordinance permits dwelling units in the Business District only as part of a multifamily dwelling or on the second or third floors above businesses. This has the benefit of providing more housing opportunities for both year-round and seasonal residents. (Chapter 5, Future Land Use Plan, page 5-11).

Village Business Characteristics

The Village business area is, of course, characterized by the present businesses. Most of the original platted part of the Village is presently zoned Business, and those parts of the original Village south of Western Avenue not yet used for business use are planned for future business use.

Objectives

It is the intent of this Plan to concentrate retail stores and services in the Village business area in order to strengthen it as a commercial center and not to allow it to expand outside the edge of existing business use as presently zoned in the Village, except for a few peripheral lots on M-109 at the west edge of the Village and a few lots used for residential and commercial uses on the west side of M22, north of State Street.

Uses Intended

The Village business area is typified by a broad variety of uses that serve the retail needs of the summer and winter visitor and of the year-around resident. Examples of uses include:

- *Grocery, pharmacy, post office, hardware, clothing, gifts, novelties, and other retail sales;*
- *Financial, real estate, and other service establishments;*
- *Motels and Bed & Breakfasts;*
- *Restaurants and taverns;*
- *Medical, dental, optical, and related health and fitness services;*
- *Electrical, plumbing, and building trades; and*
- *Office buildings.*

Multiple-family dwellings are also permitted in the Village business area, either as freestanding apartment buildings, townhouses, apartments over businesses, or other forms of shared-wall dwellings. However, all parking for residents must be on site, and all Health Department requirements for well and septic must also be met. (Chapter 5, Page 5-22)

PC06-07-06 was a request from Glen Arbor Township to remove single family dwellings as a permitted use in the Business District in 2007. The township planning commission minutes from June 3, 2021, indicate that at that time (2007), the township feared running out of places to put businesses in the Business District. The May 6 minutes posted online for Glen Arbor Township (and included in the Appendix), as well as the minutes from the Public Hearing, discuss the past history of removing single family dwellings as a permitted use and the consequences of doing so. Now, the township is proposing to add this back in as a permitted use. In 2007, it was noted that there were single family dwellings in the Business district which would become non-conforming.

The Public Hearing minutes include a good deal of discussion by the planning commission members and not a lot from the public. Since this is a Public Hearing, it is important to capture the comments from the public. It is also noted there were a lot of letters with concerns (pro and con). It would be helpful to have a summary of those comments in the Public Hearing – for the public, the county planning commission for its review, and for the Township Board. The township planning commission has the letters and while it is not necessary for the county planning commission to receive all of them, a summary would have been helpful and enlightening as to the concerns of the residents. It is noted in the township minutes that public comment included concerns about walkability of the Business District, excessive noise and lights.

In Glen Arbor Township, there are three separate areas zoned Business, totaling about 104 acres in the Township. While most Business property is located in the Village, there is also an area in the Homestead and a small area at the north end of Fisher Lake that are also zoned Business. If the proposed amendment is adopted by the Township Board, single family residential will once again be allowed in the Business Districts in the township.

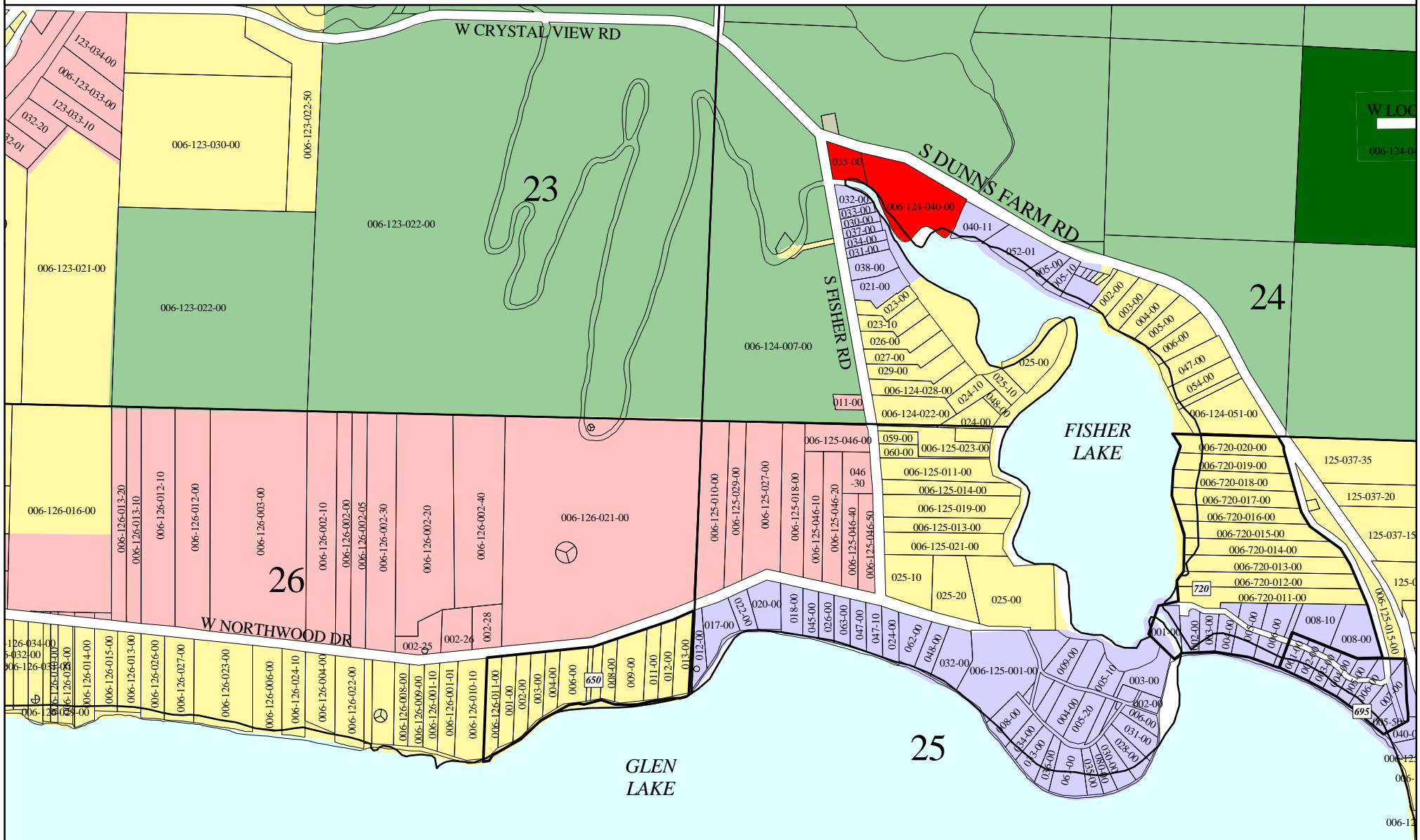
Staff Notes: For all Public Hearings, the Public Hearing should be ‘opened’, public comment taken, and then the Public Hearing is ‘closed’ before any action is taken. Public comment should be captured during the Hearing, and then when it is closed, discussion and any action taken by the members is recorded. Many of the minutes staff has recently seen from planning commissions do not reflect these steps in their minutes. If these steps were properly taken by the township planning commission, the minutes should reflect that before they are approved.

Also, in the Public Hearing minutes, it is noted on bottom of the 1st page that a member (Ihme) noted he owned property in the Business District but did not feel he had a conflict of interest. Does the township have a Conflict of

Interest Policy? The County Board adopted such a policy in 2005, revised through 2013. This policy is on the website at www.leelanau.gov for reference. In addition, the county planning commission adopted language in its bylaws to address potential conflicts of interest (also online). A member, or staff, are required to bring forth the potential conflict at a meeting. However, they do not decide if there is or is not a conflict. The rest of the members make a decision based on the policies and their decision is documented in the minutes. This takes the burden off the member on deciding whether there is a conflict or not, and recording that decision in the minutes allows for it to be easily tracked for historical purposes.

GLEN ARBOR TOWNSHIP ZONING

Fisher Lake



LEGEND

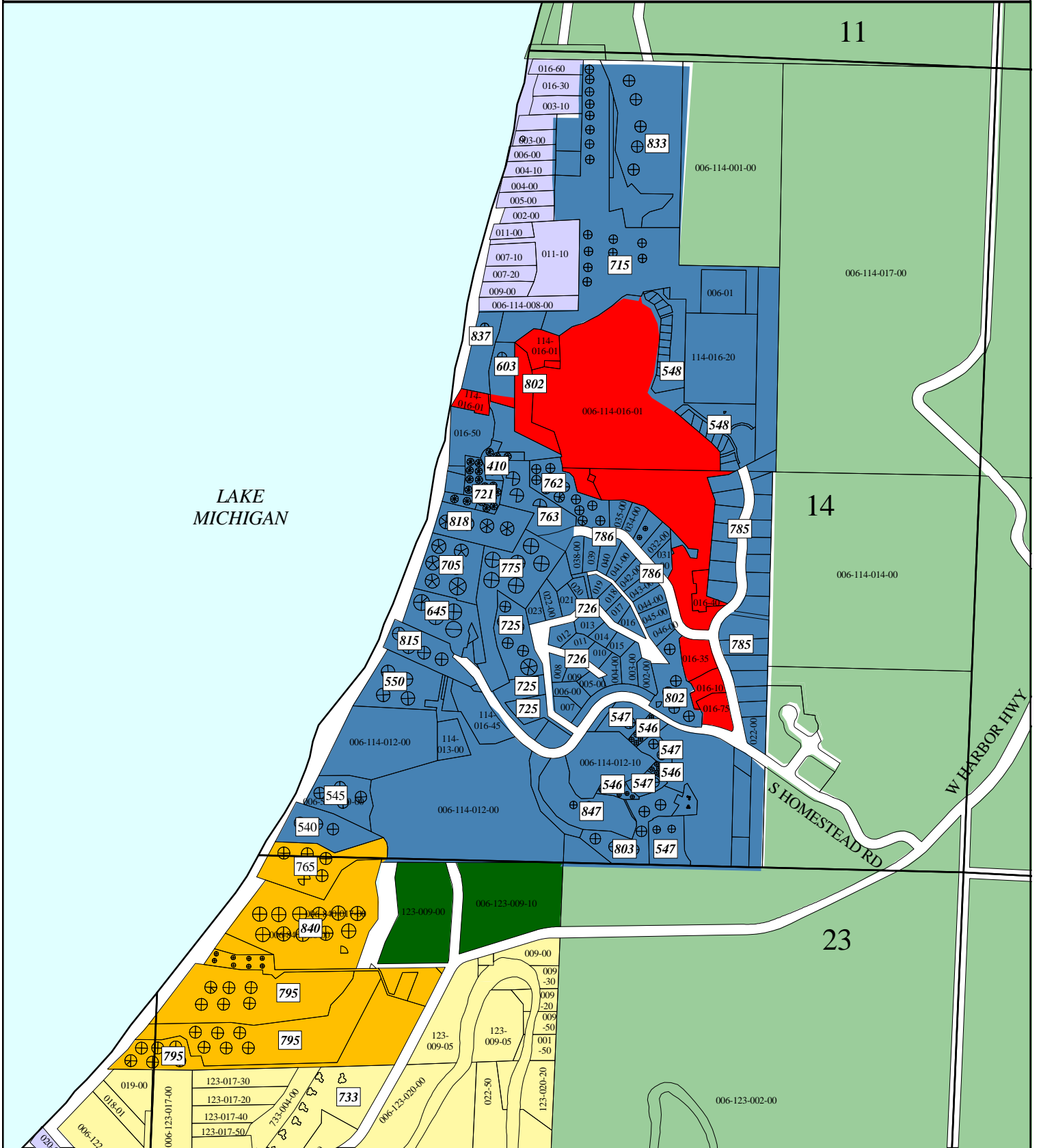
- Section lines
- ### Section numbers
- Subdivision Prefix
- Lakes

Zoning Districts

- | | | | | |
|--|--|--|--|---|
| Residential 1 | Residential 3 | Residential 5 | Agricultural | Recreational |
| Residential 2 | Residential 4 | Residential 6 | Business | Resort |
| | | | National Park | |

GLEN ARBOR TOWNSHIP ZONING

The Homestead

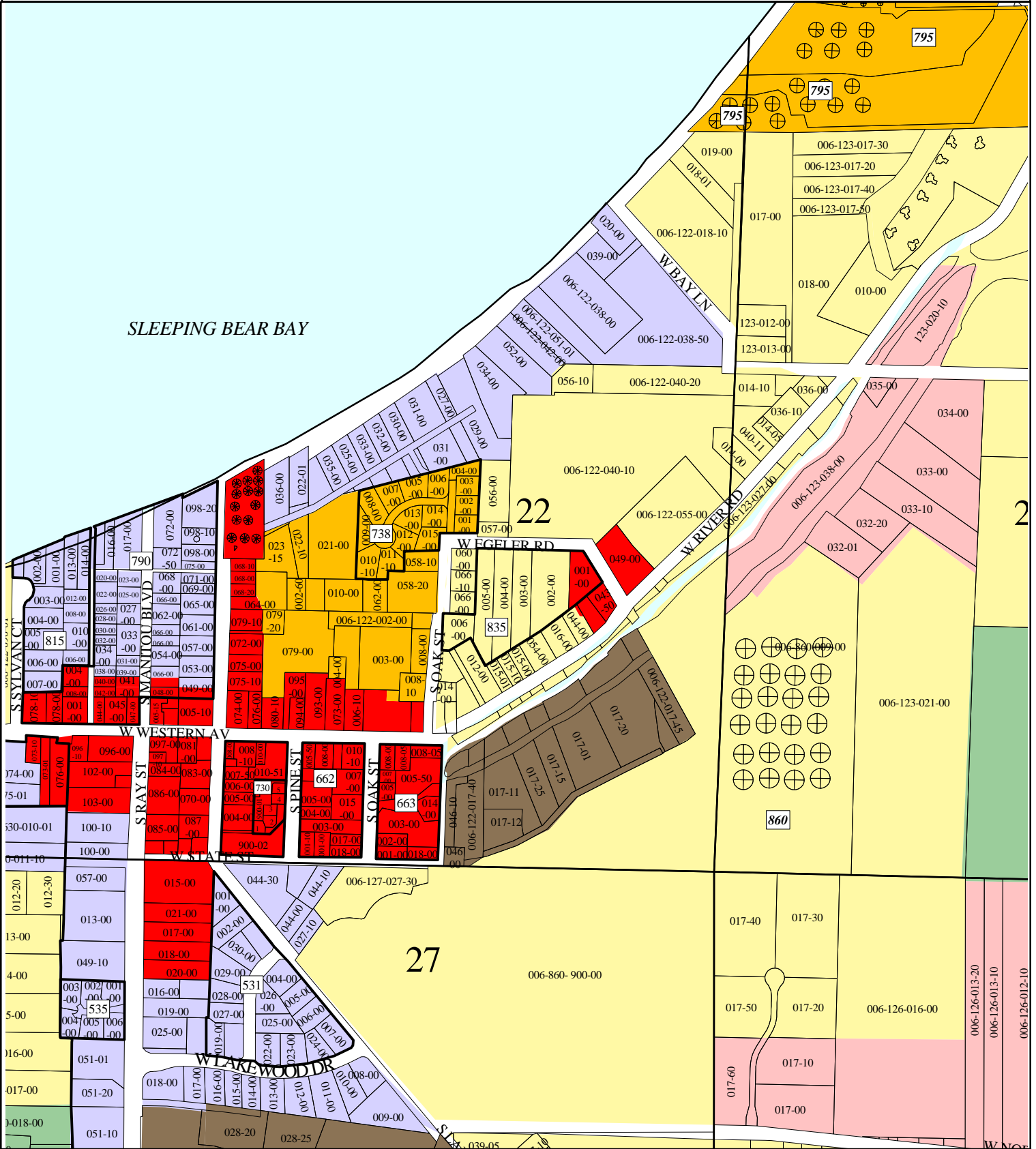


LEGEND

Section lines	# Section numbers	Subdivision Prefix	Lakes
Zoning Districts			
Residential 1	Residential 4	Agricultural	Recreational
Residential 2	Residential 5	Business	Resort
Residential 3	Residential 6	National Park	

GLEN ARBOR TOWNSHIP ZONING

Village of Glen Arbor



LEGEND

- | | | | |
|-------------------------|-----------------|--------------------|--------------|
| Section lines | Section numbers | Subdivision Prefix | Lakes |
| Zoning Districts | | | |
| Residential 1 | Residential 4 | Agricultural | Recreational |
| Residential 2 | Residential 5 | Business | Resort |
| Residential 3 | Residential 6 | National Park | |

Appendix - Transmittals from Glen Abor Township

From: Lance Roman <lanceromanx@aim.com>
Sent: Wednesday, June 9, 2021 12:07 PM
To: Trudy Galla <tgalla@leelanau.gov>
Cc: Bill Thompson <bthomp9264@aol.com>; Bob Ihme <bob@glenarboroutdoor.com>; 'Dotti Thompson' <gadeputytreas@glenarbortownship.com>; 'John Pepler' <jpepler1947@gmail.com>; Michele Aucello <deputyclerk@glenarbortownship.com>; Mike Plessner <nwpmmap@charter.net>; Pam Laureto <glenarbor@glenarbortownship.com>; 'Tim Cypher' <tim@allpermits.com>
Subject: Glen Arbor Township Proposed Zoning Amendment Change

Hi Trudy,

Attached are the GAPC Public Hearing draft minutes and the proposed verbiage for a proposed change, along with the public hearing notice. to the Glen Arbor Zoning Ordinance for the LCPC to review and comment.

Please put on the LCPC meeting agenda and forward attachments as needed.

If you have any questions, please call me at 231-326-5194.

Thanks,

Lance Roman
GAPC Chair

**GLEN ARBOR TOWNSHIP PLANNING COMMISSION
NOTICE TO THE PUBLIC**

**Public Hearing
Thursday, June 3, 2021—7:00 p.m.**

**Due to Leelanau County’s Declared State of Emergency, the meeting will be held via
Zoom <https://us02web.zoom.us/j/81451279075> Meeting ID: 814 5127 9075
One tap mobile +16468769923, 1451279075# US (New York)
+13017158592, 81451279075# US (Washington DC)**

The Glen Arbor Township Planning Commission is holding a public hearing to modify Section VIII.1.A. of the Business Zoning District Use Regulations to allow Single Family Dwelling as a permitted use by right. These zoning districts are located in T29N R14W, R22W, & R24W, Glen Arbor Township, Leelanau County, Michigan.

To review the application, call the Glen Arbor Township Zoning Administrator, (231-360-2557) or to submit written comments, write Glen Arbor Township ZA, P.O. Box 276, Glen Arbor, MI 49636; fax (231) 334-6370; or email tim@allpermits.com

Timothy A. Cypher, Glen Arbor Township Zoning Administrator

Item 3 - Proposed Zoning Ordinance Changes to Version 4.9 Single Family Dwellings – exemption removed

Article VIII BUSINESS DISTRICT

SECTION VIII.1 USE REGULATIONS

A building or premises in this District shall be used only for the following purposes:

- A. Any uses permitted in the Recreational District as described under Article VII of This Ordinance, ~~except single family dwellings~~ will be permitted in this District.
- B. Retail Stores.
- C. Service Institutions such as:
 - 1. Gasoline service stations and garages
 - 2. Repair shops
 - 3. Laundries
 - 4. Warehouses
 - 5. Utilities
 - 6. Printing houses
 - 7. Undertaking establishments
 - 8. Used car lots
- D. Restaurants and Taverns.
- E. Lumber dealers.
- F. Light manufacturing plants.
- G. Second Hand Stores - Establishments selling used or second hand merchandise and "flea markets" must conduct their business inside a building but may display merchandise outside and adjacent to such building provided such outside displays in total occupy no more than one hundred (100) square feet of area and are placed inside the building each night. Automobile dealers, farm machinery dealers and marinas selling new and used boats shall be exempt from this provision.
- H. Multi-family dwellings.
- I. Apartments or living units above or part of a commercial building.

SECTION VIII.2 USES EXCLUDED

Junk yards for the temporary or permanent storage of used cars or other salvaged materials are not to be permitted in this District. Equipment and materials storage yards equivalent to those related to the construction industry shall be entirely enclosed with a solid fence not less than six (6) feet high and not more than eight (8) feet high constructed and maintained in such suitable manner as to meet with the approval of the Zoning Administrator. The fence will be constructed of such material and of such design as to reasonably prevent trespassers from entering the premises by scaling such fence. The fence will be of solid construction or of a material so as to obstruct the view of the premises enclosed. The fence shall be maintained and painted, but shall not be used as a sign or signboard in any way.

SECTION VIII.3 LAND OCCUPANCY BY BUILDINGS

No building or structure in this District shall be erected or altered or used so as to occupy more than 80% of the lot area. Multi-family dwellings are restricted to a minimum square footage of 480 square feet of main floor living area per dwelling unit and a minimum core dimension of 20' per unit and a minimum of not less than 5,000 square feet of building lot area for each dwelling unit.

SECTION VIII.4 SET-BACK RESTRICTIONS

All buildings and structures in this District shall provide a set-back from the property line bordering the right-of-way of not less than ten (10) feet.

GLEN ARBOR TOWNSHIP

Planning Commission
Glen Arbor, Michigan 49636
Public Hearing
June 3, 2021

Due to the Coronavirus (COVID 19) pandemic and pursuant to the Leelanau County declared State of Emergency board members and the public may participate via teleconference or videoconference

Below you will find the information necessary to attend the meeting. You may access this meeting in one of two ways:

1. Video participation

**Go to Zoom.com and download the program. Then click on the following URL:
<https://us02web.zoom.us/j/81451279075> Meeting ID: 814 5127 9075**

**Teleconference participation Join Zoom Meeting
One tap mobile +16468769923, 1451279075#US (New York)
+13017158592, 81451279075# US (Washington DC)**

CALL TO ORDER:

Chairman Lance Roman called the meeting of the Public Hearing of the Planning Commission to order at 7:10 pm
The purpose of this public hearing to reinstate the ordinance we had 13 years ago to allow single family residences in the Business District. At this time the Ordinance reads that single family dwellings are not allowed in the Business District.

ROLL CALL

Lance Roman, Bob Ihme, John Pepler, and Bill Thompson in person and Mike Plessner by Zoom, Roman announced that Pam Lysaght and Bill Stege have resigned from the Planning Commission. There are 23 members of the community attending by Zoom.

APPROVE AGENDA:

There were no changes in the Agenda.

MEMBER CONFLICTS OF INTEREST:

Bob Ihme: Indicated that he owns property in the Business District and felt that he did not have a conflict of interest. No comments by PC members.

CORRESPONDENCE:

Roman stated that he received several email letters and comments, most of which were against making the change in the Ordinance. He stated that if a vote to change this Ordinance by the Planning Commission to allow single family dwellings in the Business District is passed, it will then go to County Planning where they will render their comments on the proposal. From there it would go back to the Township Board who will make a final decision whether to adopt or not the Zoning Amendment that is being presented.

Roman: About 13 years ago I was one of the people that spearheaded the effort to remove single family dwelling, use by right, and prohibit them from the Business District. It was thought, at that time, the township would be running out of places to put businesses in the Business District. It turned out that we had more negative consequences than positive consequences and we will discuss those during this meeting. The proposal now is to reinstate the Ordinance we had 13 years ago. The way Glen Arbor zoning is organized is called a pyramid structure. You have zoning districts. Glen Arbor has four residential, recreational, resort, and business districts. The districts have allowed uses for what you can do in each district. Some districts are more restrictive than others. Residential 1 is the most restrictive district. On the other end the Business district allows for more uses by right. The pyramid structure allows uses in the more restrictive district, a use by right, in succeeding less restrictive district. This had allowed a single family dwelling, in R1, the most restrictive district, to also be a use by right, in the most restrictive Business district. Prohibiting single family dwellings in the Business District 13 years ago, broke the pyramid zoning structure. Other uses allowed by right in the business district are multifamily housing such as a duplexes and condominiums. The thought is that we may see more of the multifamily dwellings if we do not allow single family dwellings.

DISCUSSION:

TimCypher, Zoning Administrator: All letters with concerns and phone calls both pro and con have been shared with the Planning Commission and will remain part of the record. Tonight the amendment is to modify Section VIII.I.A. to allow single family housing. It is a text amendment which is a simple correction. So the correction would be to scratch the words "except single family dwellings" from the Ordinance. About 100 phone calls and 18 letters were received stating concerns.

Pepler: The challenges of dealing with a 50' wide x126' deep lot to build a business, renders the lot unusable. The amount of land area it takes to put in a septic drain field and parking makes the lot almost unbuildable if you need to meet the criteria. There are about 12 parcels in the Business District that meet that size. Property that requires holding tanks are prohibited by the health department for business or multi-family uses, but are allowed for single family dwellings.

Ihme: People that had a home in the Business District when the Ordinance changed 13 years ago cannot change their building footprint. This prohibits home additions and building a garage.

Ihme: Concerned that Main Street will lose its charm and walkability. There are more residential homes that turned into businesses than business properties that

turned residential. There have only been five multifamily housing units since this Ordinance. There have been nine new businesses during that same time.

Roman: Regarding the Zoning Ordinance, if something is not going right you can change it back. Nothing is forever and Zoning can be changed as needed.

1. Modify Section VIII.I.A. Of the Business Zoning District Use Regulations to allow Single Family Dwelling as a permitted use by right.

PUBLIC COMMENTS:

Discussion was opened to the participants on Zoom and concerns were heard and commented on by Commission members and Tim Cypher, Zoning Administrator. Larry Widmayer, Chamber Treasurer, represented the Chamber of Commerce in person and expressed concern that residential properties would inhibit the walkability of the Business District and residents living next to a business could become upset with things such as excessive noise and lights. A residence could be added to the Business District zoned as “special use”.

Peppler moved that the Planning Commission adopt an amendment to allow single family dwellings a use by right in the Business District and forward the proposed amendment to the Leelanau County Planning Commission for review.

Motion was support by Thompson.

Peppler aye, Thompson aye, Ihme aye, Roman aye, Plessner nay. Motion carried.

COMMISSION MEMBER COMMENTS:

Peppler congratulated the Glen Lake Golf Team on winning the Regionals.

ADJOURN:

Lance Roman adjourned The Glen Arbor Planning Commission Public Hearing at 8:25 PM

Respectfully Submitted
Dotti Thompson
Recording Secretary
Planning Commission

GLEN ARBOR TOWNSHIP

Planning Commission
Glen Arbor, Michigan 49636

May 6 2021

Pursuant to the Leelanau County declared State of Emergency Commission members and the public may participate via teleconference or video conference

1. Video participation

Go to Zoom.com and download the program. Then click on the following:

URL:<https://us02web.zoom.us/j/81494730126>

Meeting ID: 81494730126

2. Teleconference participation

Using either a land line or cell phone dial 1-301-715-8592

When requested, enter the following access code 81494730126 followed by#

CALL TO ORDER:

Chairman Lance Roman called the meeting of the Planning Commission to order at 7: P.M.

ROLL CALL:

Via Zoom:

Pam Lysaght, Bill Stege, Mike Plessner, Bob Ihme, and John Pepler. Lance Roman and Bill Thompson present in person.

Tim Cypher was also present via Zoom.

AGENDA:

Switch order of discussion to #1 then #3 and lastly #2.

MINUTES:

The April meeting was cancelled due to a conflict with the Open Meetings Act. The meeting was called to order by Chairman Lance Roman and adjourned minutes later. **This is reflected in the April 2021 minutes which were approved unanimously by a motion from Thompson and supported by Stege.**

TOWNSHIP BOARD REPORT:

John Pepler reported on the regular April Township Board meeting:

- There will be a referendum on August 3 regarding rezoning Brammer property adjacent to the Mill.
- The Fire Chief received a 8.8% raise

- There will not be a replacement for the traveling sign in front of the Township Hall. The yellow sign will continue to be used for events and announcements.
- There will be a Memorial Day ceremony on May 28 at 10 AM at the Glen Arbor Cemetery.

ZONING ADMINISTRATORS REPORT:

Tim Cypher, Zoning Administrator reported:

- The Condo project at the Wildflower site is being delayed. Mr. Faber is having a problem with surface water run-off and may need another public hearing for an Amendment change.
- The permits have been approved for the new homes being built on South Ray Street.

ZONING BOARD OF APPEALS REPORT:

Lysaght and Cypher reported:

The Zoning Board of Appeals met in late March regarding a Variance on which they voted to approve. The ZBA determined that if legal questions arise, decisions will be tabled until an Attorney is consulted. Recorded audio will be preserved until the minutes are approved.

A silent prayer was offered for the Freeman family.

PUBLIC COMMENTS:

BUSINESS:

1. Subcommittee mission discussion

Chairman Roman stated that the original plan for the subcommittee was to reorganize the Ordinance and change words but not the content. Additional items can be documented and brought to the Planning Commission. Roman reiterated that the subcommittee can organize differently but keep content neutral. Roman stated that it would be easier to get things done if the Ordinance was reorganized in a better format.

Roman questioned taking minutes of the subcommittee meeting since the subcommittee is not a sanctioned Government entity. Cypher offered they have Dana taking minutes so they can accurately document reports.

The subcommittee’s purpose was discussed with its members and the remainder of the Planning Commission members.

Roman praised the Subcommittee for their diligent work.

2. Review ordinance update proposals

A. Single family dwellings in Business District

This discussion proposes changing allowed uses in the Business District to allow single family dwellings, reversing a 2006 ordinance change which disallowed single family dwellings in the Business District. Roman, who was a PC member at that time, indicated that he championed the 2006 change to disallow, citing that at the time the PC was concerned with the Business

District filling out with residential uses, blocking future commercial uses. Pepler pointed that the 2006 change had unintentional consequences of blocking use of many small lots in the Business District that were too small for a business use. These same lots would best use for residential and there are many requests to do so. After lengthy discussion **Thompson moved to remove the word *except single family dwellings* from Ordinance Section VIII.1A, which would reverse the 2006 change that disallowed single family dwellings in the Business District.** Pepler supported. Discussion ensued and **Lysaght moved to table the motion.** It was supported by Plessner. With two motions on the table Roman call for a vote on Lysaght's motion to table, 2 for and 5 against, motion failed. On Thompson's motion to allow, 4 for and 3 against, motion carried. A public hearing will be scheduled at 7PM before the June 3 Planning meeting. Cypher will send out the 300 foot, adjoining property owner letters, as required for this type of Ordinance change and post hearing notices in the Enterprise.

B. Relaxing off street parking requirements in Business District
Delayed until June meeting due to lack of time.

C. Fences as structures review
Delayed until June meeting due to lack of time.

3. Ordinance review sub-committee update
Covered under bullet point #1. Minutes of the meeting were provided.

PUBLIC COMMENTS:

Via Zoom three comments were heard.

COMMISSION MEMBER COMMENTS:

The Planning Commission should put the Overlay District on the Agenda.

ADJOURN:

The meeting of the Planning Commission was adjourned at 9:15 by Chairman Lance Roman.

Respectfully Submitted
Dotti Thompson
Recording Secretary
Planning Commission