

## Kasson Township Zoning Board of Appeals

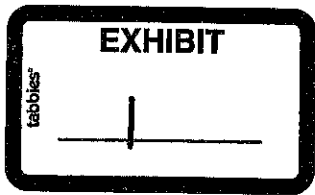
### Appeal of James Shettek, Bill Kasben and Fran Seymour

Two Applications for Appeal to the Zoning Board of Appeals: Appeal of Planning Commission Decision on Enduro Special Use Permit and Appeal of Zoning Administrator's Decision to Deny Processing of Special Use Permit on July 7, 2023

#### Record on Appeal (as of October 6, 2023)

1. February 18, 2023 Special Use Application
2. March 20, 2023 Planning Commission Minutes
3. May 2, 2023 Letter from Kristyn Houle to Planning Commission
4. May 4, 2023 Letter from Kristyn Houle to Planning Commission No. 1
5. May 4, 2023 Letter from Kristyn Houle to Planning Commission No. 2
6. May 5, 2023 Letter from Tom Grier to Zoning Administrator Tim Cypher
7. May 25, 2023 Letter from Peter Wendling to Tom Grier and Tim Cypher
8. June 19, 2023 Planning Commission Minutes
9. June 11, 2023 Letter from Kristyn Houle to Tim Cypher
10. June 23, 2023 Email from Fran Seymour to Tim Cypher (w/attachments)
11. Tim Cypher July 7, 2023 Email to Peter Wendling and Fran Seymour (including July 7, 2023 Tom Grier letter to Tim Cypher)
12. July 13, 2023 Peter Wendling letter to Tom Grier
13. July 15, 2023 Tom Grier email to Peter Wendling

14. July 17, 2023 Planning Commission Motion
15. July 17, 2023 Peter Wendling letter to Planning Commission.
16. July 17, 2023 Anne Wendling email with cases from Peter Endling
17. July, 18, 2023 77 Fran Seymour handwritten note to Tim Cypher
18. July 28, 2023 Appeals
19. October 4, 2023 Emails re: protocol
20. October 5, 2023 Peter Wendling letter to ZBA on the appeal



**KASSON TOWNSHIP  
PLANNING/ZONING APPLICATION**

- CONCEPTUAL DEVELOPMENT PLAN REVIEW (PLANNED DEVELOPMENT)
- DEVELOPMENT SITE PLAN REVIEW
- SPECIAL USE PERMIT - EARTH REMOVAL, QUARRYING, GRAVEL PROCESSING, MINING OP'S
- SPECIAL USE PERMIT - ALL OTHERS
- SPECIAL USE PERMIT RENEWAL
- REZONING PETITION
- ZONING BOARD OF APPEALS PETITION

In addition to this application form, you must submit one or more addenda, corresponding to the box(es) you checked above.

APPLICANT INFORMATION:

Name(s) James Schellak Phone 231-218-7762  
 Street 244 W Kasson Ctr  
 City Maple City State MI Zip 49664  
 Relationship of Applicant to Owner (if different) \_\_\_\_\_

OWNER INFORMATION (IF DIFFERENT FROM APPLICANT):

Name(s) Bill Karben Phone 231-218-6100  
 Street 1175 E Kasson Rd  
 City Maple City State MI Zip 49664

OTHER CONTACT INFORMATION (IF NECESSARY):

Name(s) Fran Seymour Phone 231-633-1648  
 Street 1145 Hastings St  
 City Townsend City State MI Zip 49686

PROPERTY INFORMATION:

Address or Description Multiple parcels at corner of E Kasson Rd & S Bright  
 Tax Parcel Number See below (Also attach full legal description. A copy of the deed or land contract is acceptable)

- Current Zoning:  Ag  Forest  Commercial  Gravel  HD Village  PD  SPD  
 Proposed Zoning:  Ag  Forest  Commercial  Gravel  HD Village  PD  SPD

007-024-001-10  
 007-024-005-00  
 007-024-004-30  
 007-024-004-20  
 007-024-004-00

**KASSON TOWNSHIP  
PLANNING/ZONING APPLICATION**

**ACKNOWLEDGEMENT AND CERTIFICATION:**

It is hereby acknowledged by the undersigned, that all information provided on this application, any addendum, and other supporting documentation is true and correct to the best of my(our) knowledge. In the case of a Zoning Board of Appeals Petition, it is further acknowledged that any approval of the ZBA involving site improvement, use, and/or construction does not relieve the applicant from obtaining other applicable authorizations and permits

**SIGNATURES:**

Applicant(s) or James R. Scholt Date 2/18/23  
Authorized \_\_\_\_\_  
Corporate Officer(s)

Owner(s) or \_\_\_\_\_ Date \_\_\_\_\_  
Authorized \_\_\_\_\_  
Corporate Officer(s)

**REMINDER: SUBMIT THIS APPLICATION, THE APPROPRIATE ADDENDUM, THE REQUIRED FEE, ALL ATTACHMENTS AND DRAWINGS TO EITHER THE KASSON TOWNSHIP ZONING ADMINISTRATOR OR KASSON TOWNSHIP CLERK (SEE YOUR PARTICULAR ADDENDUM).**

**ZONING ADMINISTRATOR AND CLERK USE ONLY**

Application ID \_\_\_\_\_  
Date and Time of Application Receipt \_\_\_\_\_ Received By \_\_\_\_\_  
Date Fee Received \_\_\_\_\_ Amount Received \_\_\_\_\_  
Date of Letter of Credit Received \_\_\_\_\_ Letter of Credit Amt \_\_\_\_\_  
Date of Letter of Credit Expiration \_\_\_\_\_

## **Michigan Sprint Enduro Event Information.**

We are requesting a special use permit, under the category of Other Special Uses for an Enduro Motorcycle event. An enduro event involves motorbikes traversing a course through woods and hills in a timed event. These events are held all over Michigan, and the United States, every week.

**We are amending our original request and would now like to hold four events per year. Each event involves a one-day race on a Sunday, with some participants arriving on Saturday. Our dates will be determined in the future.**

Here are some bullet point items of information:

-Roughly 100-200 riders will come in for the event. **Due to the publicity this event has received, this number may increase.**

-Typical average people in addition to the rider count is 1 to every 2 riders. 50-100 additional people.

-All people through the front 'gate' will be required to sign a waiver form. Basically stating they are at a potentially dangerous event and the property owners, Event promoters or workers are not held liable. They are agreeing to those terms. An insurance policy directly for that event is bought and paid for.

-The entire event is held outside. People will have their own vehicles and some may have campers for primitive camping on our site.

-It is up to the property owners/township if campfires are allowed.

-People coming into the event will spend a large amount of money collectively at nearby grocery stores, gas stations, restaurants, hotels, etc.

-Very family oriented. This is not a Sturgis Bike Week crowd. Most people coming to the event come with moms, dads, brothers, and sisters. Most families get together for potluck and socializing at the event. The people part of the series are some of the most appreciative and respectable people you will meet.

-People will start to arrive on Saturday. Some people will walk or bicycle the course. But other than track workers, there will be no riding motorcycles except on Sunday.

-Racing will take place on Sunday only. Racing starts at 8:30am and will conclude before 5pm.

-All racing is closed course and on private property. No riding on the road will be permitted.

-Everyone will be leaving on Sunday late afternoon.

-An Ambulance or EMT is required to be on site. The event promoters arrange for this.

-Portable outhouses will be provided on site.

-Insurance for the event is provided by the promoters through the AMA (American Motorcyclist Association)

-Track set up would start 1-2 months prior to the event. Most track work is done on foot with an atv following to carry equipment such as arrows, staples, track tape, wooden stakes, etc. This is a natural trail,

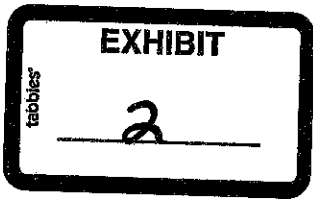
no earth work or tree removal is needed. The idea is to use the characteristics of the natural land.

-Within 1 week of the event finishing, all course marking material will be torn down and discarded.

-Information regarding the event can be found on [michigansprintenduro.com](http://michigansprintenduro.com)

-Noise Requirements for the bikes. Per AMA Rules 2 Strokes must be 96db/A or under and 4 strokes must be 94db/a or under





**KASSON TOWNSHIP PLANNING COMMISSION  
REGULAR MEETING  
Monday, March 20, 2023; 7:00 pm  
Kasson Township Hall  
10988 S. Newman Road, Maple City, MI 49664  
MINUTES**

I. Call Meeting to Order/Pledge of Allegiance

Chairman Carter called the meeting to order at 7:00 pm with the Pledge of Allegiance.

II. Roll Call of Commissioners and Staff

- A. Present: Tad Carter, Township Board Rep; Mike Lanham, Commissioner; Chuck Schaeffer, Secretary; Dave Noonan, Commissioner
- B. Excused: Jerry Roush, Chairman
- C. Staff: Tim Cypher, Zoning Administrator (attended virtually); Allison Hubley-Patterson, Recording Secretary
- D. Visitors present: In total, there was 11 members of the public present at various times during the meeting.

\*Due to the absence of Chairman Roush, Carter served as Acting Chair for this meeting.

III. Consideration of Agenda (Attachment "A")

Chairman Carter asked for a motion to approve the agenda as presented.  
**LANHAM MOVED TO APPROVE THE AGENDA AS PRESENTED;  
NOONAN SECONDED. ALL PRESENT IN FAVOR, MOTION CARRIED.**

IV. Declaration of Conflicts of Interest – none reported at this time.

V. Public Comment - none

VI. Approval of Minutes – **Special Meeting** – January 16, 2023

**CHAIRMAN CARTER MOVED TO APPROVE THE MINUTES OF THE  
JANUARY 16, 2023 SPECIAL MEETING AS PRESENTED; NOONAN  
SECONDED. MOTION CARRIED.** Lanham abstained as he was not yet a member of the Planning Commission on January 16, 2023.

VII. Approval of Minutes – **Regular Meeting** – January 16, 2023

Chairman Carter asked for a motion to approve the minutes of the January 16, 2023 Regular Meeting as presented. **NOONAN MOVED TO APPROVE THE MINUTES OF THE JANUARY 16, 2023 REGULAR MEETING AS PRESENTED; SCHAEFFER SECONDED. MOTION CARRIED.** Lanham abstained as he was not yet a member of the Planning Commission on January 16, 2023.

VIII. Correspondence Received - none

IX. Area Reports

A. Chairperson – Commissioner Roush – absent – no report

B. Secretary – Commissioner Schaeffer

Schaeffer clarified that he will remain as a member of the Planning Commission until the Master Plan has been completed in its entirety. This includes making sure that the Plan has been published and that all necessary documentation has been placed in the file.

C. Township Board – Commissioner Carter – no report

D. Zoning Board of Appeals – Commissioner Noonan – no report

E. Zoning Administrator's Report – Zoning Administrator Cypher

Cypher reported that he issued one land use permit in February for a dwelling addition; fees collected totaled \$75.00. There were three construction/site inspections for the month. Cypher continues to investigate junk that is accumulating at a residential location across from Habitat for Humanity. In total 27 telephone calls were returned and 13 responses were provided via the Internet. He attended the Kasson Township Board Meeting on February 15, 2023.

Cypher was unable to attend the Kasson Township Annual Meeting but provided a report in advance. He shared the following information from the Annual Report: During the year, 45 land use permits were issued which was an increase from 32 that were issued in the previous year. Of these, 13 were for single family residences (SFRs), six additions, two garages, four decks/porches, 11 accessory buildings, two commercial permits, four for agriculture construction, three solar panels and ten renewal/change of use permits. There was one ZBA hearing for Elmers but the ZBA hearing for Lively was cancelled. There were five special land use permits, which included gravel pit renewals, Lively Holdings and Tom Krause (storage units).

There were two zoning amendments regarding municipal buildings and commercial mixed-use, nine land divisions and one property line adjustment. There was one site plan review and Cypher completed a total of 88 construction inspections. Two violations were noted but these have both been resolved. Two investigations for Krull's Composting and junk that is accumulating at a residential location are ongoing. Total fees for the year amounted to \$9,190.00. Cypher supplied information via 397 telephone calls and 294 responses via the Internet.

X. Old Business

A. Master Plan – Status update

Cypher and Hubley-Patterson are currently working on the Master Plan and intend to distribute the latest version of the document to all PC members and Township Board members by the end this week.

XI. New Business

A. Enduro Motorcycle Race – Application for Special Use

Fran Seymour and James Schettek presented their plans for an Enduro Motorcycle Race to be held over Memorial Day weekend of 2024. If the first event is successful, they may wish to have more events over the next couple of years. Mr. Seymour will send video clips of prior races for PC members to view.

Mr. Schettek stated that there are currently no locations in northern Michigan so racers and their families must travel down state for events. The event will be family-friendly and is multi-generational; all ages are attracted to this type of event.

There will be a single track through the woods that is handlebar width. The goal of the group is to show their support for both veterans and farmers; Mr. Schettek indicated that many of these types of events are held on farm property.

Mr. Seymour stated that they anticipate that approximately 100 to 200 people will turn out for the event. Most people will arrive on Friday night and will have a camper or will plan to stay at a local hotel. Saturday is used for walking the course and the race takes place on Sunday; by Sunday evening, all participants will have left the premises. No riding is permitted on either Friday or Saturday. There will be very little change in the land with regard to tree cutting.

The applicants have already spoken to Cedar Area Fire and Rescue. They will make arrangements to rent portable toilets and are considering having one or more food trucks on site.

Noonan asked about the hours for the race on Sunday. The race will begin at approximately 8:30 a.m. and will be finished between 4:30 p.m. and 5:00 p.m.

Carter inquired as to how many residences would be affected by the race. Mr. Schettek replied that it would affect approximately 12 local residences. Mr. Bob Needham was present and stated that his house is the closest to where the event will be held. He added that the track will be approximately 100 to 150 yards from his house. Mr. Seymour noted that the bikes are limited to a certain decibel level depending on the style of bike; the bike is not permitted to exceed certain limits. He stated that bikers have ridden on this path for many years but there have probably not been more than 15 to 20 riders up to this point.

Schaeffer asked if there would be a main entrance for the public and added that this would help with staging the event location. Schaeffer also inquired about potable water. Mr. Seymour replied that since many people will be bringing their camper, they will have their own water source. They would be happy to provide water but stated that it may not be needed; campers will come with their own supplies and this is similar to "rustic camping".

Schaeffer asked if the applicants have spoken to the Department of Natural Resources (DNR) regarding permits for the campground. This has not been done. Cypher informed the applicants that they should speak to the DNR as anything over five campers is regulated. He stated that it would be a good idea to "check the box" by following up on this matter. Although this event will be held on private land, Schaeffer noted that the PC previously dealt with a request for a campground that was also on private land. Cypher suggested that Mr. Seymour inform the DNR that the event will involve two nights.

Lanham inquired as to how many people from the general public can be expected to attend. Mr. Schettek replied that, typically, not many people from the public attend as the event normally only attracts racers and their families.

A member of the public stated that he resides in the Fife Lake area and is affiliated with District 14 of the American Motorcycle Association. An event was recently held in Mancelona and there was a great turnout. The Mancelona City Council received very positive feedback from residents and business owners regarding the event. The event was so successful that Pure Michigan will be featuring the event in an upcoming advertisement. He added that a race that is held up north will draw people to the area. People who participate in these events tend to be very responsible and he assured the PC that the site will be left clean once the event concludes.

Schaeffer asked where in Michigan do most of the people attending these events come from. The applicants replied that they typically reside in the center of the state. Schaeffer inquired if there is any other suitable location; Mr. Schettek responded that there are very few locations that would be appropriate for this event. Schaeffer also suggested that the applicants contact the Leelanau County Sheriff's Office and added that someone from the Sheriff's Office may be willing to make a statement at the upcoming Public Hearing.

Lanham asked if all events associated with the race will be contained to the property that will be used for the race. Mr. Seymour replied that this is correct. The comment was made that passersby will most likely not even see the campers from the road.

Mr. Justin Ray is with the Twin Bay Trail Riders. He stated that he grew up racing and discussed the checklist that is used to ensure that everything has been taken care of prior to the race. This includes obtaining insurance, arranging for EMS, renting portable toilets, etc.

Schaeffer asked if the group is a 501c3 and the response was "Yes". He informed the applicants that he knows a group of volunteers that may be able to help with the event if they have 501c3 status.

Cypher inquired as to how many food trucks would be on the premises as approval will be needed from the Health Department. Mr. Seymour replied that there would be two food trucks maximum. He asked Cypher if the local food trucks have already been approved by the Health Department in advance to participate in such events but Cypher responded that this is not always the case.

Cypher encouraged the applicants to think about the future. If the inaugural event is successful, they may want to hold future events but they should get their ducks in a row now in order to successfully hold additional races going forward.

Cypher asked how many campsites there would be. Mr. Seymour replied that there would be 50 to 100 campsites in total. Cypher also inquired about a back-up plan should there be torrential rains throughout the weekend. He asked if emergency vehicles would easily be able to get into the property. Mr. Seymour replied, "Yes".

Cypher asked the applicants to add Kasson Township as an additional named insured on the insurance certificate. Mr. Seymour stated that he would take care of this. Cypher also commented that the Fire Chief is very specific when

it comes to campfires; he asked the applicants to work out these details in advance of the Public Hearing.

Cypher also requested that the applicants discuss the event with Mr. Matt Ansonge, Emergency Management Director for Leelanau County. He stated that, with this number of people attending the event, there should be an emergency plan developed beforehand.

Cypher asked about the noise level on Friday night and throughout the day on Saturday as riders are preparing their bikes. Mr. Seymour replied that there could potentially be noise at these times. It was noted that typically "quiet time" is observed after 9:00 p.m. at these events. The applicants shared that the campsite will also be positioned in the center of the property so as to help diffuse the noise. Cypher also requested that portable toilets be positioned strategically throughout the property and on the course in case they are needed.

Cypher addressed the noise that will be generated by the bikes and stated that he pulled together some information regarding comparable examples of noise levels. The noise generated from the bikes will be comparable to a Boeing 737 or DC-9 aircraft at one nautical mile before landing (97 dB), a power mower (96 dB), a motorcycle at 25 feet (90 dB) or a newspaper press at 97 dB. A person's hearing will likely be damaged after eight hours of exposure.

Cypher noted that typically 300-foot letters are sent out to adjacent property owners. He suggested that the PC consider expanding this distance to notify property owners who are further away from the parcels so that they are aware of the event. He added that it may be beneficial to distribute inexpensive earplugs to people as they enter the area; it is understood that the racers will have their own ear protection equipment.

Chairman Carter asked if a motion is needed this evening. Cypher reviewed the process going forward and stated that the PC could vote to set the Public Hearing for the next meeting. He added that the application is complete except for a few details that should be finalized by the applicants prior to the Public Hearing.

Chairman Carter asked for a motion for staff to send out letters to property owners who are within 1,000 feet of the parcels where the Enduro Motorcycle Race will be held. **NOONAN MOVED FOR STAFF TO SEND OUT LETTERS TO PROPERTY OWNERS WHO ARE WITHIN 1,000 FEET OF THE PARCELS WHERE THE ENDURO MOTORCYCLE RACE WILL BE HELD; LANHAM SECONDED. ALL PRESENT IN FAVOR, MOTION CARRIED.**

Chairman Carter asked for a motion to set the Public Hearing for Monday, April 17, 2023 at 6:00 p.m. in the matter of the Enduro Motorcycle Race Application for Special Use. **NOONAN MOVED TO SET THE PUBLIC HEARING FOR MONDAY, APRIL 17, 2023 AT 6:00 P.M. IN THE MATTER OF THE ENDURO MOTORCYCLE RACE APPLICATION FOR SPECIAL USE; SCHAEFFER SECONDED. ALL PRESENT IN FAVOR, MOTION CARRIED.**

- XII. Public Comment - none
- XIII. Comments from the Commissioners – none
- XIV. Next Meeting - Monday, April 17, 2023 at 6:00 p.m. The Public Hearing will commence promptly at 6:00 p.m. followed by the Regular Meeting of the PC.
- XV. Adjournment

Chairman Carter asked for a motion to adjourn the meeting. **NOONAN MOVED TO ADJOURN THE MEETING; LANHAM SECONDED. ALL PRESENT IN FAVOR, MOTION CARRIED.**

The meeting was adjourned at 7:58 pm.

Respectfully submitted,

Allison Hubley-Patterson  
Recording Secretary







# Law Office of Kristyn J. Houle, PLC

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May 2, 2023

Kasson Township Planning Commission  
10988 S. Newman Rd.  
Maple City, MI 49664

Re: *Public Comment – Enduro Motorcycle Race – Application for Special Use Permit  
Letter One of Two from Law Office of Kristyn J. Houle, PLC*

Dear Planning Commission Members:

My firm represents Kasson Township Neighborhood Association (“KTNA”), an unincorporated nonprofit association formed under MCL 600.2051(2). This is a neighborhood association with approximately 60 members whose mission is to protect the environment, property values, and the peaceful enjoyment of neighborhoods in Kasson Township.

Please accept this letter as a request to *deny* Fran Seymour and James Schettek’s Application for Special Use Permit for their Enduro Motorcycle Race. This is the first of two letters from my firm – the second letter will be submitted later this week.

This first letter will focus on the very important and clear legal argument that Section 7.15 of the Zoning Ordinance (the section of the ordinance that the Planning Commission is deciding this SUP application under) is unlawful, and therefore void *ab initio* because:

(1) it violates the specificity requirement of the Michigan Zoning Enabling Act (“MZEA”), MCL 125.3502(1)(a); *Whitman v Galien Township*, 288 Mich App 672 (2010); and

(2) it unlawfully delegates legislative power to the Planning Commission (an administrative body) that is - the power to assign special uses in zoning districts which is a *legislative power* reserved only for the elected officials on the Township Board after due process safeguards are met. [(MCL 125.3502(1)]; *Sun Communities v Leroy Township*, 241 Mich App 665 (2000).

Some of KTNA’s members live adjacent to and/or near the proposed location of the event. KTNA is vehemently opposed to the proposed activity in the AG district, in part because it is not a permitted use nor is it a specified special land use under the AG district (Section 4.5 of the Zoning Ordinance). In addition to the arguments numbered above, allowing an unspecified use would be a public and private nuisance, it would constitute illegal spot zoning and may also rise to a regulatory taking of private property in violation of the Michigan Constitution (MLCA Const. Art 10 Sec 2).

Because the use is not specified under section 4.5 and the Planning Commission cannot create a special land use, the Enduro Motorcycle race application must be denied. The Planning Commission simply lacks the legal authority to grant the permit.

If the Planning Commission chooses to grant the special use permit – it will do so in violation of the law – and it exposes the Commission and the Township to a challenge in circuit court, where my client will request attorney fees, costs and sanctions in having to bring a lawsuit to defend their property rights. “A decision by a zoning board that violates a statute or the constitution is not authorized by the law.” *Northwestern Nat’l Cas. Co. v Ins. Comm’r*, 231 Mich App 483 (1998).

**SECTION 7.15 DOES NOT COMPLY WITH THE SPECIFICITY REQUIREMENT  
OF THE MZEA MCL 125.3502(1)(A) AND IS THEREFORE VOID AB INITIO**

Section 502 of the MZEA states in pertinent part:

- (1) The *legislative body* may provide in a zoning ordinance for special land uses in a zoning district. **The zoning ordinance shall specify all of the following:**
  - (a) **The special land uses and activities eligible for approval** and the body or official responsible for reviewing and granting approval.

The MZEA specificity requirement operates to prevent an administrative body from engaging in rezoning by approving wholesale changes to the character of a zoning district, that is why rezoning is exclusively a legislative function. *Whitman v Galien Township, supra*. In the *Whitman* case, the Court held that the zoning ordinance did not comply with the specificity requirements of the MZEA, and thus, the special use permit that the zoning board granted did not comport with the law, and the permit was vacated. In that case, the zoning board granted a special use permit for a snowmobile, dirt bike and ATV racetrack in the township’s agricultural district. The Galien Township Zoning Ordinance stated that a special use permit could be granted by the zoning board for, “establishments for the conducting of *commercial or industrial activities*, subject to approval of the zoning board.” The Court found that the terms “commercial or industrial activities” were not specific enough, and were therefore a violation of Section 502 of the MZEA.

Similarly, the Kasson Township ordinance section 7.15 states:

*Land and structural uses that are not specified in any other section of this Ordinance*, but, upon being applied for under the provisions of Chapter 7, may be considered by the Planning Commission as long as they meet all of the conditions and requirements of this Chapter and the spirit and intent of the Ordinance.

“Land and structural uses” are even more broad than “commercial and industrial activities” and clearly lack the specificity the MZEA requires per the interpretation by the *Whitman* Court.

In interpreting the specificity requirement in the MZEA, the *Whitman* Court found:

When these definitions are considered together, the statute can be read to mandate that a zoning ordinance must set forth in **explicit, precise, definite and detailed language both the customary uses and the specific actions and functions that are eligible for special use permits**. The legal definition of “special use permit” supports this reading of the statute. Black’s Law Dictionary (9<sup>th</sup> ed) defines a special use permit as, “a zoning board’s authorization to use property in a way that is **identified as a special exception** in a zoning ordinance.” Accordingly, the MZEA’s specificity requirement ensures that property uses and activities eligible for special-use status are **identified in the language of the ordinance**. *Id.* at 682-83 (**emphasis added**).

The specificity rule also encourages uniformity within a zoning district by placing limits on discretionary zoning decisions. [See, MCL 125.3201(2)]. This requirement **encourages consistency within a zoning district and guards against undesirable “spot zoning”** which is defined as “a zoning ordinance or amendment creating a small zone of inconsistent use within a larger zone.” *Id.*, citing, *Penning v Owens*, 340 Mich 355, 367 (1954).

**SECTION 7.15 OF THE ZONING ORDINANCE**  
**UNLAWFULLY DELEGATES LEGISLATIVE POWER TO THE PLANNING COMMISSION**

The MZEA’s specificity requirement also operates to prevent an administrative body from engaging in rezoning, since *rezoning is exclusively a legislative function*. *Id.*, citing *Sun Communities, supra*, 241 Mich App at 669.

Section 502(1) of the MZEA states, “the **legislative body** may provide in a zoning ordinance for special land uses in a zoning district.” The Township Board is the legislative body (elected by its constituents), whereas the Planning Commission is the administrative body (appointed by the Supervisor with the approval of the township board). “The specificity requirement, when coupled with the MZEA’s requirement that the zoning ordinance include standards governing a zoning board’s discretionary authority, **serves to ensure that the ordinance complies with the Michigan Constitution and does not amount to an improper delegation of legislative authority**.” *Id.* at 684.

Clearly, section 7.15 of the Kasson Township Zoning Ordinance improperly delegates legislative authority to the Planning Commission by allowing it to “provide for special land uses in a zoning district.” In other words, if the Kasson Township Planning Commission grants the applicant’s special use permit – it would be illegally re-zoning the agricultural property (even if it is a temporary rezoning of the land) – in violation of the MZEA and the Michigan Constitution.

CONCLUSION

It is requested that the Planning Commission deny the application on the grounds that it does not have the authority to grant the special use permit as explained above.

Even if, *for the sake of argument*, the Planning Commission did have the authority to grant the SUP, which I do not believe it does, it still cannot do so because the applicant has failed to meet the standards under the SUP Section of the Ordinance. This alternative argument will be the subject of my second letter in the event the Planning Commission believes that they have the authority to grant a SUP. My second legal opinion letter will be supported in part, by the report of Christopher Grobbel, PhD, of Grobbel Environmental & Planning Associates.

Finally, as stated above, if the Planning Commission grants the permit – my clients are prepared to defend their property rights to the fullest extent of the law and are confident of success.

Very truly yours,



Kristyn J. Houle

**EXHIBIT**

tabbies

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# Law Office of Kristyn J. Houle, PLC

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May 4, 2023

Kasson Township Planning Commission  
10988 S. Newman Rd.  
Maple City, MI 49664

Re: *Public Comment – Enduro Motorcycle Race – Application for Special Use Permit*

Dear Planning Commission Members:

Please accept this letter as a supplement to my first legal opinion letter of May 2, 2023 regarding the Enduro Motorcycle Race Application for Special Use Permit. I am still working on my second letter addressing the SUP standards, which I will send to you later today or tomorrow morning.

For the purposes of this supplemental legal opinion letter, my first letter argued that Section 7.15 of the Zoning Ordinance (the section of the ordinance that the Planning Commission is deciding this SUP application under) is unlawful, and therefore void *ab initio* because it violates the specificity requirement of the Michigan Zoning Enabling Act (“MZEA”), MCL 125.3502(1)(a); *Whitman v Galien Township*, 288 Mich App 672 (2010), and because it unlawfully delegates legislative power to the Planning Commission in violation of the MZEA and the Michigan Constitution. [(MCL 125.3502(1)); *Sun Communities v Leroy Township*, 241 Mich App 665 (2000)].

The applicants are applying for their Special Use Permit under Section 7.15 “Other Special Land Uses” (see application and narrative for SUP) so in my mind this should end the inquiry. The application must be denied because the Planning Commission does not have the authority to decide on it.

However, Section 5.13 “Temporary Outdoor Uses” has been brought up as a potential section that may apply in this matter. It is my opinion that the permit must be denied under this section for the same legal arguments that apply to Section 7.15. That is, the Planning Commission does not have the legal authority to decide “any other temporary outdoor uses” [this is an exclusively *legislative* power for the township board to decide (essentially a special use)]; and this section of the ordinance violates the specificity requirements of the MZEA and the constitutional division of powers.

Section 5.13 basically has two sections, the first is: “temporary outdoor uses may be permitted in any zoning district provided that the temporary use is similar in nature to those uses that are allowed by right in the district.” It is questionable as to whether this is specific enough to meet the MZEA requirements, but it doesn’t matter. As Dr. Grobbel points out in his report, the permitted uses in the Ag district are *not even remotely similar* in nature to a 3-day motorcycle race

event with associated camping and food service. (Grobbe Report, p.2; See also, Agricultural District, Permitted Uses, Sec. 4.5.1A-I). There is just no way anyone can argue that the Enduro Motorcycle Race is anywhere nearly similar to the uses allowed by right in the Ag District. Therefore, this section does not apply to the current situation.

The second section states: “*any other temporary outdoor uses* require a review by the Planning Commission and may require an approved site plan at the commission’s discretion...” It is this section that is unlawful for the same reasons as section 7.15. It unconstitutionally delegates legislative powers to the Planning Commission (that is, to decide on what “other temporary outdoor uses” may be allowed in any district). This legislative power is reserved exclusively to the Township Board. Additionally, the term “*other temporary outdoor uses*” violates the specificity requirement of the MZEA.

Section 502 of the MZEA states in pertinent part:

- (1) The *legislative body* may provide in a zoning ordinance for special land uses in a zoning district. **The zoning ordinance shall specify all of the following:**
  - (a) **The special land uses and activities eligible for approval** and the body or official responsible for reviewing and granting approval.

In the *Whitman* case, the Court found that the terms “**commercial or industrial activities**” were not specific enough, and were therefore a violation of Section 502 of the MZEA.

Similarly, the pertinent section of 5.13 states, “any other temporary outdoor uses require a review by the Planning Commission and may require an approved site plan at the commission’s discretion...” “**Any other temporary outdoor uses**” is even more broad than “commercial and industrial activities” and clearly lack the specificity the MZEA requires per the interpretation by the *Whitman* Court. [for example, temporary outdoor uses can range from a garage sale, church social picnic to a sports event, outdoor music concert, circus, drag race, etc.].

In interpreting the specificity requirement in the MZEA, the *Whitman* Court found:

When these definitions are considered together, the statute can be read to mandate that a zoning ordinance must set forth in **explicit, precise, definite and detailed language both the customary uses and the specific actions and functions that are eligible for special use permits**. The legal definition of “special use permit” supports this reading of the statute. Black’s Law Dictionary (9<sup>th</sup> ed) defines a special use permit as, “a zoning board’s authorization to use property in a way that is **identified as a special exception** in a zoning ordinance.” Accordingly, the MZEA’s specificity requirement ensures that property uses and activities eligible for special-use status are **identified in the language of the ordinance**. *Id.* at 682-83 (emphasis added).



The MZEA's specificity requirement also operates to prevent an administrative body from engaging in rezoning, since *rezoning is exclusively a legislative function*. *Id.*, citing *Sun Communities*, *supra*, 241 Mich App at 669.

Section 502(1) of the MZEA states, "the **legislative body** may provide in a zoning ordinance for special land uses in a zoning district." The Township Board is the legislative body (elected by its constituents), whereas the Planning Commission is the administrative body (appointed by the Supervisor with the approval of the township board). "The specificity requirement, when coupled with the MZEA's requirement that the zoning ordinance include standards governing a zoning board's discretionary authority, **serves to ensure that the ordinance complies with the Michigan Constitution and does not amount to an improper delegation of legislative authority.**" *Id.* at 684.

The specificity requirement **encourages consistency within a zoning district and guards against undesirable "spot zoning"** which is defined as "a zoning ordinance or amendment creating a small zone of inconsistent use within a larger zone." *Id.*, citing, *Penning v Owens*, 340 Mich 355, 367 (1954).

Clearly, section 5.13 of the Kasson Township Zoning Ordinance improperly delegates legislative authority to the Planning Commission by allowing it to "provide for special land uses (other temporary outdoor uses) in a zoning district." In other words, if the Kasson Township Planning Commission grants the applicant's special use permit under section 5.13 – it would be illegally rezoning the agricultural property (*even if it is a temporary rezoning* of the land) – in violation of the MZEA and the Michigan Constitution.

#### CONCLUSION

It is requested that the Planning Commission deny the application on the grounds that it does not have the authority to grant the special use permit under either Section 7.15 *or* 5.13 of the zoning ordinance.

I would like to also point out – as part of my FOIA Response, I noted documentation that the applicants acknowledge that they do not have a permit to put on the Race, and that if the special use permit is denied, that they will simply advertise that it is not going forward.

If the Planning Commission grants the permit – my clients are prepared to defend their property rights to the fullest extent of the law and are confident of success.

Very truly yours,

  
Kristyn J. Houle





# Law Office of Kristyn J. Houle, PLC

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May 4, 2023

Kasson Township Planning Commission  
10988 S. Newman Rd.  
Maple City, MI 49664

Re: *Public Comment – Enduro Motorcycle Race – Application for Special Use Permit  
Letter Two from Law Office of Kristyn J. Houle, PLC*

Dear Planning Commission Members:

Please accept this as a request that the Planning Commission *deny* the James Shettek/Fran Seymour Application for Special Use Permit for an Enduro Motorcycle Race proposed to be held on Memorial Day weekend (Friday, May 26-Sunday, May 28) on William Kasben's property in Maple City. The applicants state, "we are requesting a special use permit, under the category of 'Other Special Uses' for an Enduro Motorcycle Event." [See Application Narrative]. The "Other Special Uses" section of the zoning ordinance is section 7.15 and as stated in my letter dated May 2, 2023, the Planning Commission does not have the authority to grant a special use under this section because it violates the specificity requirement of the MZEA [MCL 125.3502(1)(a)] and unlawfully delegates legislative power to the Planning Commission in violation of the MZEA and the Michigan Constitution (MCLA Const. Art 3, Sec. 2). [My 5/2/23 letter is incorporated herein in its entirety]. The permit must be denied under section 5.13 "Temporary Outdoor Uses" for the same reasons. The Planning Commission lacks authority to grant a permit for "other temporary outdoor uses" because section 5.13 violates the MZEA and the Constitution. [See my 5/4/23 letter incorporated herein in its entirety]. The applicants have stated that they may want to have additional race events if their permit is granted.

For the reasons stated in my previous letters, the application must be denied because the Planning Commission does not have the legal authority to grant it. However, even if, *for the sake of argument*, the Planning Commission had the authority, (*which it does not*), the permit would still have to be denied for the reasons stated below.

## Background

The application for special land use permit for the event states that the property is zoned Agricultural (AG). However, it appears that it may actually be zoned Forested (FR). Either way, under the "permitted uses" in both districts there is nothing remotely similar to a 3-day motorcycle event with camping, racing, possible food trucks, loud speakers, generators for RVs and around 150-300 event participants. [See C. Grobbel Report, p. 2, Ex1]. Per the application, noise requirements for the bikes are up to 96 db/A. (See Application Narrative). [It is important to note

that there is no mention of the way in which the number of participants is controlled (“crowd control”). Upon information and belief, these types of races can draw participants in the thousands.]

The applicants refer to *michigansprintenduro.com* for additional information. Upon review of the website, it appears that the event is advertised as “Wild Bill Sprint Enduro” on “Wild Bill Farm” in Maple City. The participants will take off in 15 second increments, and have the opportunity to run each race up to 6 times. The proposed race is clearly a commercial event, complete with an entry fee (\$15-\$40) and 2023 sponsors, including, but not limited to, Mobile MP Powersports, Boughner Racing Custom Suspension, EPIC Powersports, XC Gear, and Rocky Mountain ATV/MC Race Gas. [See attached website info, Ex2, see also Michigan Sprint Enduro, LLC Articles of Organization, Ex3].

Importantly, any work to prepare for the proposed race without the requisite township approval, is a risk the applicants take for not securing a permit or approval with enough time to confirm that the race can go forward. To that end, I note as part of my FOIA response, a social media post by one of the co-applicants, Fran Seymour who admits, “The race has been posted on the Michigan Sprint Enduro site, *but if not approved* will obviously be taken down.” Also, per the draft April 17, 2023 minutes, on page 3, Mr. Seymour stated “the proper paperwork for a 501c3 will be drawn up *if the application for special use is approved.*” [Ex4, emphasis added].

**The Application for SUP does not meet all of the Standards under  
Section 7.7 Basis For Determination**

As you know, under the Michigan Zoning Enabling Act, the applicant for a SUP must meet each and every standard applicable to the SUP under the zoning ordinance in order to obtain the special land use permit. Dr. Grobbel in his attached report (note – it is a slightly revised version from the first version I emailed earlier this week), goes over each standard and as an expert in planning and zoning states whether he believes the applicants have met each of the standards. For the purposes of my letter, I will go over the standards that are most obviously not met by the application.

Section 7.7 states in pertinent part: Each of the proposed Special Land Uses on the proposed location *shall*:

**(A) Be designed, constructed, operated and maintained so as to be harmonious ...with the existing or intended character of the general vicinity as indicated in the Township Master Plan or other policies of the township.**

**and**

**(B) Not be hazardous or disturbing to existing uses in the same general vicinity, and will not have adverse effects on the market value of surrounding property and to the community as a whole.**

**and**

**(E) Not involve uses, activities... or conditions of operation that will be detrimental to any person, property or the general welfare by fumes, glare, noise, odors or dust.**

The proposed Special Land Use does not meet these very important standards, and the permit must be denied.

The race event (A) *will not* be harmonious with the existing character of the general vicinity as indicated in the Master Plan and (B) it *will be* hazardous and disturbing to existing uses in the same general vicinity and have an adverse effect on market value of the surrounding properties, because (E) it involves uses and activities that will be detrimental to people and property because of noise dust and fumes from the motorcycle race. The surrounding neighborhood is a quiet, tranquil and peaceful area of residential homes, open space, Bright Lake and farmland. [Please see Public Comment Letters submitted in Opposition to the SUP, public record]. The noise, dust and fumes generated from the 100-200 race bikes as well as the generators and campfire smoke will be hazardous and disturbing to these existing uses.

At the March 20, 2023 Planning Commission meeting, it was decided that the notices for the public hearing on the SUP should expand beyond the required 300 feet – and should be sent to those within 1,000 feet - an obvious recognition by the Planning Commission of the wide-spread disturbing impact of the proposed event.

At that same meeting, the Zoning Administrator stated that he had pulled together some information regarding comparable examples of noise levels. He stated, “the noise generated from the bikes will be comparable to a Boeing 737 or DC-9 aircraft at one nautical mile before landing (97 dB), a power mower (96 dB) a motorcycle at 25 feet (90 dB) or a newspaper press at 97 dB. A person’s hearing will likely be damaged after eight hours of exposure.” [See March 20, 2023 Draft Minutes of PC Minutes, p. 6]. Per the application narrative, the race on Sunday is scheduled to run from approximately 8:30 am – 5:00 pm, and the bikes will take off in 15 second increments and could potentially run the race track up to 6 or more times [see website info, Ex2]. This means continuous noise for up to 9 hours. When asked about the noise level on Friday night and throughout the day on Saturday as riders are preparing their bikes, the applicant admitted that there “could potentially be noise at these times.” [March 20, 2023 Draft Minutes of PC Meeting, p. 6].

Per the handouts of the April 17, 2023 public hearing on the SUP, the Zoning Ordinance passage regarding noise states: No use except a temporary construction operation shall be permitted which creates a noise level of which exceeds five decibels (as defined by the Occupational Safety and Health Act of 1970) above the ambient level of the area measured at the property line.

The Noise issue was addressed in Dr. Grobbel’s report as well. On page 3 of his report, Dr. Grobbel states:

In land use planning and zoning practice, noise can be defined as an unwanted sound that someone considers unreasonably disturbing, objectionable, obnoxious, etc... typical sound measurements for motorcycles are 100 dBA, and such motorcycle sound is known to easily travel for distances up to ½ mile – depending

on topography, weather and other ambient conditions. The noise generated from the proposed motorcycle race event will very likely result in the unreasonable interference with the comfortable use and enjoyment of the existing nearby residential uses, will not be harmonious in this setting to the intended character of the general vicinity, will exceed the Township's prohibition of a 5 dB increase in ambient sound at the nearest property lines, and will violate the intent and expressed goals, policies and actions of the Kasson Township Master Plan.  
[See Ex1, p. 3-4].

I spoke briefly with a sound expert, Tom Gallery, who told me that it would be very difficult to attenuate the noise from the motorcycles used in races, because they are in constant motion. In addition to the 1970 OSHA standards referenced in section 4.10.5 of the Zoning Ordinance, the Planning Commission should consider the March, 1974 EPA report on the Environmental Noise Requisite to Protect the Public Health and Welfare in determining that the race will produce unacceptable levels of noise. The report was emailed to Mr. Cypher and Ms. Boomer as part of my first public comment materials on May 2, 2023.

In her April 17, 2023 public comment letter, Patti Travioli mentions a Harvard Medical School study on the health risks associated with noise. The study points out that researchers have found that "noise pollution not only drives hearing loss, tinnitus, and hypersensitivity to sound, but can cause or exacerbate cardiovascular disease, type 2 diabetes, sleep disturbances; stress; mental health and cognition problems, including memory impairment and attention deficits; childhood learning delays; and low birth weight." [The Effects of Noise on Health. By S. Dutchen, Harvard Magazine, Ex 6]. Additionally, there have been studies on the negative impact of noise on those suffering from Post-Traumatic Stress Disorder. (PTSDUK.com "Hyperacusis and PTSD")

Ms. Travioli and her husband own 20 acres that are adjacent to the proposed event location. She runs Heartwood Forest Farm, a certified organic farm. She is concerned that the event may risk her organic certification if the soil becomes contaminated as a result of the race (her property is located below the grade level of the trail). Even if there was no contamination risk, the event is clearly not in harmony with this adjacent use of land.

Ms. Travioli's husband, Jim Travioli is a trained and licensed real estate appraiser. In his letter to the Planning Commission, Mr. Travioli states:

1.) Loss of quiet enjoyment. Our home is a bit over 100 yards from the existing 2 track on property in question. Our home and the Needham's to the west of us, are the closet homes to their track (aerial view attached). Our home is on a bluff which looks directly to the north where part of their track is located. The noise created from the scheduled event and the inevitable addition of other events, plus all the practice that will happen in-between events will be impossible to escape. We have the right to "quiet enjoyment" of our home every day, not every day except for days that are given to the Michigan Sprint Enduros company to use as they wish. This is what we bought when we moved here.

2.) Loss of property value. As a trained and licensed real estate appraiser, I am very aware of what this Enduro track can do to property values. In real estate appraising there is a term called "External Obsolescence".

External Obsolescence is defined as "An element of accrued depreciation; a defect, usually incurable, caused by negative influences outside a site. External obsolescence causes a loss in value to your property caused by forces that you can not control. That's what it means when its says "usually incurable", you can't fix it and just have to live with it." The homeowner cannot reverse the loss in value by spending money to fix something. [See J. Travioli letter, public record].

It is not a surprise to anyone that the use and enjoyment and the property values of one's home can depend on whether you have the ability to enjoy your outside property during the warmer months, whether its for organic gardening, barbequing, or simply enjoying the evening sunsets on your deck. In northern Michigan, there are a lot of families who live here only during the warm season, beginning Memorial Day weekend. If the Enduro Race event is permitted to go forward, and it becomes an annual event, the property values of the surrounding homes will more than likely diminish significantly because of the disturbing noise, fumes and dust. Frankly, no one wants to live next to a motorcycle race track. This diminution in value could easily lead to a regulatory taking claim against the Township.

Additionally, the traffic issue is not designed to be harmonious with the vicinity and will be hazardous and disturbing to the area. Because this is a commercial event, a commercial driveway should be required to protect the health, safety and welfare of the neighbors. Upon information and belief, the applicants have a residential driveway approval from the Leelanau County Road Commission (LCRC), but they do not have a commercial driveway permit. The LCRC has adopted the USDOT legal requirement for line of sight, and upon information and belief, the USDOT standards are not met by the driveway currently installed by the applicants. [See attached LCRC Standards, Ex5]. This driveway is located at the crest of a hill, and there is concern that this will be a hazard to passing traffic. As Dr. Grobbel points out, Section 7.5.7 requires a written impact statement for SUP applications "relative to project impact on traffic and on the natural environment." It is my understanding that no such impact statement has been submitted by the applicants. [Ex1, p.2].

The proposed use will also not be harmonious with the surrounding natural area and again, there is no written impact statement from the applicants relative to the impact on the natural environment. Upon information and belief, there are wetlands on the proposed location of the race that should be protected from riders. Also, as pointed out in his letter to the Township, Mr. Verschaeve states:

The adjacent fields and forests are both wild and agricultural spaces where there are nesting eagles, otters, herons, pileated woodpeckers, bears, deer and abundant other wildlife. The noise and the fumes from the motorcycles will disrupt and displace some species which families depend upon for hunting. Directly across from the proposed event space is a beef farm. There are copious amounts of scientific research informing both wildlife biologists as well as agricultural

scientists concluding the harmful effects of noise on both habitat and agricultural production. [Verschaeve letter, public record.]

Ms. Elizabeth Chapelle states, "there are also sand hill cranes, eagles, herons, fish and wildlife that are found around Bright Lake. That lake has never had a gasoline engine on it and the families that surround it have worked together for generations to keep those waters clean." (Chapelle letter, public record).

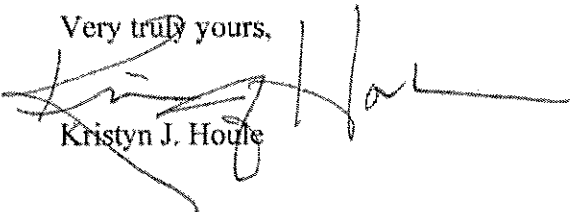
Finally, *even if* the Planning Commission had the authority to grant the SUP, and the Applicant met all of the standards of Section 7.7, there are still conditions that have not been met and are likely unable to be met by the applicant, such as: installing a commercial driveway; designating a safety coordinator for the event; providing potable water and water for fire safety; establishing rules and regulations for attendees relating to quiet time, traffic control, parking, and safety precautions; designating a person to field neighbor complaints; crowd control (how many participants are allowed to attend?; how is this regulated? a plan should be submitted to the Township); noise regulations (do the bikes meet AMA standards? How is this regulated?); the applicant should be required to post a bond for a sound engineering firm to measure noise at property lines; the applicants should provide rules and regulations for on-site and off-site conduct of attendees, including, but not limited to a prohibition against alcohol or drug use.

#### CONCLUSION

Clearly, as demonstrated above, and by all of the public comment letters in opposition to the SUP, Section 7.7 (A), (B) and (E) are not met by the applicant, and therefore, the permit must be denied. Further, as demonstrated by Dr. Grobbel's report, the applicant fails to meet most of the other SUP standards under Section 7. The proposed land use is not a permitted use nor is it a use allowed by special land use permit under either the Agricultural district or the Forested district. Further, the proposed use could easily rise to the level of a regulatory taking as well as a nuisance in fact and a nuisance per se under Michigan case law, and could expose the Township to litigation on these claims in addition to the MZEA and Constitutional issues raised in my earlier letters.

For the reasons stated herein, and in my May 2nd and May 4th letters to the Planning Commission, the Special Use Permit must be denied.

Very truly yours,

  
Kristyn J. Houle



# **EXHIBIT 1**



# Grobbel Environmental & Planning Associates

8288 E North Wind Tr PO Box 58 Lake Leelanau, MI 49653

May 3, 2023 (revised)

Planning Commission - Kasson Township  
10988 S. Newman Rd.  
Maple City, MI 49664

**RE: Planner's Report/Environmental Assessment - Proposed Spring Creek Trails Enduro Motorcycle Race Event, W. Kasben Properties, E. Kasson Rd., Parcel Nos. 007-024-001-00, 007-024-005-00, 007-024-004-20, 007-024-004-30 & 007024-004-00, Kasson Township, Leelanau County, Michigan.**

Dear Kasson Township Planning Commission,

Please find this planner's report and environmental assessment of the proposed Spring Creek Trails Enduro Motorcycle Race Event. Applicants James Scheffek and Fran Seymour propose an enduro motorcycle race event during the Memorial Day weekend, i.e., May 26 (Friday) through 28 (Sunday), 2023. The subject parcels are owned by William Kasben and zoned Agriculture (Ag) pursuant to the Kasson Township Zoning Ordinance.<sup>1</sup> Applicants propose a commercial three (3) day event with an 8.5 hour enduro motorcycle race event on Sunday May 28, 2023, two (2) on-site camping areas with 50-100 campsites with campfires allowed, overnight parking (with no utilities), a trash bin and Porto-John area, dumpster area, and a food truck area.<sup>2</sup> Applicants anticipate up to 200 event riders/participants and up to an additional 100 attendees.

## **Kasson Township Zoning Ordinance Requirements**

1. **Section 5.13 - General Provisions: Temporary Outdoor Uses.** The Kasson Township Zoning Ordinance Section 5.13 allows for temporary outdoor uses (or temporary outdoor events) "in any zoning

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<sup>1</sup> Kasson Township, Leelanau County Zoning Ordinance, adopted April 7, 1997 with amendments through January 26, 2019.

<sup>2</sup> Kasson Township Planning/Zoning Application, dated February 18, 2023.

district provided that the temporary use is similar in nature to those uses that are allowed by right in the district. . . . and that the Zoning Administrator shall determine off street parking requirements for the event.” Within Sections 4.5.1 and 4.5.2 of the Township Zoning Ordinance, the Agricultural District does not list permitted or special land uses remotely similar in nature to a three-day motorcycle race event with associated proposed overnight camping or food service (i.e. the proposed food truck area)<sup>3</sup>, and adequate details of required or proposed off street parking are not provided within the event application. *Consequently, the application as provided does not comply with Section 5.13 of the Zoning Ordinance and cannot be approved as proposed.*

2. **Section 5.15 - General Provisions: Required Water Supply and Sanitary Sewerage Facilities.** Section 5.15 of the Ordinance requires essential services stating “(t)he owner or applicant for any Land Use Permit demonstrate the availability of potable water and public sewer connections or adequate space for septic fields with appropriate served areas and setback . . . etc.” The application proposes a Porta-John and trash bin area within the southwest portion of the subject site, but does not propose the provision of potable/drinking water for event attendees, participants, and/or proposed overnight campers. *Consequently, the application as provided does not comply with Section 5.15 of the Zoning Ordinance, and cannot be approved as proposed.*

3. **Chapter 7 Special Land Uses and Special Permit Requirements.** The Kasson Township Zoning Ordinance Section 7.5.7. requires written impact statements for SLU applications “relative to project impact on . . . traffic . . . and upon the natural environment.” Based on information and belief, no required impact statements have been provided within application documents for the Planning Commission to reasonably assess potential impact from the proposed 3-day outdoor motorcycle race event and associated camping, food service, access management, emergency services/public safety, and waste management activities. *Consequently, the application as provided does not comply with Section 7.5.7. of the Zoning Ordinance, and cannot be approved as proposed.*

**Section 7.7: Basis for Determination** of the Township Zoning Ordinance provides special land use (SLU) permit review criteria for the Planning Commission, requiring Planning Commission findings

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<sup>3</sup> It is noted that Section 4.5.2 Special Land Uses within the Ag District lists “public or private outdoor recreation or park facilities,” but does not list such events. Neither is the proposed land use listed within Township Zoning Ordinance Section 4.10: Special Purpose Districts.

that each of the following has been met:

**A. Be designed, constructed, operated and maintained so as to be harmonious ...with the existing or intended character of the general vicinity as indicated in the Township Master Plan or other policies of the Township.**

The site and surrounding area are typified by actively managed forest and farmland, and low density rural residential development. Based on aerial photographs and site vicinity visits, the subject site is adjacent to approximately eight (8) residences and within one-quarter mile of nearly forty (40) residences. The Kasson Township Zoning Ordinance definition of “noise” includes that “(n)o use except a temporary construction operation shall be permitted which creates a noise level of which exceeds five decibels (as defined in the Occupational Safety and Health Act of 1970) above the ambient level of the area measured at the property line. In land use planning and zoning practice, noise can also be defined as an unwanted sound that someone considers unreasonably disturbing, objectionable, obnoxious, etc.<sup>4</sup> As noted in footnote 4 below, typical sound measurements for motorcycles are 100 dBA, and such motorcycle sound is known to easily travel for distances up to 1/2 mile - depending on topography, weather

<sup>4</sup> “Sound” is a vibration that propagates as a typically audible mechanical wave of pressure and displacement, through a medium such as air or water. The properties of sound include: frequency; wavelength; wave number; amplitude; sound pressure; sound intensity; speed of sound; and direction. The decibel scale used to measure sound for the human ear is the dB A-scale (dBA). Importantly, dBA is a logarithmic scale typified by the following:

Whisper Quiet Library at 6 feet	30dBA
Normal conversation at 3 ft	60-65dBA
City Traffic (inside car)	85dBA
Train whistle at 500 ft/Truck Traffic	90dBA
Jackhammer at 50 ft	95dBA
Level at which sustained exposure may result in hearing loss	90 - 95dBA
Hand Drill	98dBA
Power mower at 3 ft	107dBA
Snowmobile/Motorcycle	100dBA
Power saw at 3 ft	110dBA
Sandblasting/Loud Rock Concert	115dBA
Pain begins	125dBA
Loudest recommended exposure WITH hearing protection (even short term exposure can cause permanent damage)	140dBA
Jet engine at 100 ft	140dBA
12 Gauge Shotgun Blast	165dBA
Death of hearing tissue	180dBA
Loudest sound possible	194dBA

and other ambient conditions. The Kasson Township Master Plan Future Land Use Map depicts the subject site as “forested,”<sup>5</sup> and emphasizes the “vital role the forests play in the Township’s ecological health and in the maintenance of its rural character, Kasson Township shall strive to preserve its woodlands by promoting wise forest management...and by including trees and other vegetation in the site plan review process.”<sup>6</sup> The Master Plan also states, “(t)his Plan is based upon the understanding that the beauty and quality of life in Kasson Township springs from the bounty of its natural resources - the hill, forests, field, and lakes; and the balanced arrangement of these with its farms and village areas. It is the harmonious blending of these elements, without one dominating the others, that produces the satisfaction of the community residents and that draws tourists and residents alike to the township. The Plan intends to maintain this balance.”<sup>7</sup>

The Master Plan’s policies and actions recognize the importance of considering impacts to forest and the Township’s rural character in the site plan review process,<sup>8</sup> and sets forth the dated goal “to mandate and enforce adequate buffers and proper regulations of nonresidential uses to ensure the quiet enjoyment of their homes by residents of the Township.”<sup>9</sup>

The noise generated from the proposed motorcycle race event will very likely result in the unreasonable interference with the comfortable use and enjoyment of these existing nearby residential uses, will not be harmonious in this setting to the intended character of the general vicinity, will exceed the Township’s prohibition of a 5 dB increase in ambient sound at nearest property lines, and will violate the intent and expressed goals, policies and actions of the Kasson Township Master Plan. *Consequently, the application as provided does not comply with this Section of the Ordinance or the Master Plan, and cannot be approved as proposed.*

**B. Not be hazardous or disturbing to existing uses in the same general vicinity, and will not have adverse effects on the market value of surrounding property and to the community as a whole.**

It is well-established in land use planning and zoning that proximity to nuisances per se and contextual

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<sup>5</sup> Kasson Township Future Land Use Map, V. 4, Figure 3: Kasson Township Master Plan, January 2022, p. 13.

<sup>6</sup> Kasson Township Master Plan, January 2022, p. 23.

<sup>7</sup> Kasson Township Master Plan, p. 10.

<sup>8</sup> Kasson Township Master Plan, p. 23.

<sup>9</sup> Kasson Township Master Plan, p. 26.

nuisances negatively impact adjacent and surrounding property values. The prevention of such adverse impacts for “spill-over effects” are a primary purpose and pillar of local governmental planning and zoning as enabled by Michigan land use law. Also see comments in A above. *Consequently, the application as provided does not comply with this Section of the Ordinance, and cannot be approved as proposed.*

**C. Be served adequately by essential facilities and services, such as, but not limited to, highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, and schools.**

The application as proposed does not adequately address or detail the provision of essential services and facility, as needed for event participants, including but not limited to potable water, septic, fire protection, EMS and police services. *Consequently, the application as provided does not comply with this Section of the Ordinance, and cannot be approved as proposed.*

**D. Not create excessive additional requirements at public costs for public facilities and services.**

*See comment in C above.*

**E. Not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property or the general welfare by fumes, glare, noise odors or dust.**

The noise generated from the proposed motorcycle race event will very likely result in the unreasonable interference with the comfortable use and enjoyment of existing nearby residential uses, will not be harmonious in this setting to the intended character of the general vicinity. *Consequently, the application as proposed does not comply with this Section of the Ordinance, and cannot be approved as proposed.*

**F. Will be in general compliance with the land use policies outlined in the Township Master Plan, the principles of sound planning, and will not jeopardize the economic welfare of the Township.**

The noise generated from the proposed event will very likely result in the unreasonable interference with

the comfortable use and enjoyment of these existing nearby residential uses, will likely exceed the Township's prohibition of a 5 dB increase in ambient sound at a nearest property line, will not be harmonious in this setting to the intended character of the general vicinity, and will violate the intent and expressed goals, policies and actions of the Kasson Township Master Plan. *Consequently, the application as provided does not comply with this Section of the Ordinance or the Master Plan, does not represent or advance sound planning principles, and cannot be approved as proposed.*

**G. Will not directly or indirectly have a substantial adverse effect upon the natural resources of the Township. Including, but not limited to, prime or unique agricultural lands, water recharge areas, lakes, rivers, streams, forest, wetlands, wildlife areas and major sand, gravel or mineral deposits.**

The subject site is typified by sandy and sandy loam soils (i.e., Kaleva sands, Emmet-Leelanau sandy/gravelly sandy loams, and Leelanau-East lake sandy loams) up to 45% slopes. Such sandy slopes are inherently vulnerable to soil erosion and sedimentation from activities such as off road vehicle use or motorcycle race events such as proposed. *The proposed land use will likely result in accelerated, localized soil erosion, indirectly have a substantial adverse effect on forestlands and agricultural lands, and will likely violate this Section of the Ordinance.*

**H. Structures, landscaping, or other land uses, will not disrupt water drainage systems necessary for agricultural uses and will be in compliance with Leelanau County Drainage Commission requirements.**

*Not applicable.*

**I. Phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility services, drainage or erosion control.**

*Based on information and belief, phased development plans have not been provided, and thereby do not comply with this Section of the Ordinance - especially as it relates to likely impacts to site drainage and/or soil erosion control.*

**J. Phases of development must also be in compliance with the requirements of the district in which it is proposed and all other standards in this Ordinance, as well as with the requirements of the County Road Commission, County Building Inspector, County Drain Commissioner, District Health Department, Soil Erosion Officer, Agricultural Soil Conservation Service, area fire departments, the DNR and other applicable township, county, state and federal statutes.**

The proposed motorcycle race event does not comply with Section 4.5: Agricultural District permitted or SLUs, or Section 5.13 Temporary Outdoor Events requirements of the Ordinance. See comments above. Based on information and belief, phased development plans and permits from any state or county have not been provided. *Thereby, the proposed SUP application does not comply with this Section of the Ordinance, especially as it relates to Benzie-Leelanau District Health Department water and sewage services provision; lack of an emergency management plan; lack of compliance with MDNR campground regulations; no proof of event insurance, including Kasson Township as an additionally named/indemnified party; no proof of agency approvals regarding fire protection, EMS and police services and traffic management; etc. Consequently, the application as proposed does not comply with the Section of the Ordinance and cannot be approved as proposed.*

**For the above stated reasons, we strongly urge the Kasson Township Planning Commission to deny the Spring Creek Trails event SLU application as proposed.**

If you have any questions regarding these public comments or this planner's report, please feel free to contact me at 231-499-7165 or grobbelenvironmental@gmail.com. Thank you.

Sincerely,  
**Grobbel Environmental & Planning Associates**



Christopher P. Grobbel, Ph.D.  
Sr. Planner/Project Manager



## Appendix - Sound

### **Human Perceptions of Increases in Decibel Level** (i.e., an exponential scale):

Imperceptible Change	1dBA
Barely Perceptible Change	3dBA
Clearly Noticeable Change	5dBA
About Twice as Loud	10dB
About Four Times as Loud	20dBA

**Zoning Regulations Regarding Noise** - a 55 dBA or 60 dBA standard at the nearest neighboring property line is common, e.g., is the U.S. EPA guideline for commercial wind generators.

### **Sound Measurement**

A-weighting scale (dBA) - used of the human hearing range used for all community sound measurements.

C-weighting scale (dBC) – used to evaluate very large sounds (i.e., over 100 dB) or low frequency sounds (i.e., under 60 Hz)

Hz = “hertz” - the unit of measurement of sound frequency in the International System of Units and is defined as one cycle per second. It is named for Heinrich Rudolf Hertz, the first person to provide conclusive proof of the existence of electromagnetic waves.

**Sound measurement** - must measure ambient sound level and subtract that from sound level from sound source generating operation, apparatus or activity.

i.e., ambient sound level (dBA) – sound/noise at measuring point (dBA) =  
sound from a source (dBA)

## CHRISTOPHER P. GROBBEL

### EDUCATION

**Ph. D.** Environmental Policy and Law, Michigan State University, Resource Development Department, College of Agriculture and Natural Resources, 1998, GPA 3.96.

**M.S.** Environmental Policy and Law / Hydrogeology - Michigan State University, Resource Development Department, College of Agriculture and Natural Resources. 1986, GPA 3.93.

**B.S.** Environmental Science / Forestry with High Honor - Michigan State University, Resource Development Department, College of Agriculture and Natural Resources, 1983, GPA 3.82.

### PROFESSIONAL EXPERIENCE

**Principal/Senior Associate** – Grobbel Environmental & Planning Associates, Traverse City, Michigan.

1998 to Present      Founder and president of the environmental consulting and land use planning firm, Grobbel Environmental & Planning Associates. Project experience includes watershed management and protection planning; community master planning, police power and zoning ordinance development; land use and environmental planning; ecological assessment; wetland determination, restoration and delineation; soil/groundwater investigation and remediation; risk assessment, management and communication; brownfield redevelopment; innovative stormwater treatment system design and construction; litigation support and expert witness; and all aspects of business development, media relations, financial management, marketing and administration.

**Assistant/Adjunct Professor** – Department of Community Sustainability/CARRS/Resource Development Department, College of Agriculture & Natural Resources, Michigan State University, Traverse City and East Lansing, Michigan.

1992 to 2016      Design and teaching of college undergraduate courses entitled: CSUS 425 Environmental Impact Assessment; CSUS 465 Environmental and Natural Resources Law; CSUS 200 Introduction to Sustainability; CSUS 320 Environmental Planning and Management; ESA 225 Land and Environmental Issues in Law; RD 336 State Environmental Law; RD 491 Environmental Ethics; and RD 430 Natural Resources Law. Director of MSU undergraduate environmental studies program at the University Center in Traverse City, Michigan

**Land Use Programs Consultant** – Tip of the Mitt Watershed Council, Petoskey/Traverse City, Michigan.

2002 - 2004      Land use programs consultant undertaking master planning, zoning ordinance audit and development, site conservation design/development, site plan review, and land use training and education programs. Duties also include environmental planning; ecological assessment; soil and groundwater investigation; wetland determination, assessment, delineation and restoration; risk assessment, management and communication; brownfield redevelopment; litigation support and expert witness; and all aspects of technical services development, marketing and administration.

**CHRISTOPHER P. GROBBEL**

**Page 2**

**Northwest Michigan Land Use Agent** – MSU Extension, Grand Traverse County, Michigan.

1999 - 2003 Developer, co-author and coordinator of MSUE's award winning Citizen Planner statewide land use training program in Michigan. Design and teaching of college credit and adult learner non-credit courses in land use planning and law, environmental law and policy, community development, wetlands and watershed management, *etc.* Member of Leelanau County Agricultural Alliance, Antrim-Grand Traverse County farmland preservation task force involved in undertaking surveys and geographic information system mapping toward county administered farmland preservation programs.

**Director of Education and Land Stewardship** – Leelanau Conservancy, Leland, Michigan.

1998 - 1999 Design and delivery of land use, conservation and environmental education programs for school children, landowners, professionals and local and regional units of government. Implementation of the Leelanau Geography Project, including the training of middle school teachers from ten (10) area public and private schools. Communication and outreach to visual, print, audio and electronic media. Design and implementation of web pages for Leelanau Conservancy and regional environmental education consortium. Writing and administration of numerous grants.

**Co-owner/Senior Project Manager** - Compliance, Inc. Environmental Engineering, Traverse City and Detroit, Michigan.

1996 - 1998 Founder of Southwest Detroit office for Compliance, Inc. Regulatory specialist and senior project manager for the investigation and remediation of sites of environmental contamination, brownfield redevelopment, air permitting, emergency response, expert witness and leaking underground storage tank programs. Recipient of Kresge Foundation brownfield redevelopment project grant, and board member for Cluster 5 (Southwest Detroit) of Detroit's Community Reinvestment Strategy initiative.

**Regulatory Specialist/Project Manager** - Environmental Solutions, Inc., Traverse City, Michigan.

1992 - 1996 Regulatory specialist and project manager for the investigation and remediation of sites of environmental contamination.

**Environmental Enforcement Specialist** - Michigan Department of Environmental Quality, Environmental Response Division, Lansing, Michigan.

1991 - 1992 Liaison to the Department of the Attorney General in the enforcement and litigation of state environmental regulations.

**Environmental Quality Analyst** - Michigan Department of Environmental Quality, Environmental Response Division, Gaylord, Michigan.

1989 - 1991 Compliance and enforcement of state hazardous waste, solid waste and leaking underground storage tank (LUST) regulations for eight county region. Responsible for coordination of Part 201 and LUST programs for the eight (8) county Gaylord District.

**CHRISTOPHER P. GROBBEL**

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**Water Quality Specialist** - Michigan Department of Natural Resources, Land and Water Management Division, Lansing, Michigan.

1988 - 1989 Production supervisor and design assistant for the Michigan Statewide Groundwater Data Base geographic information system.

**U.S. Peace Corps** – Returned Peace Corps Volunteer.

1987 - 1988 Worked in the development of agro-forestry systems, soil conservation and environmental education projects in Guayas Province, Ecuador.

**Consultant** - Michigan Department of Natural Resources, Groundwater Quality and Land and Water Management Divisions, Lansing, Michigan.

1986 - 1987 Staff planner and development specialist for the prototype computerized Michigan Statewide Groundwater Data Base.

**SELECT PROFESSIONAL PUBLICATIONS & PRESENTATIONS**

**The Rap Sheets: Paying for Pollution. The Misuse of Public Resources for Manure-to-Energy Projects at Industrial Dairies in Wisconsin**, Socially Responsible Agriculture Project and Kewaunee CARES, May, 2019.

**Delaware CAFO Guide**, Socially Responsible Agriculture Project, May 2019.

**Michigan CAFO Guide**, Socially Responsible Agriculture Project, January 2019.

**Local Governmental Role in Oil and Gas Regulation**, WMEAC Conference, Fracking in Michigan, December 3, 2014, Kellogg Center, E. Lansing, Michigan.

**Environmental Issues in Natural Gas Production**, Harrison, W.B. III, Peters, J., Poll, J., Grobbel, C., VanDyke, A., and Sadler, S., Foxmoor Continuing Education, a Division of Half Moon Education, Inc., publication, 2014.

**What is a Taking? Exploring the Boundary between Public Interest and Private Property**, Kohler, Ellen, Esq. and Grobbel, Christopher, Ph.D., Tip of the Mitt Watershed Council publication, 2004.

**Summary of Property Takings Case Law**, Michigan State University Land Use Series, East Lansing, Michigan, December 16, 2002, <http://www.msue.msu.edu/aoe/landuse/landindex.html>.

**Citizen Planner Program Curriculum**, training course series for non-professionals involved in local land use decision-making, Michigan State University Extension, 175 pp., copyright 2000. Legal Foundations of Planning and Zoning; Private Property Rights and the Takings Issue; Zoning for Water Quality; Farmland Preservation Tools and Techniques; Principles of the New Urbanism; Brownfield Redevelopment; Wetland Science and Regulation; and Riparian Rights.

**An Examination Of Indicators Of Social Equity In Michigan Environmental Policy: The Case Of The Michigan Environmental Response Program**, Ph.D. dissertation for the College of Agriculture and Natural Resources, Resource Development Department, Michigan State University, 200 pp., 1998.

**CHRISTOPHER P. GROBBEL**

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**Environmental Justice Bibliography, 1975-1994**, D. Doberneck, C. Grobbel, T. Link, and G. Guluma, Office of Diversity and Pluralism, College of Agriculture and Natural Resources, and the Resource Development Department, Michigan State University, 79 pp., 1995.

**Environmental Equity and U.S. Policy**, Community News & Views, Vol. 6, No. 4, Urban Affairs Programs, Michigan State University, Winter 1994.

**Wellkey: User Documentation**, Christopher P. Grobbel and Bruce Morrison, 69 pp., 1989.

**Water Well Record Location Verification and Automation: A Pilot Project for Isabella County, Michigan**, M.N. Beaulac and Christopher P. Grobbel, 50 pp., 1987.

**State v.s. Federal Rights in the Regulation of Natural Resources: Legal Issues Surrounding Great Lakes Water Diversion**, A Master's Thesis for the College of Agricultural and Natural Resources, Michigan State University, Christopher P. Grobbel, 120 pp., 1986.

**Water Management in Michigan: Legal Issues in Michigan Water Planning**, Dan Bronstein, Leighton Leighty, John Vincent and Christopher Grobbel, 214 pp., 1985.

Presenter of "Environmental Issues with Hydraulic Fracturing: Unconventional Natural Gas Development of Collingwood Shale" numerous conferences and presentations through-out Michigan, 2010 – 2014.

Panelist: "Risks of Hydraulic Fracturing: Unconventional Natural Gas Development of Collingwood Shale," Michigan State University Extension, Traverse City, Michigan, June 24, 2010.

Instructor of "Planning and Zoning Essentials" Michigan Association of Planning, February 25, 2010, Perry Davis Hotel, Petoskey, Michigan.

Presenter of "Role of Local Government in Protecting Wetlands" at the Planning Michigan Conference, Michigan Association of Planning's 2009 Planning Conference, October 2, 2009, Mt. Pleasant, Michigan.

Presenter of "Role of Local Government in Michigan Wetland Regulation" at the Michigan Wetlands: Celebrating the 25<sup>th</sup> Anniversary of the Wetland Protection Act Conference, Michigan Department of Environmental Quality, Michigan Department of Natural Resources, Northwestern Michigan College, Water Studies Institute, and U.S. Environmental Protection Agency, May 20-22, Traverse City Michigan.

Presenter of "Groundwater Disputes: Case Studies and Solutions" at the 10<sup>th</sup> Annual Michigan Environmental Health Professionals Conference, October 12-15, 2003, Shanty Creek, Bellaire, Michigan.

Presenter of "Water Quality Protection Tools for Local Government," Kellogg Foundation/People and Land Project, September 30, 2003, Inland Lakes Education Center, Indian River, Michigan.

Presenter of "Water Quality Protection Tools for Local Government," Kellogg Foundation/People and Land Project, August 22, 2003, Grand Traverse Bay Watershed Conference, Holiday Inn, Traverse City, Michigan.

Presenter of "Farmland Preservation Tools and Techniques and Landowner Options" at the 52<sup>nd</sup> Annual Benzie-Manistee Horticultural Show, March 18-20, 2003, Crystal Mountain, Thompsonville, Michigan.

**CHRISTOPHER P. GROBBEL**

**Page 5**

Presenter "**Riparian Rights**" for HARBOR, Inc. at the Little Traverse Township Hall, Emmet County, Michigan, March 25, 2003.

Panelist "**The Legalities of Land Use**" for MSU Extension/HARBOR, Inc. at the Little Traverse Township Hall, Emmet County, Michigan, December 10, 2002.

Presenter "**Planning and Zoning - How to Stay Out of Court**" at the Annual Michigan Society of Planning Conference, Community, Culture, Change: Planning Michigan, Kalamazoo, October 2 through 5, 2002.

Presenter of "**Michigan's Environmental Regulatory Legacy**" at the 2001 Kickoff: Michigan Groundwater Stewardship Program, Michigan Department of Agriculture, Michigan, Boyne City, Michigan, October 25, 2000.

Presenter of "**Hydrogeology, Contaminant Monitoring, Fate and Transport, and Contaminant Remediation**" at the Chemical Applications: Pesticide/Fertilizer Application Workshop, Michigan State University, East Lansing, Michigan, March 30 – 31, 2000.

Presenter at the 2000 Envirothon, "**Renewable Energy: Taking Another Look**", Northwest Michigan Horticulture Research Station, Michigan State University Extension, February 18, 2000.

Co-presenter "**Land Use Conflict: When City and Country Clash**", A project of the National Public Policy Education Committee in Cooperation with the Farm Foundation, Northwest Michigan Orchard Show, Grand Traverse Resort, Acme, Michigan, January 25, 2000.

Panelist "**Building Consensus in Land Use and Growth**", Council of Michigan Foundations annual conference, Grand Traverse Resort, Acme, Michigan, October 4, 2000.

Panelist at "**A Community Forum of Brownfield Redevelopment along Boardman Lake**", Traverse City, Michigan, October 13 and 27, 1998.

Panelist on "**Impact of the Michigan Environmental Response Act**" at the Michigan Department of Treasury's 8th Annual Directions in Public Finance Conference at the Grand Traverse Resort, Acme Michigan on June 2, 1995.

Presented an **Environmental Regulatory Update: Issues Related to Commercial Lender Liability** for Old Kent Bank, March 11, 1994 and June 7, 1995.

Presented Guidelines for the **Purchasing, Handling and Disposal of Hazardous Materials** with Benson, McCurdy & Wotila, P.C. for Northern Michigan Purchasing Agents in Kalkaska, Michigan on March 9, 1994.

Presenter - **An Overview of Michigan Environmental Response Act and Other Environmental Regulations** for Grand Traverse Area Certified Public Accounts and Attorneys at the Grand Traverse Resort, Traverse City, December 10, 1991.

Guest Lecturer in **Wetland Law** – Detroit College of Law, Michigan State University, East Lansing, Michigan, Spring 2002.

## **CHRISTOPHER P. GROBBEL**

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Guest Lecturer in **Environmental Justice Studies** – University of Michigan, School of Natural Resources, Ann Arbor, Michigan, Spring 1998.

Guest Lecturer in **Environmental Justice and the Law** – Cooley Law School, Lansing, Michigan, Fall 1997.

Guest Lecturer in **Environmental Studies** – Western Michigan University, Kalamazoo, Michigan, 1994 through 1999.

### **FURTHER EDUCATION**

Seminar - **New Digital Joint Permit Application (JPA) in MiWaters: Submitting Wetlands, Lakes and Streams Applications**, Water Resources Division of the Michigan Department of Environmental Quality, March 5, 2019.

Training – **Understanding the Depth of Deep Well Injection**, North Central Michigan College, Petoskey, Michigan, May 20, 2010.

Training – **Design for Rain Gardens: Stormwater and Runoff Control**, North Carolina State University and Tetra Tech, April 16, 2009.

Training – **Wetland Plant Identification**, Wetland Training Institute, Dr. Mollenberg, Lansing, Michigan, May 21-24, 2002.

Training - **Planning Hydrology for Constructed Wetlands**, Wetland Training Institute, Dr. Gary Pierce, Pierce Cedar Creek Institute, Hastings, Michigan. July 9 - 13, 2001.

Training - **U.S. Army Corps of Engineers Wetland Delineation and Management Training**, Richard Chinn Environmental Training, Inc., Chicago, Illinois, October 9 - 13, 2000.

Training – **Special Wetland Area Management Project**, Geographic Information System Wetland Data Northwest Michigan Council of Governments, Traverse City, Michigan, August 31, 2000.

Training – **Web Site Design Course**, Michigan State University Extension, University Center, Traverse City, Michigan May 4, 2000.

Training - **American Institute of Certified Planners (AICP) Comprehensive Exam Preparatory Course**, February through April 17, 2000.

Training - **Computer Technologies and Groundwater Resource Data Management**, U.S. EPA, Atlanta, Georgia, August 1986.

Seminar - **Hazardous Waste Management under the Resource Conservation and Recovery Act**, Waste Management Division of the Michigan Department of Natural Resources, February 1989.

Training - **Soil and Groundwater Sampling and Analysis** - Michigan Department of Natural Resources, April 1989.

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Training - **Innovative Remedial Action Technologies**, Environmental Response Division, Michigan Department of Natural Resources, 1989.

Seminar - **Underground Storage Tank Management**, Department of Engineering Professional Development, University of Wisconsin, 1989.

Training - **Amendments to the Michigan Environmental Response Act, 1988 P.A. 307**, Michigan Department of Natural Resources, 1990.

Seminar - **Leak Detection and Corrective Action for Underground Storage Tanks**, Department of Engineering Professional Development, University of Wisconsin, 1990.

Seminar - **Groundwater Flow and Well Hydraulics**, Department of Engineering Professional Development, University of Wisconsin, 1991.

**Cleaning The Air in West Michigan #4: Recognizing and Dealing with Non-compliance**, Varnum, Riddering, Schmidt and Howlett, and Grand Valley State University - Water Resources Institute, Grand Rapids, Michigan, September 1994.

**ASTM - Environmental Site Assessment Up-date**, Chicago, Illinois, August 1994.

Seminar - **IBM PC Applications in Groundwater Pollution and Hydrology**, Groundwater Modeling and Computer Technologies for Groundwater Quality Management - National Ground Water Association, Boston, Massachusetts, August 1994.

Workshop - **Waste Minimization and Energy Efficiency Workshop** - American Automobile Manufacturers Association, Michigan Departments of Commerce and Natural Resources and the U.S. EPA, Detroit, Michigan, December 1994.

Seminar - **Clean Air Act Amendments, Sec. 112(R) - Process Safety Management and Risk Management Compliance**, Michigan Association of Environmental Professionals Howell, Michigan, December 1994.

Workshop - **Waste Minimization and Energy Efficiency Workshop** - Michigan Departments of Commerce and Natural Resources, Traverse City, Michigan, May 1995.

Training - **Risk-Based Corrective Action (RBCA) Applied at Petroleum Sites (ASTM E38-94)**, ASTM by Foster Wheeler Environmental Corporation, Bellevue, Washington, July 14-15, 1995.

Conference - **Restructuring Rural Society and Rural Sociology**, Environmental Justice, 58<sup>th</sup> Annual Meeting, Rural Sociological Society, Ritz-Carlton Hotel, Pentagon City, Virginia, August 17-20, 1995.

Conference - **Michigan Chapter of the American Planning Association and the Michigan Society of Planning Officials**, 4<sup>th</sup> Annual Joint Conference, "Planning Michigan For the People, By the People", Amway Grand Plaza, Grand Rapids, Michigan, September 22-25, 1999.

Seminar - **Innovative Septic Technologies**, Michigan State University Engineering Department, Michigan State University Extension and Northwest Michigan Council of Governments, Traverse City Library, Traverse City, Michigan, August 25, 2000.



**CHRISTOPHER P. GROBBEL**

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**Academic Achievement:**

Phi Theta Kappa National Honor Society  
Golden Key National Honor Society  
Alpha Zeta Agriculture and Natural Resources Honor Society  
Numerous MSU scholarships and assistantships – 3/84 through 3/86.  
MSU graduate student fellowship – 9/92 through 8/98.

**Professional Certifications:**

OSHA 40-Hour Site Safety Training  
OSHA 8-Hour Site Safety Training  
OSHA Hazardous Waste Site Supervisory Safety Training  
Qualified Underground Storage Tank Professional #190, State of Michigan, Department of Environmental Quality.  
Michigan Association of Planning, certified instructor.

**Professional Associations:**

Michigan Association of Environmental Professionals, member.  
National Association of Environmental Professionals, member.  
National Ground Water Association, member.  
Society of Wetland Scientists, member.  
Michigan Association Planning, certified instructor and former education committee member.  
American Planning Association, member.

# **EXHIBIT 2**

RESULT/LIVESCORING

POINTS STANDING

RULES

XC GEAR RAFFLE



WELCOME TO MICHIGAN SPRINT ENDUROS

**MOBILE MP POWERSPORTS**

**KENDA** **HBD** **E**

**2023 MOBILE POWERSPORTS AMA MICHIGAN SPRINT ENDURO SERIES**

**PRESENTED BY KENDA TIRES & HBD MOTORCYCLES**

<p><b>May 7: 10 Pines Sprint Enduro</b> 10 Pines Ranch, Marquette, MI</p> <p><b>May 20: Wild Bill Sprint Enduro</b> Wild Bill Farm, Maple City, MI</p> <p><b>June 25: Ogemaw Sprint Enduro</b> Ogemaw Sport and Trail, Rose City, MI</p>	<p><b>July 16: Eagle Sprint Enduro</b> Eagle Fairgrounds, Eagle, MI</p> <p><b>August 27: Nancy Boy Sprint Enduro</b> Valley Trail Riders, Bentley, MI</p> <p><b>SAT September 16: Battle Creek Sprint Enduro</b> Battle Creek Motorcycle Club, Battle Creek, MI</p> <p><b>September 17: Battle Creek CP</b></p>
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**SPRINT ENDURO FORMAT: BIG BIKES**  
**1 HOUR YOUTH LAPS RACE**  
**30 MIN SOCC LAPS RACE**

**XC** **100%** **ENDURO**

THIS INFORMATION WILL BE POSTED OUT AT THE TRACK SITE TO

[CLICK HERE FOR 2022 BANQUET TICKETS.](#)  
**FEBRUARY 25th, 2023**  
**SOARING EAGLE CASINO**  
**Mt. PLEASANT, MI**

**ABOUT MSE**



New Offroad  
Racing Format



Sprint Enduro  
Racing

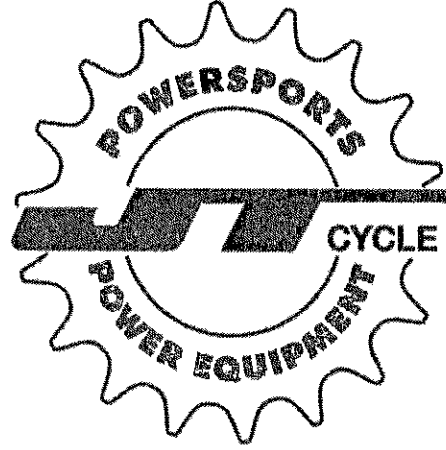
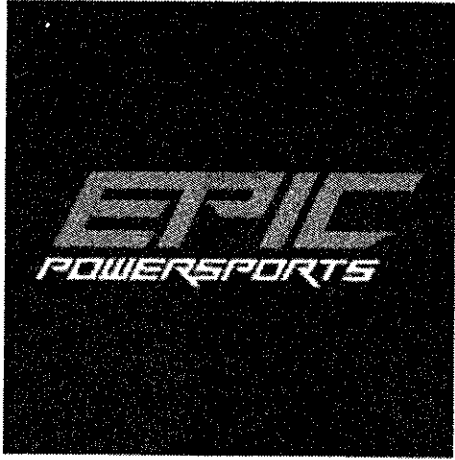


Give us a shot

# What is a Michigan Sprint Enduro

## 2023 SPONSORS





## SOCIAL

GoDaddy



# **2023 Michigan Sprint Enduro Series Rules**

Rules are subject to change at any time.

Changes are in red.

## **ENTRY FEES**

**50cc Auto/ Trail Beginner- \$15**

**Youth/ (Womens/Girls AM)- \$25**

**Big Bikes- \$40**

**Gate Fee: All Racers & Anyone over 10 Yrs Old- \$10 Per Event Day**

## **RACE FORMAT (SPRINT ENDURO)**

All Sprint Enduro events will feature at least two special tests with racers making multiple attempts on each test and the total, cumulative time being used for race results. I.e., the fastest rider wins. There will be no “drops” of special test times, all test scores count. Riders may only switch bikes if they have a mechanical issue that prevents that bike from being used the rest of the day. If a riders machine breaks to the point it is unrideable, they must get with the rules referee to determine a bike switch may be made. Riders are only allowed this once per race. Without a referee determination for the switch the rider is disqualified.

Number of Tests: Racers will get to ride 6-10 special tests unless weather or another unforeseen circumstance delays the program. If necessary due to inclement weather, the Pro and A riders may run more tests than B/C riders if conditions do not allow less skilled riders to complete the course. Riders must follow the program as scheduled. You must go back and forth and not ride a section consecutively. (Unless race officials instruct otherwise)

## **STAGING AND STARTING PROCEDURES**

**Sprint Enduro Day Schedule:**

**8:15am- 50cc Auto Riders Meeting**

**8:30am- 50cc Auto Race (one Parade Lap, one 30 Min Race)**

**9:15am- Youth Riders Meeting**

**9:30am- Youth Race (No Parade Lap, one 1-hour race)**

**11:00am- Afternoon riders Meeting**

**11:30am- Start of Afternoon Sprint Enduro Racing.**

Youth: will run a mass start with dead engine for each individual class and race for 1 hour doing laps. The rider to finish the most laps in the fastest time will be the winner. Start order: Super Mini, 85cc, 65cc, Trail, Womens/Girls

Starting Order Sprint Enduro: Classes will be ordered for each special test going from what we anticipate to be fastest to slowest. The Pro classes will start first and C classes will start last. There will be 3 shoots lining up to the starting grid labeled A, B, and C, you need to line up in your assigned shoot.

For the first test, pro class will start first, followed by A classes and so on. You will be assigned a number based on what class you are in. For the first test of the day the top 15 riders in points will be lined up in order. For every test after, the top 15 riders for the day will be lined up in the order they lie in the day.

For all classes after Pro Class you will be lining yourselves up. The A class shoot will go first, then the B class shoot, finally the C class shoot. Riders will line themselves up by speed. If one rider is faster than another, that rider should go first. This will be an Honors system.

Start Procedure: Riders will take off for each special test one-at-a-time. Racers will be split by 15 second intervals. Engines will be live and bike in gear. A race official will motion for you to pull up to the starting line and you will watch the digital countdown display at the start. You must wait until the clock reaches 0 to take off.

All riders must start with both wheels on the starting grate. No rolling starts allowed. Failure to abide by this rule will be a 3 strike system. A rider will be given one warning for failing to start on the starting grate. A second violation will result in a 10-second penalty. Third strike and you are out. No exceptions!

The pre-staging area before the start shoot is a dead engine zone. It is imperative that riders keep their bikes off in this area as to allow staging officials to easily call riders into staging when riders are re-seeded after the first two tests based off of overall results. A bike is only to be running once it is inside of the banner shoot before the starting grate.

Be courteous in the staging area! Riders who are caught jumping line or starting out of order will be given a warning, if there is a second offense the rider will be given a 10 second penalty, a 3rd offense will result in a disqualification from that day's event.

### **RACE FORMAT (Grand Prix)**

Racers will be split into 4 separate groups. Pro/A Class Group, B/60+ Class Group, C/Schoolboy/Women's Group, Youth/Girls Group. Each group will race its own race. Two groups will not be on the same track at the same time. There will be two separate courses laid out to allow two motos to be going on at once. Each group will race 1 30 minute plus 1 lap moto on each course.

Starts will be a mass start for each class. Classes will be separated by 30 second intervals. Dead engine starts with a 10 second warning given to each class.

The racer that does the most laps in the shortest amount of time will win the race.

Total time for the 2 combined motos for each class will determine the event overall placing.

Race order for Grand Prix

8:15am- 50cc Auto Riders Meeting

8:30am- 50cc auto race. (one parade lap. One 30 Minute race)

9:30am- Riders Meeting for Afternoon program

10am- Race #1 (Youth on Enduro Track/ C classes on cross track)

11:15am- Race #2 (A Classes on Enduro Track/ B Classes on Cross Track)

12:30pm- Race #3 (C Classes on enduro track/ Youth on Cross Track)

1:45pm- Race #4 (B classes on enduro Track/ A Classes on Cross Track)

## **TIMING AND SCORING**

Michigan Sprint Enduros will utilize Live Laps timing and scoring transponders exclusively. Every racer is required to have a working Live Laps transponder. (except 50cc Auto Racers)

Transponders can be purchased at sign up for \$20. All Transponders must be stuck on the underside of the helmet visor.

Sprint Enduro: Riders will take off in 15 second intervals (unless otherwise notified by a race official) sorted by class. Their transponder will record their time at the start. A race official will take a backup note of when you cross the start antenna. At the finish of the special test you must follow the shoot in a controlled manner and single file, no exceptions. An antenna will record your time when you cross the line and a race official will take a backup note of when you cross the finish antenna. Overall and class results will be a cumulative time for ALL special tests for each day and for the weekend, there will be no drops. If a rider takes out any of the banners around either the in or the out scoring areas, the rider will receive a ten second penalty for the first offense. If that said rider does this a second time, a 1 minute penalty will be assessed. A third offense will result in a Disqualification. The same goes rule applies if you pass in the scoring shoot.

If a rider is late to the staging area, meaning after their entire class as taken off, that rider will have to wait until the end to take his/her pass through that test. We will have a 10

minute period after the last rider take off into the test. After that ten minute period has expired, that test will be closed.

GP: Riders will be required to ride single file through the scoring shoot at an idle speed. Same rules apply from sprint enduros for taking out banners in scoring areas. Riders will be scanned by an antenna and a back up score will be taken. Overall time combined for the 2 moto format will determine the class placing and overall finishing.

## THE COURSES

**The Cross Test/Track** will be primarily grass track marked with wooden stakes and ribbon or arrows on both sides of the course. If there is ribbon or arrows on either side of the trail, you **MUST** remain between them. In some cases, there will be small sections of woods, or motocross track as part of the cross test. In any wooded section of the cross test you **MUST** stay on the established trail. Any motocross track sections that the organizer feels could create confusion will be ribboned on both sides but the entirety of a motocross track will not be ribboned. On any section of motocross track riders are required to stay on the motocross track, i.e. no cutting corners or going around obstacles.

The cross test race course is the space *between* the wooden stakes and ribbon or arrows, riders should respect those boundaries and race in between them. Riders caught purposefully riding through ribbon, or over stakes to gain a time advantage will be given one warning, a second offense will result in a 30-second penalty, and a 3rd offense will result in a disqualification.

The cross test will sometimes use a natural barrier such as the edge of a forest as one edge of the track, these sections may not have ribbon. Riders can treat this area as part of the race course but must not bypass any part of the track or break through any ribbon or stakes in the process.

**The Enduro Test/Track** will be a primarily wooded race course with a combination of well-defined trail, fire roads, single track trail, and some grass track that will be marked with arrows and ribbon. Portions of the trail that are well-defined may not be ribboned on both sides. On sections of the trail that are ribboned or arrowed on both sides riders must remain inside those markers.

Sprint Enduro racing is not a hare scramble or traditional enduro, there is no 25-foot rule, etc. You **MUST** remain on the established trail for the entirety of the event unless in the case of a bottle neck or downed rider where you may go around and re-enter the race course as quickly as possible.

Riders caught by a course official blatantly cutting the course will be given an immediate penalty of at least 1-minute. Hot lines and shortcuts will not be tolerated.

We understand that mistakes happen and riders will end up off course due to a crash, miscalculation of trail or course, etc. If you get off course, go through ribbon, blow a turn, etc. you must return to the track as close to the point you left as is safely possible. Riders who go off course cannot make up any time advantage or tear down ribbon or stakes to return to the course.

Pre Riding of the course is not allowed. You are allowed to walk, bicycle or eMTB the course before the event. Club members that laid out the course may ride the course before the event and still race the event. They must have put in the time of laying out the course to pre ride the course. You may not just show up to 'burn' in the trail unless the work beforehand was done and still race the event. Pre Riders of the course that will be racing must be approved by the club president and Series Chairman.

### **Results**

Results will be posted at each event after the event is completed. Results will either be printed out and posted or displayed on a monitor. A protest period will be announced at each event. That protest period is for Awards. Once the protest period is over those results will be considered final for awards.

Results will not be considered final for Series Points until 24 hours after the event is completed. A protest period of Series Points will be open for 24 hours which riders can message there Protest in person, via text, phone call, email, etc. After the 24 hour Protest period is over Results will be considered final for points.

### **Points Standings**

Points will be awarded for each discipline of racing. A combination of GP and Sprint Enduro finishes will determine placing for the Michigan Off-Road Championship series. There will also be 1 State Champion awarded for each discipline for each class at the season end. The individual discipline State Championship will have 0 drops for each class. The Michigan Off-Road Championship Series will have 1 Drop for the season making 6 of the 7 best scores count towards year end awards.

#### **Overall Points Breakdown**

1<sup>st</sup>- 30pts

2<sup>nd</sup>- 25pts

3<sup>rd</sup>- 21pts

4<sup>th</sup>-18pts  
5<sup>th</sup>- 16pts  
6<sup>th</sup>- 15pts  
7<sup>th</sup>- 14pts  
8<sup>th</sup>- 13pts  
9<sup>th</sup>- 12pts  
10<sup>th</sup>- 11pts  
11<sup>th</sup>- 10pts  
12<sup>th</sup>- 9pts  
13<sup>th</sup>- 8pts  
14<sup>th</sup>- 7pts  
15<sup>th</sup>- 6pts  
16<sup>th</sup>- 5pts  
17<sup>th</sup>- 4pts  
18<sup>th</sup>- 3pts  
19<sup>th</sup>- 2pts  
20<sup>th</sup>- 1pt

#### Class Points Breakdown

1<sup>st</sup>- 30pts  
2<sup>nd</sup>- 25pts  
3<sup>rd</sup>- 21pts  
4<sup>th</sup>-18pts  
5<sup>th</sup>- 16pts  
6<sup>th</sup>- 15pts  
7<sup>th</sup>- 14pts  
8<sup>th</sup>- 13pts  
9<sup>th</sup>- 12pts  
10<sup>th</sup>- 11pts  
11<sup>th</sup>- 10pts

12<sup>th</sup>- 9pts

13<sup>th</sup>- 8pts

14<sup>th</sup>- 7pts

15<sup>th</sup>- 6pts

16<sup>th</sup>- 5pts

17<sup>th</sup>- 4pts

18<sup>th</sup>- 3pts

19<sup>th</sup>- 2pts

20<sup>th</sup>- 1pt

### **Drops**

Each rider will have 1 Drop race. At the end of the season the best 5 out of 6 rounds will count towards your total.

### **Worker Points**

Each rider is allowed to have 1 race count as worker points. Anyone that wants to receive worker points must contact Logan Densmore before the event to earn his/her worker points.

Worker Points will be calculated as an average of all of the riders race finishes.

To obtain worker points the rider must lay out trail, or work the event weekend and must be approved by club president and Series Chairman.

### **Year End Awards**

To be eligible for awards you must race a minimum 50% or the race, this may include worker points.

# 2023 Michigan Sprint Enduro Classes

MINIMUM TIRE SIZE FOR MICHIGAN SPRINT ENDUROS AFTERNOON CLASSES ARE 19" FRONT AND 16" REAR

## AFTERNOON CLASSES

**PRO-** Anyone that has placed in the top 10 Overall of 2022 MSE or any other Off-road Series. Open Bike Size, Open Age

*If you ride 'A' in Hare Scrambles, Enduros, ETC. You must ride in an 'A' Class.*

**Lites A-** Up to 250cc Motorcycle. Open Age. 'A' Rider ability.

**Open A-** Open Bike Size, Open Age. 'A' Rider Ability.

**30+ A-** Open Bike Size, Must be at Least 30 years of age on date of the event. 'A' Rider Ability.

**40+ A-** Open Bike Size, Must be at least 40 years of age on date of the event. 'A' Rider Ability.

**50+ A-** Open Bike Size, Must be at least 50 years of age on date of the event. 'A' Rider Ability.

*If you ride 'B' in hare scrambles, enduros, etc. You must ride in a 'B' Class.*

**Lites B-** Up to 250cc motorcycle. Open Age 'B' Rider Ability.

**Open B-** Open Bike Size, Open Age. 'B' Rider ability.

**30+ B-** Open Bike Size, must be at least 30 years of age on date of the event. 'B' Rider Ability.

**40+ B-** Open Bike Size, must be at least 40 years of age on date of the event. 'B' rider ability.

**50+ B-** Open Bike Size, must be at least 50 years of age on date of the event. 'B' rider ability.

*If you ride 'C' in Hare Scrambles, Enduros, ETC. You must ride in a 'C' Class*

**Lites C-** Up to 250cc Motorcycle. Open age. 'C' Rider ability.

**Open C-** Open Bike Size, Open age. 'C' Rider ability.

**30+ C-** Open bike size, must be at least 30 years of age on date of the event. 'C' Rider ability.

**40+ C-** Open Bike size, must be at least 40 years of age on date of the event. 'C' Rider ability.

**50+ C-** Open Bike Size, Must be at least 50 years of age on date of the event. 'C' Rider Ability.

**Schoolboy 12-17-** Up to 250cc Four Stroke, Up to 125cc Two Stroke. Must be between 12 years of age and 17 years of age at the date of the event. If a rider turns 18 during the season they are allowed to finish the season in this class.

**Womens-** Open Bike Size. Open Age. Open rider ability.

**60+-** Open Bike Size, Must be at least 60 years of age on date of the event, Open Rider Ability.



## YOUTH CLASSES

**SUPER MINI-** 66-105cc 2-stroke, up to 150cc 4-stroke, maximum wheel sizes of 19" front and 16" rear (smaller wheel sizes are permitted), 12-15 yr. rider.

**85cc-** 66-85cc 2-stroke, 100-150cc 4-stroke, maximum wheel sizes of 17" front and 14" rear, 7-11 yr. rider.

**65cc-** 0-65cc 2-stroke, 0-110cc 4-stroke Trail Bike, maximum wheel sizes of 14" front and 12" rear, 7-11 yr. rider. Note: Trail Bike for this class is defined as air cooled 4-stroke

**Trail Bike-** up to 150cc 4-stroke, air-cooled, maximum wheel sizes of 21" front and 19" rear, 7-15 yr. rider

**Women/Girls-** 66-105cc 2-stroke, 0-150cc liquid cooled 4-stroke, maximum wheel size of 19" front and 16" for liquid cooled 4-stroke and 2-stroke bikes. Up to 150cc air cooled 4-stroke bikes may run full size wheels (21" front and 19" rear).

## 50cc Auto Classes

**50cc 4-6yrs-** Maximum 50cc. Must not be able to shift. Bike must be automatic transmission or have the shifter removed from motorcycle. 4yrs to 6yrs rider.

**50cc 7-8yrs-** Maximum 50cc. Must not be able to shift. Bike must be automatic transmission or have the shifter removed from motorcycle. 7yrs to 8yrs rider.

**Trail Bike Beginner-** Maximum 110cc. No manual clutch motorcycles allowed. Rider must be a beginner that is not ready for the youth race yet. This will be based on Chairmans ruling. 4yrs-10yrs rider.

# **EXHIBIT 3**

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

Date Received  
JAN 08 2018

AC1

(FOR BUREAU USE ONLY)

This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

FILED

JAN 22 2018

ADMINISTRATOR  
CORPORATIONS DIVISION  
EFFECTIVE DATE:

Name	Logan Densmore		
Address	1614 Stirling Ave		
City	State	ZIP Code	
Lansing	MI	48910	

Document will be returned to the name and address you enter above. If left blank, document will be returned to the registered office.

ARTICLES OF ORGANIZATION

For use by Domestic Limited Liability Companies  
(Please read information and instructions on reverse side)

Pursuant to the provisions of Act 23, Public Acts of 1993, the undersigned executes the following Articles:

ARTICLE I

The name of the limited liability company is: Michigan Sprint Enduros LLC

ARTICLE II

The purpose or purposes for which the limited liability company is formed is to engage in any activity within the purposes for which a limited liability company may be formed under the Limited Liability Company Act of Michigan.

ARTICLE III

The duration of the limited liability company if other than perpetual is: \_\_\_\_\_

ARTICLE IV

1. The name of the resident agent at the registered office is: Logan Densmore

2. The street address of the location of the registered office is:  
 1614 Stirling Ave, Lansing, Michigan 48910  
(Street Address) (City) (Zip Code)

3. The mailing address of the registered office if different than above:  
 \_\_\_\_\_, Michigan \_\_\_\_\_  
(P.O. Box or Street Address) (City) (Zip Code)

ARTICLE V (Insert any desired additional provision authorized by the Act; attach additional pages if needed.)

\_\_\_\_\_

\$50.00  
Caldmg  
1814087

Signed this 08<sup>th</sup> day of January, 2018

By [Signature]  
(Signature(s) of Organizer(s))

Logan Densmore  
(Type or Print Name(s) of Organizer(s))



Form Revision Date 07/201

**ANNUAL STATEMENT**  
For use by **DOMESTIC LIMITED LIABILITY COMPANY**  
(Required by Section 207, Act 23, Public Act of 1993)

Identification Number: 802153324

Annual Statement Filing Year: 2023

1. Limited Liability Company Name:  
MICHIGAN SPRINT ENDUROS LLC

2. The street address of the limited liability company's registered office and name of the resident agent at that office:

1. Resident Agent Name: LOGAN DENSMORE

2. Street Address: 677 E VERMONTVILLE HWY

Apt/Suite/Other:

City: CHARLOTTE

State: MI

Zip Code: 48813

3. Mailing address of the registered office:

P.O. Box or Street Address: 677 E VERMONTVILLE HWY

Apt/Suite/Other:

City: CHARLOTTE

State: MI

Zip Code: 48813

This annual statement must be signed by a member, manager, or an authorized agent.

Signed this 14th Day of February, 2023 by:

Signature	Title	Title if "Other" was selected
Logan Densmore	Manager	

By selecting ACCEPT, I hereby acknowledge that this electronic document is being signed in accordance with the Act. I further certify that to the best of my knowledge the information provided is true, accurate, and in compliance with the Act.

Decline  Accept

# **EXHIBIT 4**



Fran Seymour

Hi Everyone. Some good discussions on here. Wanted to take a moment to clarify some of the misinformation on the photo of the notice above: Not sure where the 12 local residences info came from, but the zoning board wanted to notify anyone within 1000 feet, that may be where it came from. There's a comment about racers practicing all the time....that's not the case. If there are two events per year, racers do not practice, they only run the race on race day. However, the owner of the property rides frequently, and usually with family and friends. This has been going on for a while and is his right on his property. To my knowledge there have been no noise complaints to date. The race has been posted on the Michigan Sprint Enduro site, but if not approved will obviously be taken down. I assume they're trying to give advanced notice if folks want to plan their trips. On the letter above there is a link to the facebook page of Shattuck Racing.....this is not us and I have no idea how that link was even associated to us. We have no affiliation with them, and they race with larger scale vehicles on groomed tracks. Nothing like what this event is about. There is a hard packed gravel main entrance that was permitted and approved by the County Road Commission. Food trucks were mentioned as an idea, but none have been contacted nor are scheduled at this time. As for the noise and property rights, I'll let all of you continue to discuss those issues amongst yourselves, seem to be good points on both sides. Main objective is for a family friendly, fun event. Lord knows we could all use some fun. Our intention is to do just that, not to create a divisive issue. Don't be afraid of a couple of days of clean fun, whether or not it creates some noise. Thanks and have a great day!



Like Reply

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### E. Zoning Administrator's Report – Zoning Administrator Cypher

Cypher reported that he collected \$700.00 in fees during the month of March. The ZA March 2023 Report and ZA Monthly Permit Summary for March of 2023 can both be found in Appendix B and Appendix C, respectively.

Cypher reported that the storage units owned by Mr. Tom Krause are finally underway; they recently broke ground on this project. Mr. Krause was issued a special use permit in 2022.

**Note: At this point, Chairman Roush excused himself from chairing the meeting and turned this role over to Vice Chair Mike Lanham.**

### IX. PUBLIC HEARING – Enduro Motorcycle Race – Application for Special Use

#### A. Chairperson opens the Public Hearing and announces the subject

Vice Chair Lanham asked for a motion to open the Public Hearing in the matter of the Enduro Motorcycle Race. **CARTER MOVED TO OPEN THE PUBLIC HEARING IN THE MATTER OF THE ENDURO MOTORCYCLE RACE; SCHAEFFER SECONDED. ALL PRESENT IN FAVOR, MOTION CARRIED.**

#### B. Chairperson summarizes the procedures/rules to be followed during the hearing

Vice Chair Lanham explained the rules that must be followed during the Public Hearing. All members of the public were asked to comply with the requirements of the Public Hearing. Vice Chair Lanham reiterated that everyone present who desires to speak on this matter will have the opportunity to do so.

#### C. Applicant presents the main points of the application

Mr. Fran Seymour presented on behalf of the applicant, Mr. James Schettek. He explained that Enduro events are held throughout the state and country; Mr. Schettek would like to have an Enduro event up in northern Michigan since most events are held down state. This is a not-for-profit event and the intent is to raise money for veterans. The proper paperwork for a 501(c)(3) ~~will be drawn up if the application for special use is approved.~~ The event is also sanctioned by the American Motorcycle Association (AMA).

Mr. Seymour explained that an Enduro event is different than Motocross. Enduro events use the natural landscape and there is no tree-cutting. Mr. Seymour also clarified that this is not the "Shaddock" racing event that some

# **EXHIBIT 5**



**COUNTY RIGHT-OF-WAY STANDARDS**

(Originally Adopted 2-15-94)

(Revised 3-5-02)

(Revised 3-2-16)

(Revised 1-17-17)

(Revised 7-2-19)

These standards are adopted in accordance with and under the authority of MCL 247.325. The following information is a general summary of Road Commission Standards and Specifications regulating the use of right-of-ways. The Leelanau County Road Commission reserves the right to impose additional requirements for the construction of improvements in the county road right of way as the Road Commission may deem in the best interests of the Road Commission and the motoring public.

**Right of Way Permits**

In accordance with P.A. 200 of 1968, any person or organization wishing to construct something within County Road Right of Way or conduct an activity within this Right of Way must obtain permission from the County Road Commission. That permission is granted by the Road Commission issuing a Permit which contains instructions for the correct means of achieving that goal.

The Leelanau County Road Commission has adopted a standard permit form for issuing Right of Way permits which can be found on the Road Commission website at [https://static1.squarespace.com/static/514cbc76e4b0d2e6d865d63b/t/59fc4dfd53450ae23d8cdaf2/1509707262844/driveway\\_permit\\_revised\\_313-f.pdf](https://static1.squarespace.com/static/514cbc76e4b0d2e6d865d63b/t/59fc4dfd53450ae23d8cdaf2/1509707262844/driveway_permit_revised_313-f.pdf). While there may be many reasons for a person to apply for a permit, the same application form is used for all those varied requests. The first page of the application form is where the applicant provides contact information and a description of what they want to accomplish. The second page of the form allows the Road Commission to respond with any terms and conditions that pertain to the request. Page three includes a variety of standard conditions that apply to many or most circumstances, including a requirement for the applicant to provide adequate insurance coverage for the activity.

For a request to install or modify a driveway approach, please look at the heading "**Driveway Permit**" below.

For a request to conduct an event along or within a County Road, please look at the heading "**Permit for an Event**" below.

For a request to install a Public Utility feature (electric, phone, gas, CATV, etc.) within County Road right of way, please look at the heading "**Public Utility Permit**" below.

For a request to install a privately owned utility within County Road right of way, please look at the heading "**Private Utility Permit**" below.

Permit application fees are listed on the current "Permit Fee Schedule" which can be found on the Road Commission website at

<https://static1.squarespace.com/static/514cbc76e4b0d2e6d865d63b/t/5c9a1f6df9619a93fea99bf1/1553604462089/Permit+fee+schedule+rev+3-19-19.pdf>.

**Commissioners**

Jim Calhoun  
John Popa  
Robert Joyce  
Greg Mikowski  
Tom Eckerle

**Staff**

Manager – Justin Kelenske  
Superintendent – Dave Priest  
Finance Manager – Joe Nedow  
Engineer Tech – Keith Moore  
Fleet Manager – Dustin Albrecht

**General Contact Info**

Phone (231) 271-3993  
Fax (231) 271-5612  
e-mail [lcrc@leelanauroads.org](mailto:lcrc@leelanauroads.org)  
<http://leelanaucountyroads.org>

While this document is intended to give an applicant reasonable expectations for our response to typical applications, undoubtedly the Road Commission may receive applications for extraordinary situations that cannot be anticipated in advance. In such cases, the Road Commission will work with the applicant to develop reasonable and safe solutions.

### **Driveway Permit**

Driveway approaches may be intended to serve a wide variety of land uses and traffic levels. The Road Commission has created several categories in an attempt to provide typical dimensions and driveway features that will accommodate the anticipated traffic. We encourage each applicant to review these categories and to volunteer which category they feel best embodies their individual circumstance. Accordingly, the Leelanau County Road Commission reserves the right to determine which category best fits the applicants needs and that is in the best interest of the motoring public. We also expect that you will provide adequate information about your land use, the nature of any business, number of employees & building size(s) so that we can verify that your expectation is, indeed correct.

All driveways shall be graded to effectively drain storm water runoff from the driveway and adjacent land away from the roadway and road right of way. Any driveway that does not drain properly shall be removed or re-graded by the applicant to provide proper drainage. Storm water runoff from lawns, roofs and other areas must be handled on-site and not be drained toward the road.

For commercial and multi-residential driveways where hot mix asphalt (HMA) paved surface and/or concrete curb & gutter (or alternates) are required by the Road Commission, a \$6,000 financial guarantee is required to guarantee completion of HMA surface paving. The financial guarantee may be provided in one of three ways, cash escrow payment, a bond (from an insurance company) or a bank irrevocable letter of credit. Please refer to the Road Commission website

<https://static1.squarespace.com/static/514cbc76e4b0d2e6d865d63b/t/5c9a1f6df9619a93fea99bf1/1553604462089/Permit+fee+schedule+rev+3-19-19.pdf> for examples of acceptable formats for each of these three methods.

**Residential Home:** a driveway serving a single family dwelling or 2 dwellings (or buildable single family residential lots) sharing a common driveway. This also includes a driveway serving family farm activity and crop production, including orchards, farm fields, barns and farm accessory buildings. This category also includes a home based business where the home owner works from an office within home and does not have customer traffic.

A driveway approach for this category may have either a gravel or paved surface with a minimum throat width of 12 ft., a maximum throat width of 24 ft., 15 ft. radiuses & 20 ft. tapers. Sketch #1 shows these dimensional requirements along with other important details of construction.

If an applicant wishes to build a new driveway and pave it during the same construction season, this work may be accomplished with a single permit application, however the applicant is required to contact the Road Commission for inspection of the prepared gravel grade before the paving work is done.

**3-4 buildable Residential Lots:** a common driveway serving 3-4 single family dwellings (including apartments or other similar structures) or serving 3-4 buildable single family residential lots. This category also includes a home based business in one or more of the homes where the home owner works from an office within the home and does not have customer traffic.

A driveway approach for this category may have either a gravel or paved surface with the following minimum dimensions: 22 ft. wide throat, 25 ft. radiuses & 35 ft. tapers.

If an applicant wishes to build a new driveway and pave it during the same construction season, this work may be accomplished with a single permit application, however the applicant is required to contact the Road Commission for inspection of the prepared gravel grade before the paving work is done.

**5-14 buildable Residential Lots:** a common driveway serving 5-14 single family dwellings (including apartments or other similar structures) or serving 5-14 buildable single family residential lot. This category also includes a home based business in one or more of the homes where the home owner works from an office within the home and does not have customer traffic.

A driveway approach for this category shall have a paved surface (unless it is located along a gravel county road, in which case the surface may be gravel) with the following minimum dimensions: 24 ft. wide throat, 25 ft. radiuses & 35 ft. tapers.

If an applicant wishes to build a new driveway and pave it during the same construction season, this work may be accomplished with a single permit application, however the applicant is required to contact the Road Commission for inspection of the prepared gravel grade before the paving work is done.

**15 or more buildable Residential Lots:** a common driveway serving 15 or more single family dwellings (including apartments or other similar structures) or serving 15 or more buildable single family residential lots. This category also includes a home based business in one or more of the homes where the home owner works from an office within the home and does not have customer traffic.

A driveway approach for this category shall have a paved surface (unless it is located along a gravel county road, in which case the surface may be gravel) with the following minimum dimensions: 30 ft. wide throat, 25 ft. radiuses & 35 ft. tapers. HMA (asphalt) paving shall be at least 3" thick and concrete pavement must be at least 6" thick within the portion of the driveway approach covering the road shoulder.

Concrete curb (MDOT Detail B-2) shall be installed along the radiuses of the driveway (unless it is located along a gravel county road, in which no curb is required).

If desired, the applicant may elect to install a ditch, guardrail or rumble strip (ground into the pavement) along each radius as an alternative to concrete curb. When an alternate is desired, the applicant must provide an engineered drawing detailing the installation of the alternate choice. Ditches must have a 1 on 4 slope with the top of the slope terminating 12-18 inches from the edge of pavement. Ditches shall be a minimum of 2 feet deep or match the grade of existing ditch line to allow proper drainage. In areas where the existing road and driveway will be at least 2 feet above the surrounding land the foreslope of the roadway and driveway will be adequate without need for digging a ditch below the grade of the adjoining land. Guardrail shall meet MDOT standards for B2 guardrail, with an approved crash-tested ending where the guardrail meets the road shoulder.

If there is a circumstance where the Road Commission staff determines that ditches are unsuitable or would not be a functional solution, Road Commission staff may allow the use of 2 lb/ft steel delineator posts with reflectors along each radius, spaced no more than 10 feet apart.

If an applicant wishes to build a new driveway and pave it during the same construction season, this work may be accomplished with a single permit application, however the applicant is required to contact the Road Commission for inspection of the prepared gravel grade before the paving work is done and before any concrete curb is poured.

**Small Business:** a driveway serving a single business primarily accessed by automobile traffic that does depend upon light truck traffic for the operation of the business (less than 10 Class 5 to Class 8 trucks per day). A driveway approach for this category shall have a paved surface (unless it is located along a gravel county road, in which case the surface may be gravel) with the following minimum dimensions: 24 ft. wide throat, 25 ft. radiuses & 35 ft. tapers. HMA (asphalt) paving shall be at least 3" thick and concrete pavement must be at least 6" thick within the portion of the driveway approach covering the road shoulder. Concrete curbs are not required.

**Commercial:** a driveway serving any commercial, business, institutional or governmental activities not specifically described in the Small Business category.

A driveway approach for this category shall have a paved surface (unless it is located along a gravel county road, in which case the surface may be gravel) with the following minimum dimensions: 30 ft. wide throat, 25 ft. radiuses & 35 ft. tapers. HMA (asphalt) paving shall be at least 3" thick and concrete pavement must be at least 6" thick within the portion of the driveway approach covering the road shoulder.

Concrete curb (MDOT Detail B-2) shall be installed along the radiuses of the driveway (unless it is located along a gravel county road, in which no curb is required). If desired, the applicant may elect to install a ditch, guardrail or rumble strip (ground into the pavement) along each radius as an alternative to concrete curb. When an alternate is desired, the applicant must provide an engineered drawing detailing the installation of the alternate choice. Ditches must have a 1 on 4 slope with the top of the slope terminating 12-18 inches from the edge of pavement. Ditches shall be 2 feet deep or match the grade of existing ditch line to allow proper drainage. Guardrail shall meet MDOT standards for B2 guardrail, with an approved crash-tested ending where the guardrail meets the road shoulder.

If there is a circumstance where the Road Commission staff determines that ditches are unsuitable or would not be a functional solution, Road Commission staff may allow the use of 2 lb/ft steel delineator posts with reflectors along each radius, spaced no more than 10 feet apart.

If an applicant wishes to build a new driveway and pave it during the same construction season, this work may be accomplished with a single permit application, however the applicant is required to contact the Road Commission for inspection of the prepared gravel grade before the paving work is done and before any concrete curb is poured.

### **Existing Driveways**

Some existing driveways maybe exempt (grandfathered) from any new requirements if they meet the Road Commissions specifications. If your driveway is an existing driveway and has proven not to cause damage to the county road and if the anticipated changes to the existing business or residence will not result in a meaningful increase in the amount or type of traffic then you may be eligible for an exemption. You are required to provide proof that your existing driveway is in good condition.

### **Permit for an Event**

This section includes applications for competitions, fundraisers, parades or other activities that involve a partial or full closure of a county road. This includes any event that would, in the opinion of the Road Commission, interrupt or interfere with the normal flow of vehicular traffic or would encourage the participants to behave in a way contrary to the ordinary rules of the road (such as driving, riding or running through stop signs without stopping).

The Road Commission derives authority to issue permits for these activities from the "Driveways, Banners and Parades Act" which may be found under MCL 247.321 (Act 200 of the Public Acts of 1969, as amended). Section 3 of that Act states: "A permit to temporarily close a highway, or a portion of the highway, for a parade, celebration, festival, or similar activity may be issued by the highway authority only if requested by an authorized official designated by resolution of the governing body of a city, incorporated village, or township."

Based upon this language, we will only accept applications for this purpose when the applicant meets the criteria listed above. Anyone who is organizing an event of this nature must make arrangements with your Township accordingly.

A Township applying for a permit to hold such an event must provide:

- complete information about which section(s) of road that would be affected

- proposed traffic management plan that includes law enforcement participation
- date & timing of the event
- certificate of insurance meeting the requirements found on page 3 of our application form

Approval of the permit will be given only after concurrence with the County Emergency Management Director, the Sheriff's office & the affected Fire Chief(s) that adequate plans are in place for the event.

Insurance coverage & an indemnification statement may be provided by the sponsoring Township, the event organizer, or a combination from both parties, provided the combined insurance coverage meets or exceeds the Road Commission's current requirement.

### **Public Utility Permit**

The consent of the Board of County Road Commissioners of Leelanau County shall be obtained before any work is commenced. Any person or entity planning to install public or private utility facilities in the county road right of way shall apply for and obtain a permit from the Leelanau County Road Commission. A permit is valid only if the applicant and/or contractor provides satisfactory evidence of insurance coverage meeting the requirements outlined on the permit form.

Underground utility installation will not be allowed in the right-of-way between the dates of November 15 and April 1 unless approved by Road Commission staff for each day of work. This restriction shall not apply to emergency repair of existing utilities. Exceptions to this prohibition may be approved by the Engineer or Manager if the proposed work will not affect the roadbed support and the Utility Company will thaw the ground to enable safe digging practices to avoid conflict with other nearby underground facilities.

Underground electric and gas utility lines will be permitted within highway right-of-way only if the line owner subscribes to the MISS DIG system.

### **DESIGN**

The design and location of utility facilities along the highway must consider the potential impact on the highway. The utility owner shall be responsible for the design of its facility including clearances and separation between lines and the work shall be in accordance with these guidelines.

All underground utilities shall be installed as deep as practical to avoid future conflicts with Road Commission maintenance activities. All buried telephone and cable television lines shall have a minimum cover of 30 inches. All buried electric and gas lines shall have a minimum cover of 36 inches. The Road Commission may require greater cover or conduit for electric lines if the circumstances require. Road bores shall have a minimum cover of 4 feet and bore pits must be beyond the ditch bottom (or further as needed to protect the road shoulder from damage). Open cutting a paved road will be allowed only in unusual circumstances.

All buried utility lines under stream crossings shall be installed a minimum of 20 feet below the stream bottom. The Road Commission will require that utility companies lower any facilities that are currently at shallower depth if the existing facility will interfere with Road Commission maintenance or replacement work.

### **PLACEMENT**

New utilities placed in the right-of-way shall not adversely affect highway safety, construction, maintenance, or operations. New utility lines should be located as near as possible to the right-of-way line (28 ft. or more from center of road) to minimize conflict with future road widening or reconstruction. If the Road Commission determines that an existing utility must to be relocated to accommodate road needs, it will be relocated at no expense to the Road Commission.

### **Private Utility Permit**

County Roads are mostly 66 ft. wide easements (that cross many parcels of private and public property) for the benefit of public travel. By state law the Road Commission is granted the authority and responsibility to maintain these easements on behalf of the public. The Courts have clearly stated that the Road Commission does not enjoy the authority to grant permission for the installation of private utilities, but we do have the authority to determine or regulate how they may be installed. An applicant for a private utility permit must have permission (by ownership or grant of a recorded, written easement) when applying to the Road Commission for a permit.

The Road Commission will require that private utility installations involve minimal or no interference with the pavement, underlying support soils or drainage features of a road. Accordingly we will expect that a parallel installation will be placed at the outer edge of the right of way.

The Road Commission will issue permits for the installation of private water or sewer lines.

These must be placed with at least 36" of cover when parallel to the road and at least 48" of cover when bored under the road. Road bores must be done by directional drilling with direct insertion of the plastic water or sewer line into the ground. A steel sleeve is not allowed. Bore pits must be located outside the right of way.

Owners of private utility lines in the right of way are reminded that the Road Commission cannot be responsible for any subsequent damage to these facilities unless the owner subscribes to the MISS DIG system for locating underground utilities.

Private electrical, propane or natural gas lines are not allowed in the right of way unless the owner agrees to join MISS DIG and participate with that organization for the entire lifetime of their facility.

# **EXHIBIT 6**

## HARVARD MEDICINE

### THE MAGAZINE OF HARVARD MEDICAL SCHOOL

#### THE EFFECTS OF NOISE ON HEALTH.

NOISE POLLUTION IS MORE THAN A NUISANCE. IT'S A HEALTH RISK.

BY STEPHANIE DUTCHEN

Airplanes pierce the night. Leaf blowers interrupt fall mornings. Quiet gives way to air conditioners, pounding music, construction equipment, street traffic, barking dogs, sirens.

For half a century, U.S. agencies such as the EPA have deemed noise pollution "a growing danger to the health and welfare of the Nation's population." The European Environmental Agency reports that noise ranks second only to air pollution as the environmental exposure most harmful to public health.

Yet, in sectors from government regulation to health care practice, the threats posed by noise remain "often underestimated," according to the International Commission on Biological Effects of Noise.

Researchers and clinicians are trying to change this. They've shown that noise pollution not only drives hearing loss, tinnitus, and hypersensitivity to sound, but can cause or exacerbate cardiovascular disease; type 2 diabetes; sleep disturbances; stress; mental health and cognition problems, including memory impairment and attention deficits; childhood learning delays; and low birth weight. Scientists are investigating other possible links, including to dementia.

Research also reveals how noise pollution connects with climate change. Many contributors to global warming generate noise, chief among them transportation and fossil fuel extraction and processing. Urban sprawl and deforestation destroy natural carbon absorption reservoirs while removing natural sound buffers. Technologies that help people deal with climate change, like air conditioners and generators, can be noisy. Conversely, certain climate mitigation strategies such as creating green spaces in concrete jungles offer opportunities to muffle noise.

#### **Wanted: better models**

Estimates hold that chronic noise exposure contributes to 48,000 new cases of heart disease in Europe each year and disrupts the sleep of 6.5 million people. Quantifying noise pollution's contribution to health problems and death in the United States, however, remains a challenge because of poor measuring and monitoring, says Peter James, an HMS associate professor of population medicine in Harvard Pilgrim Health Care Institute's Department of Population Medicine. This makes it harder to determine the best policies and medical practices for care.

"The U.S. hasn't really funded noise control or noise research since the 1980s," says James. "It's a big problem. We need to prioritize this so we can really pin down how noise affects health."



“To say the onus is on the individual to fix their noise exposure is not feasible.”

James helps colleagues apply existing noise modeling data to large cohort studies, such as the Nurses’ Health Study, to analyze participants’ noise exposures and health outcomes. The models have low resolution, however, and working with them can be frustrating; researchers can’t be sure whether a negative finding means noise doesn’t contribute to a particular outcome, such as something as seemingly unrelated as menopause onset, or the data weren’t robust enough to reveal a connection. James hopes to augment epidemiological data with input from participants using sensors and apps, which can deliver precise location and health information.

“Given what we do know, noise is too significant an issue for us to sit around and wait to have perfect data,” he says.

James led a seminal 2017 study, published in *Environmental Health Perspectives*, which shows that people in neighborhoods with low socioeconomic status and higher proportions of residents of color bear the brunt of noise pollution in this country.

“We want our patients to reduce their exposure as much as possible, such as wearing ear plugs or investing in soundproofing insulation, but that’s not possible for many who live in the noisiest areas,” he says. “To say the onus is on the individual to fix their noise exposure is not feasible.”

## **Heart, felt**

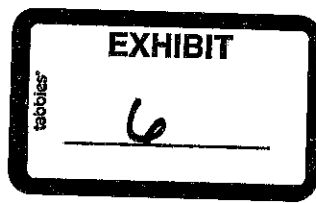
Another branch of inquiry focuses on how vibrations from noise can cause impairments. Part of the answer lies in the stress-response system. Researchers have found that the more people are bothered by noise, the greater the health risks they face from it. Yet, even those who tune out noise pollution, whether when awake or asleep, experience autonomic stress reactions.

Ahmed Tawakol, an HMS associate professor of medicine at Massachusetts General Hospital, and Michael Osborne, an HMS instructor in medicine at Mass General, have used advanced PET scanning to show that transportation noise is associated with heightened activity of the amygdala relative to regulatory cortical regions. Amygdalar activity can trigger stress pathways, including inflammation, that can lead to cardiovascular and metabolic diseases. Participants with a higher ratio of amygdalar to cortical activity had more risk for adverse outcomes in follow-up. The link persisted even after accounting for other disease risk factors.

In the clinic, Tawakol and Osborne say that evidence supports strategic intervention rather than trying to squeeze questions about noise into each patient encounter.

“If a patient mentions noise as a cause of stress, especially if they have or are at risk of cardiovascular disease, I’d certainly recommend personal noise mitigation strategies and stress reduction techniques,” Osborne says.

As researchers reveal the mechanisms and magnitude of noise-induced illness, clinicians will become better equipped to identify at-risk patients and prescribe effective solutions.





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May 5, 2023

Tim Cypher, Zoning Administrator  
Kasson Township  
P.O. Box 62  
Maple City, MI 49664

RE: Michigan Spirit Enduro Event Information

Dear Tim:

**Summary**

Based upon the following discussion, in my view the granting of a special land use to the applicant for the Enduro motorbike Event would likely be found to be unlawful if challenged in a Circuit Court action as the group of neighboring property owners has threatened.

Second, the applicant cannot meet several of the general special land use standards under Section 7.7 of the Zoning Ordinance ("ZO") without at least a sound study having been prepared by a certified sound engineer. Under the Escrow ZO Section 10.10, the applicant would be responsible to advance funds to pay for the sound engineer's study. The Township Board would need to authorize the hiring of the sound engineer so that the engineer's client is the Township, not the applicant.

**Background**

Several persons own adjacent parcels east of Bright Road and north of East Kasson Road in the central eastern portion of the Township. Collectively, these persons have filed an application for a special use permit ("SUP") to conduct what is known as the Michigan Spirit Enduro Event ("Enduro") on 304 acres. This is a motorcycle "dirt bike" event proposed to occur on Memorial Day Weekend. The Event Information worksheet states that the actual riding competition will occur on Sunday, May 28, 2023, and that the participants and their families will be

Kent E. Gerberding  
Michael I. Conlon  
Catherine D. Jasinski  
Thomas A. Grier  
Julie A. Gillum  
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Of Counsel:

Richard W. Ford  
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Harry T. Running  
(1911 – 1992)  
William L. Wise  
(1928 – 2014)  
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arriving/leaving throughout the holiday weekend. Between 100-200 riders with individual motorbikes are expected.

The Spring Creek Trails Site Plan for the event shows trails throughout the 304-acre combined property. This part of the Township is located within the Zoning Ordinance's (or "ZO") Forested zoning district and is generally rural.

The Planning Commission's ("PC") public hearing occurred on Monday April 17, 2023. It is my understanding that there were about 100 persons in attendance. A review of the draft minutes from the hearing show that some persons voiced support for the Event, but many others expressed opposition and/or strong concern about the Event. Some persons living nearby the Event site, and others, were not opposed to the Event, while many other persons who were neighboring property owners, expressed opposition or strong concern. Other landowners with properties along Bright Road, Kasben Road, South Tower Road and Darga Road expressed opposition or concern. One Maple City resident expressed concern. A Google Map aerial view of the area appears to show that the concentration of residential properties along Bright Road northwest of the Event site could be particularly impacted.

Based on the PC's draft minutes from the April 17, 2023 public hearing, it is my understanding that the PC will consider this matter again at a meeting on May 8, 2023 and these minutes show that the PC would consider additional written material from the public, agencies and the applicant at least through the May 8, 2023 date.

There is a neighborhood association, formed as a Michigan non-profit corporation, identified as the Kasson Township Neighborhood Association (KTNA") which opposes the Event and which has hired as their attorney, Kristyn Houle. This week, Ms. Houle has submitted a number of documents opposing the Event on KTNA's behalf.

These documents include: 1) a legal opinion challenging the PC's authority to approve the Event as a SUP under ZO Section 7.15, 2) A second legal opinion challenging the PC's authority to approve the Event as a temporary use under ZO Section 5.13, 3) a Report prepared by KTNA's environmental consultant Chris Grobbel and 4) a US EPA Noise Study from 1974.<sup>1</sup>

You have asked that I review the legal opinions and other submissions from the KTNA and Ms. Houle.

---

<sup>1</sup> I have prior familiarity with the 1974 US EPA Noise study, which is a well-known benchmark.

### A. Chris Grobbel Report and EPA Noise Study

The Grobbel Report offers factual comment on a number of the ZO sections that provide standards for SUP approvals. Those are mainly self-explanatory. The potential noise and sound impact of the Event on neighboring properties is one strong, focal point of the Report, and I am going to focus on that, in particular, given my own experience with land uses and sound. My sense is that the sound/noise impact of the Event will be the most material issue to consider.

At the outset, Mr. Grobbel's report, page 3, identifies that there are eight residential properties adjacent to the Event site and another 40 or so residences located within one-quarter mile. Assuming this is true (and it appears supported by my own view of the Google aerial photos), there could potentially be *severe* noise impacts to these properties and *substantial* impacts to other properties located farther away that need to be addressed. The following discussion supports these concerns:

The applicant has indicated that each motor bike will produce a sound level of 94 dB to 96 dB. The applicant has further indicated that up to 200 motorbike riders may participate.<sup>2</sup> The bikes will likely compete in "heat-like" events with multiple bikes riding at one time. This would mean that the 94 dB to 96 dB sound level of one motor bike will be multiplied exponentially. The riding will occur on trails throughout the 304-acre site. The racing will occur during one full day. This calls into question how the sound level will impact the surrounding residential properties.

In support of the KTNA's position opposing the Event, Ms. Houle has also attached the March 1974 US E.P.A. Environmental Report ("EPA Report"). I am previously familiar with this EPA Report. It was brought to my attention years ago by the Kolano and Saha ("K&S") sound engineering firm in Waterford, Michigan in connection with noise regulation issues both for Kasson Township (in the Deering matter) and also for other municipal and private client land use matters.

A key finding within the EPA Report, page D-59, calls for **55 decibel ("dB")** as "the outdoor level in residential areas compatible with the protection of public health and welfare". See excerpts from the EPA Report, **Exhibit A**. The 55 dB level has been used as a benchmark in many applications. For example, one of Michigan's most prominent land use planners, Mark Wykoff, used the 55 dB level as the standard for many zoning ordinances in northern Michigan that Mr. Wykoff helped to draft – that pertain to gravel mining and other outdoor uses. When working with K&S's Darren Brown on the Deering matter, Mr. Brown used the 55 dB level as the standard to determine the height and location of berms and setbacks on the Deering property to alleviate the noise problems that had been

---

<sup>2</sup> Enduro has standardized entrance fees for the participants.

experienced by the residential neighborhood to the north. I have seen the 55 dB standard applied to other case circumstances.

There are a couple of other key points from the EPA Report: an increase of 10 dB doubles the sound level. Accordingly, an increase from 55 dB to 65 dB will be *twice* as loud. Correspondingly, surveys within the EPA Report show increasing levels of community annoyance above 60-65 dB with severe annoyance above 75-80 dB. See Report excerpts, **Exhibit A**.

By comparison, the motorbike Event applicant has acknowledged sound levels averaging 95 dB for *one* bike. Multiplying the number of bikes racing in "heats" at one time would presumably increase the 95 dB level substantially. In summary, the Event sound level would be at least twice the "severe annoyance" level at 75-80 dB cited in the EPA Report and could be many times louder. And 95 dB is *eight times* louder than the 55 dB level recommended by the US EPA.

## **B. Special Use Standards**

The foregoing discussion correspondingly triggers concerns under the following special use standards under ZO Section 7.7:

Each of the proposed Special Land Uses on the proposed location shall:

A. Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity as indicated in the Township Master Plan or other policies of the Township.

B. Not be hazardous or disturbing to existing uses in the same general vicinity, and will not have adverse effects on the market value of surrounding property and to the community as a whole.

E. Not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property or the general welfare by fumes, glare, noise odors or dust. [Emphases added]

Where there is a readily-apparent question as to whether the sound impact of the Event, alone, could cause harm to the neighboring residential properties, in my view, the applicant has a strong burden to show that the standards will not be violated. There should be what is called "competent, material and substantial evidence" within the record to establish that the standards will not be violated. This will require, at minimum, a formal sound study from a certified sound engineer. The study should address the following questions and/or whatever additional questions the engineer may advise:

1) What is the collective dB sound level at the various boundary lines of the 304-acre property associated with multiple motorbikes operating at one time in "heats", 2) how far, and at what dB level, will the sound intrude into neighboring properties 3) given site conditions inside the 304-acre Event property, is it even feasible to construct ameliorative features within the property such as berms to reduce the noise to acceptable dB levels?

Secondly, depending on the results of the sound study, and/or if the applicant is requesting more than one event per year, it may be advisable to require a property value study pursuant to ZO Section 7.7 B to determine whether there will be "adverse effects on the market value of surrounding property". Such a study would need to be conducted by a Michigan certified appraiser [i.e. Michigan Appraisal Institute ("MAI") equivalent.]

Under ZO Section 10.10, the applicant would be required to escrow funds to pay for the sound study, and the potential market value study. The Township Board would then need to contract with the experts.

In conclusion, unless and until the sound study has been conducted, and the study shows that the Event can proceed without harming the neighboring properties, the standards in ZO Section 7.7 A., B. and E. have not been met and the SUP should not be granted.

### **C. Legal Challenge to Special Land Use approval under ZO Section 7.15**

The Event's SUP application is proceeding under ZO Section 7.15 which provides a "catch all" to allow special uses not otherwise identified in each zoning district (in this case the Forested District):

Land and structural uses that are not specified in any other section of this Ordinance, but, upon being applied for under the provisions of Chapter 7, may be considered by the Planning Commission as long as they meet all the conditions and requirements of this Chapter and the spirit and intent of the Ordinance.

Ms. Houle's letter, dated May 2, 2023, claims ZO Section 7.15 is unlawful essentially because it allows the PC unrestricted discretion to allow certain land uses as special land uses in the Forested District even though the land uses are not specifically identified as allowable SUPs there. Boiled down, Ms. Houle argues ZO Section 7.15 allows the PC to "spot zone" land uses as SUPs within the Forested District or anywhere else in the Township.

She relies for support upon MCL 125.3502(1)(a) which states:

The zoning ordinance shall specify all of the following:

- (a) The special land uses and activities eligible for approval and the body or official responsible for reviewing and granting approval. [Emphases added]

She claims ZO Section 7.15 violates MCL 125.3502(1)(a) because its open nature does not identify the potential SUPs in the Forested District.

Ms. Houle further relies on a published (precedential) Court of Appeals' ("COA") Opinion, *Whitman v. Galien Township*, 288 Mich App 672 (2010) which construed Galien Township's zoning ordinance SUP provision similar to ZO Section 7.15. The Galien Township provision allowed "commercial and industrial activities" generally as SUPs within the agricultural zoning district without specifying the type of commercial and industrial uses. This gave the township zoning board broad discretion to decide the uses in a manner similar to ZO Section 7.15 which allows the PC to consider for SUPs "Land and structural uses that are not specified in any other section of this Ordinance".

*Galien Township*, 681 explained the comparable question in that case:

The central issue in this case is whether § 2.4B(2) of the zoning ordinance complies with MCL 125.3502(1), which provides that if a zoning ordinance allows for special-use permits, the ordinance "shall specify ... [t]he special land uses and activities eligible for approval..." Section 2.4B(2) of the zoning ordinance provides that "[e]stablishments for the conducting of commercial or industrial activities" are eligible for special-use permits within the agricultural zoning district, subject to the zoning board's approval and compliance with the requirements set forth in § 3.13 of the ordinance. Plaintiffs contend that the zoning ordinance fails to "specify" the land uses and activities that are eligible for special-use permits because the ordinance generalizes that any establishment for commercial or industrial activities is eligible for special-use status.

The COA concluded the open SUP language allowing "commercial and industrial activities" in the agricultural zoning district – without specifying the uses - violated MCL 125.3502(1):

Section 2.4B(2) does not comply with MCL 125.3502(1) because it does not specify the special land uses and activities eligible for approval, but identifies only general categories of uses or activities. *Id.*, 685-686.

The COA noted that the Galien Township zoning ordinance applied general standards for SUP approvals similar to those in Kasson ZO Section 7.7. The second phrase in ZO Section 7.15 cross references the ZO Section 7.7 standards:



[Other SUPs] “may be considered by the Planning Commission as long as they meet all the conditions and requirements of this Chapter”.

The COA then considered whether such general special use standards [Section 3.13 in the Galien Township zoning ordinance] otherwise “saved” the open special use language from the challenge under MCL 125.3502 (1). The COA said no.

The fact that § 3.13 [akin to Kasson Twp ZO Section 7.7] is specific and detailed regarding the “requirements and standards for approving a request for a special land use” does not save § 2.4B(2) from noncompliance with the statute for failure to specify the special land uses and activities eligible for approval. [reference added] *Id.*, 686

The use approved in Galien Township and determined to be unlawful by the COA was an “operation of a snowmobile, dirt bike, and ATV racetrack during the summer months in the township's agricultural zoning district.” *Id.*, 673, quite similar to the motorbike Enduro Event proposed by the applicant here.

Notably, I had a recent conversation with Michigan Township Association (“MTA”) staff attorney Catherine Mullhaupt about the Enduro Event before receiving Ms. Houle’s letter. Ms. Mullhaupt independently raised concerns about the *Whitman* COA case in the context of ZO Section 7.15. We then discussed the permitted and the special land uses within the Forested District.<sup>3</sup> Ms.

---

<sup>3</sup> **SECTION 4.7.1 PERMITTED USES**

- Single family dwellings.
- Duplex dwellings.
- Residential Planned Developments in accordance with Section 4.11 when more than one structure is included for a specific parcel of property.
- Home Occupations.
- Agricultural Uses (refer to Section 4.5.1).
- Adult Foster Care Family Home.
- Family Child Care Home.
- Foster Family Home.

**SECTION 4.7.2 SPECIAL LAND USES**

All uses listed below require a Special Use Permit in accordance with Chapter 7:

- Housekeeping cabin parks.
- Boarding or Lodging Houses.
- Bed and Breakfast establishments.
- Elderly Day Care Centers.
- Churches.
- Public or private outdoor recreation or park facilities.
- Fruit packing and grading plants.
- Wineries.
- Cooling and packing plants.
- Agricultural research and development facilities; public and private.
- Other similar agricultural businesses or uses.
- Riding stables.
- Kennels.

Mullhaupt raised further concerns about the Enduro Event because it was not consistent or comparable with any of the permitted or special land uses in the Forested District.

In summary, because ZO 7.15 is comparable to the similar open SUP language that *Whitman* struck down as unlawful and because of the factual similarity between the proposed use in Galien Township “snowmobile, dirt bike, and ATV racetrack” and the Enduro Event (and because of the parallel concern expressed by the MTA), the legal claims raised in Ms. Houle’s letter are well founded.

#### **D. Legal concerns raised with respect to allowing the Enduro Event as a Temporary Use**

In a follow-up letter, dated May 4, 2023, Ms. Houle further challenges the lawfulness of approving the Enduro Event as a potential temporary use. ZO Section 5.13 provides in part:

Temporary outdoor uses may be permitted in any zoning district provided that the temporary use is similar in nature to those uses that are allowed by right in the district. Any other temporary outdoor uses require a review by the Planning Commission and may require an approved site plan at the Commission's discretion in accordance with Chapter 8. [Emphases added]

Ms. Houle raises the same concerns about the “open-ended” nature of the ZO Section 5.13 that were raised by with respect to ZO 7.15 under the *Whitman* analysis.

There are legal similarities between the two arguments, but there is a simpler answer. ZO Section 5.13 only allows temporary uses “similar in nature to those uses that are allowed by right in the district”. Uses “allowed by right” correspond to the permitted uses within the Forested District below:

#### **SECTION 4.7.1 PERMITTED USES**

- Single family dwellings.
- Duplex dwellings.
- Residential Planned Developments in accordance with Section 4.11 when more than one structure is included for a specific parcel of property.
- Home Occupations.
- Agricultural Uses (refer to Section 4.5.1).
- Adult Foster Care Family Home.

- 
- Cemeteries.
  - Schools.
  - Adult Foster Care Group Home.
    - Group Child Care Home.

Letter to Tim Cypher

May 5, 2023

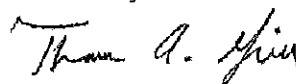
Page 9 of 9

- Family Child Care Home.
- Foster Family Home.

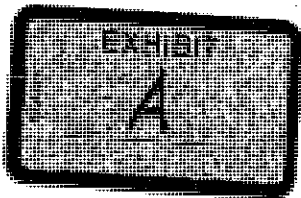
There is no permitted use similar in nature to the Enduro Event proposed by the applicant.

Please contact me with any questions or concerns.

Sincerely,



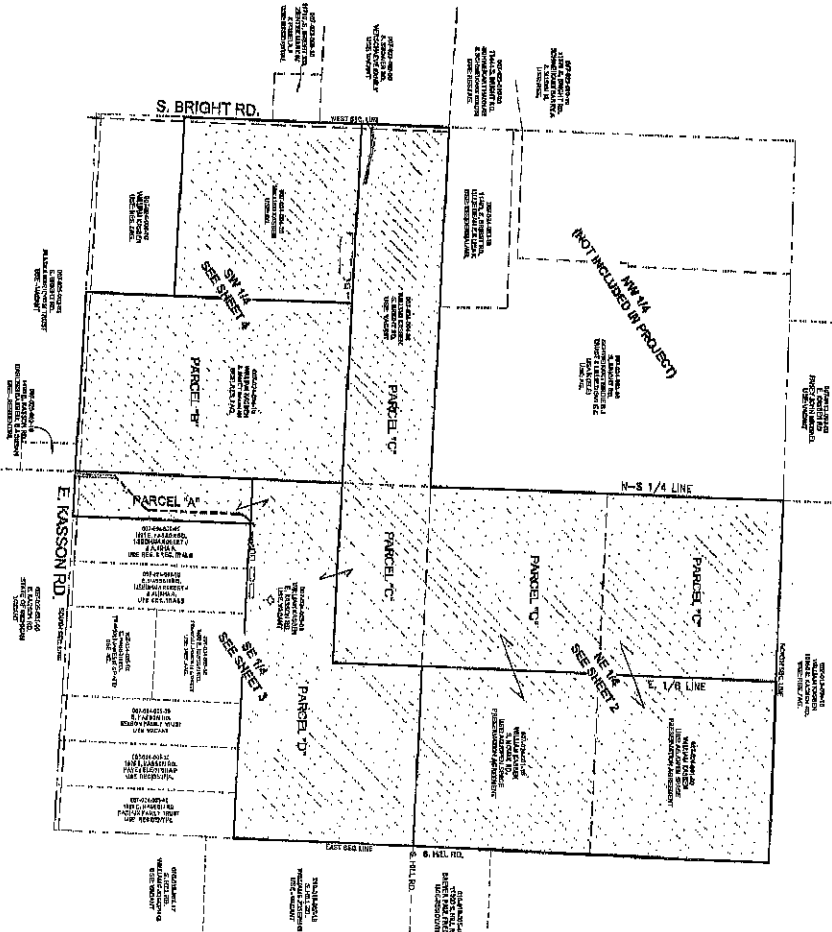
Thomas A. Grier



# SITE PLAN

## SPRING CREEK TRAILS

SECTION 24, T28N, R13W, KASSON TOWNSHIP  
LEELANAU COUNTY, MICHIGAN

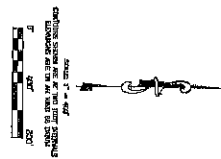


PROJECT OVERVIEW AND VICINITY MAP



Know what's below.  
Call before you dig.

**LOCATION OF EXISTING UTILITIES**  
 ALL EXISTING UTILITIES ARE SHOWN ON THIS PLAN. THE LOCATION OF ALL UTILITIES IS BASED ON THE RECORD DRAWINGS ON FILE WITH THE LEELANAU COUNTY ENGINEER. THE LOCATION OF ALL UTILITIES IS BASED ON THE RECORD DRAWINGS ON FILE WITH THE LEELANAU COUNTY ENGINEER. THE LOCATION OF ALL UTILITIES IS BASED ON THE RECORD DRAWINGS ON FILE WITH THE LEELANAU COUNTY ENGINEER.



### PROJECT INFORMATION

PROJECT OWNER: [Name]  
 PROJECT ADDRESS: [Address]  
 PROJECT CITY: [City]  
 PROJECT STATE: [State]

### ZONING DISTRICTS

EXISTING ZONING DISTRICT: [District]  
 PROPOSED ZONING DISTRICT: [District]

### EXISTING UTILITIES

EXISTING UTILITIES: [List of utilities]

### PROPOSED UTILITIES

PROPOSED UTILITIES: [List of utilities]

### PROPOSED IMPROVEMENTS

PROPOSED IMPROVEMENTS: [List of improvements]

### PARCEL 'A'

Parcel 'A' is a [Size] parcel located [Location]. It is bounded by [Boundaries]. The parcel is currently zoned [Zoning]. The proposed improvements include [Improvements].

### PARCEL 'B'

Parcel 'B' is a [Size] parcel located [Location]. It is bounded by [Boundaries]. The parcel is currently zoned [Zoning]. The proposed improvements include [Improvements].

### PARCEL 'C'

Parcel 'C' is a [Size] parcel located [Location]. It is bounded by [Boundaries]. The parcel is currently zoned [Zoning]. The proposed improvements include [Improvements].

### PARCEL 'D'

Parcel 'D' is a [Size] parcel located [Location]. It is bounded by [Boundaries]. The parcel is currently zoned [Zoning]. The proposed improvements include [Improvements].

### PARCEL 'E'

Parcel 'E' is a [Size] parcel located [Location]. It is bounded by [Boundaries]. The parcel is currently zoned [Zoning]. The proposed improvements include [Improvements].

### PARCEL 'F'

Parcel 'F' is a [Size] parcel located [Location]. It is bounded by [Boundaries]. The parcel is currently zoned [Zoning]. The proposed improvements include [Improvements].

### PARCEL 'G'

Parcel 'G' is a [Size] parcel located [Location]. It is bounded by [Boundaries]. The parcel is currently zoned [Zoning]. The proposed improvements include [Improvements].

### PARCEL 'H'

Parcel 'H' is a [Size] parcel located [Location]. It is bounded by [Boundaries]. The parcel is currently zoned [Zoning]. The proposed improvements include [Improvements].

### PARCEL 'I'

Parcel 'I' is a [Size] parcel located [Location]. It is bounded by [Boundaries]. The parcel is currently zoned [Zoning]. The proposed improvements include [Improvements].

### PARCEL 'J'

Parcel 'J' is a [Size] parcel located [Location]. It is bounded by [Boundaries]. The parcel is currently zoned [Zoning]. The proposed improvements include [Improvements].

### PARCEL 'K'

Parcel 'K' is a [Size] parcel located [Location]. It is bounded by [Boundaries]. The parcel is currently zoned [Zoning]. The proposed improvements include [Improvements].

### PARCEL 'L'

Parcel 'L' is a [Size] parcel located [Location]. It is bounded by [Boundaries]. The parcel is currently zoned [Zoning]. The proposed improvements include [Improvements].

### PARCEL 'M'

Parcel 'M' is a [Size] parcel located [Location]. It is bounded by [Boundaries]. The parcel is currently zoned [Zoning]. The proposed improvements include [Improvements].

### PARCEL 'N'

Parcel 'N' is a [Size] parcel located [Location]. It is bounded by [Boundaries]. The parcel is currently zoned [Zoning]. The proposed improvements include [Improvements].

### PARCEL 'O'

Parcel 'O' is a [Size] parcel located [Location]. It is bounded by [Boundaries]. The parcel is currently zoned [Zoning]. The proposed improvements include [Improvements].

### PARCEL 'P'

Parcel 'P' is a [Size] parcel located [Location]. It is bounded by [Boundaries]. The parcel is currently zoned [Zoning]. The proposed improvements include [Improvements].

### PARCEL 'Q'

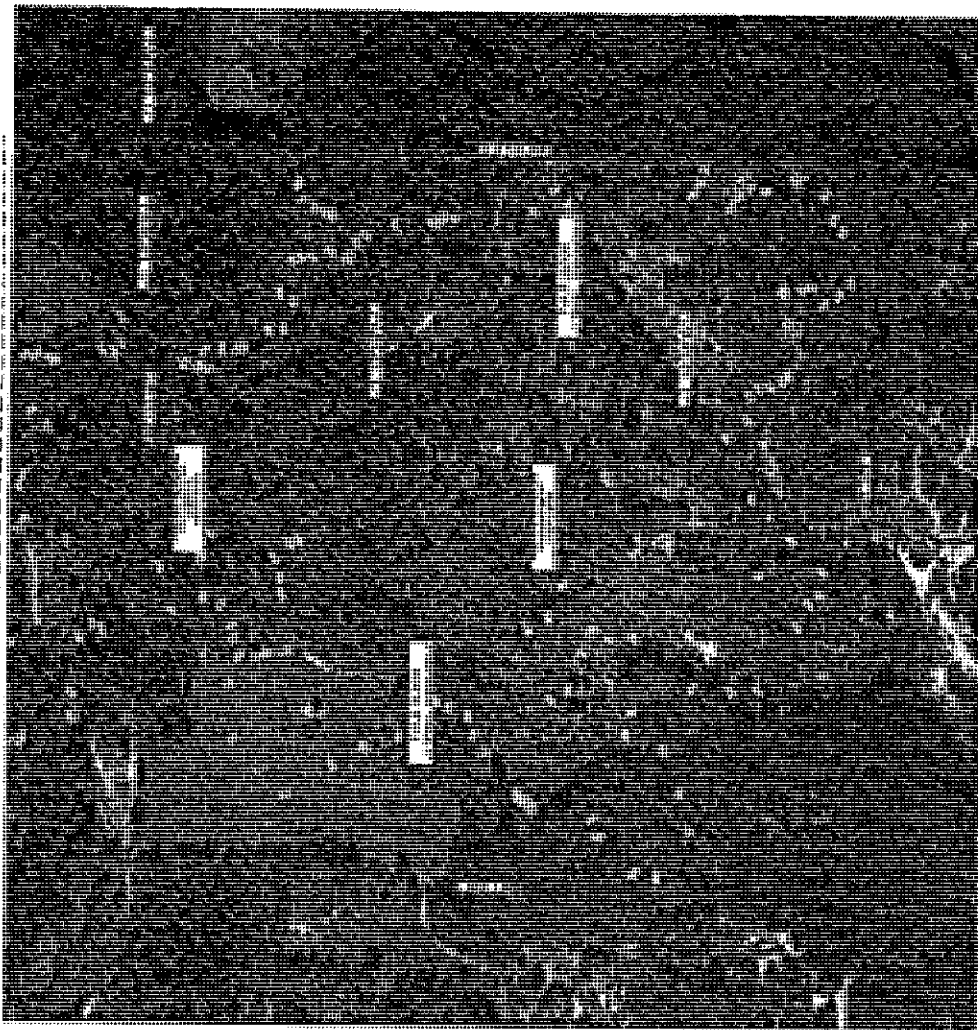
Parcel 'Q' is a [Size] parcel located [Location]. It is bounded by [Boundaries]. The parcel is currently zoned [Zoning]. The proposed improvements include [Improvements].

<b>BOB MITCHELL &amp; ASSOCIATES</b> PLANNING ENGINEERING SURVEYING MANAGEMENT 404 N. Main Street Leelanau County, Michigan 49753 Phone: (231) 533-7888 Fax: (231) 533-7888 Web: www.bmmitchell.com	
PROJECT INFORMATION SITE PLAN SPRING CREEK TRAILS SECTION 24, T28N, R13W, KASSON TOWNSHIP GRAND TRAVERSE COUNTY, MICHIGAN	PROJECT NO.: <b>20210019</b> SHEET NO.: <b>1</b> OF 4

# SITE PLAN

## SPRING CREEK TRAILS

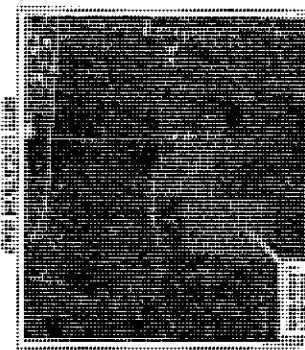
SECTION 24, T29N, R13W, KASSON TOWNSHIP  
LEELANAU COUNTY, MICHIGAN



PROJECT DETAIL - NORTHEAST 1/4

SCALE: 1" = 200'

MATCHLINE - SEE SHEET 3



GRAPHIC SCALE: 1" = 200'  
 0 200 400 600 800 1000

### PLAN LEGEND

- PROPERTY BOUNDARY
- EASEMENT
- EXISTING ROADWAY
- EXISTING TRAIL
- PROPOSED TRAIL
- PROPOSED TRAIL
- PROPOSED TRAIL
- PROPOSED TRAIL

### PROJECT INFORMATION

**PROPERTY OWNER/CLIENT:**  
SPRING TRAILS LLC

**ZONING DISTRICT:**  
UNCLASSIFIED

**EXISTING REGULATING AGENCIES:**  
LEELANAU COUNTY, MICHIGAN  
GRAND TRAVERSE COUNTY, MICHIGAN

**DESIGNER:**  
BOB MITCHELL & ASSOCIATES

**DATE:**  
2021/00/19

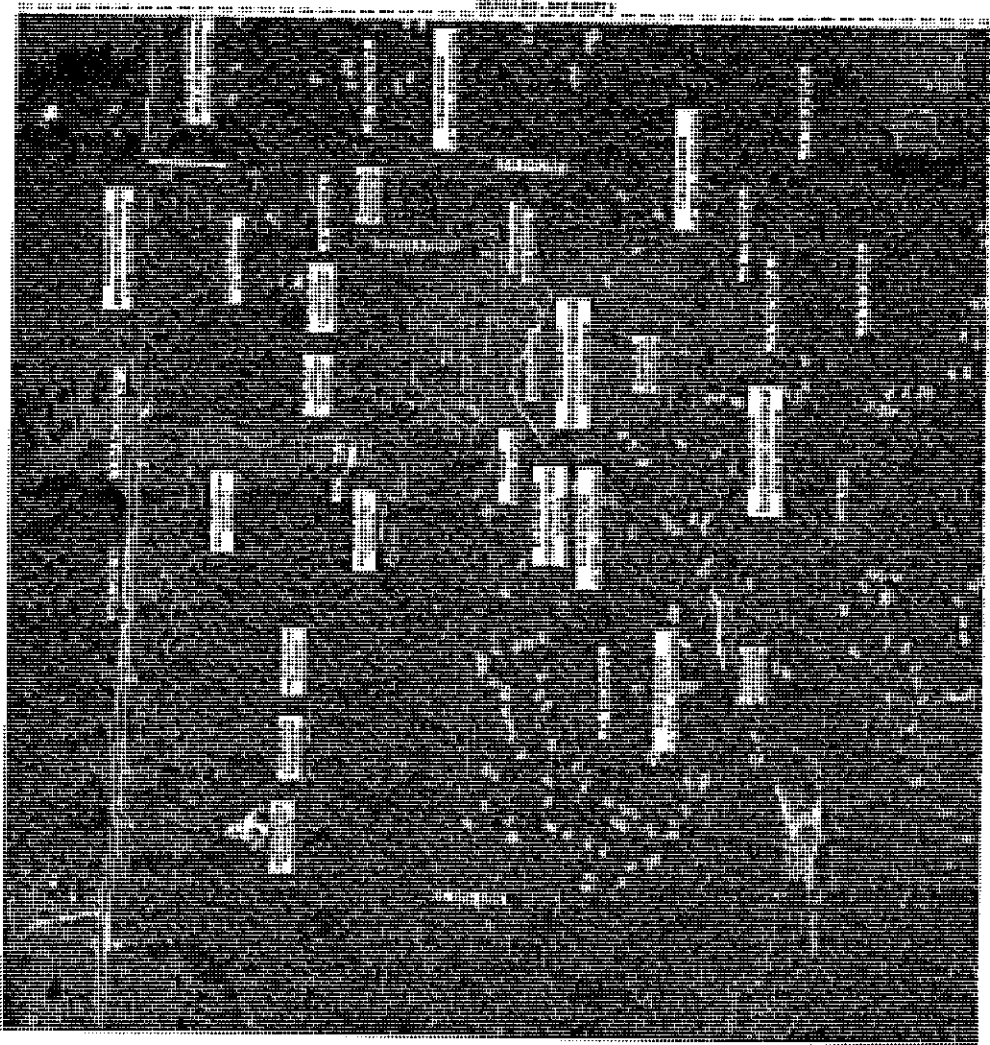
<b>2</b> <small>SHEET 2 OF 4</small>	<b>SITE PLAN</b> <b>SPRING CREEK TRAILS</b> <small>SECTION 24, T29N, R13W, KASSON TOWNSHIP          GRAND TRAVERSE COUNTY, MICHIGAN</small>		<b>BOB MITCHELL &amp; ASSOCIATES</b> <small>PLANNING ENGINEERING SURVEYING MANAGEMENT</small> Grand Traverse County, Michigan 404 N. State Street Grand Haven, MI 49427 (616) 941-1111 FAX (616) 941-1112 Web Site: www.bmitchell.com
	<small>PROJECT INFORMATION:</small> SHEET NO.: 202100-19 DATE: 2021/00/19		



# SITE PLAN

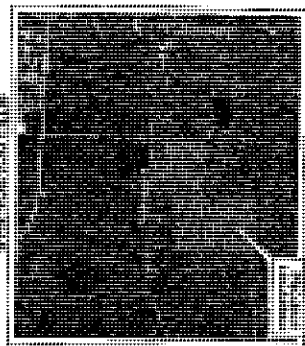
## SPRING CREEK TRAILS

SECTION 24, T28N, R13W, KASSON TOWNSHIP  
 ILEENAU COUNTY, MICHIGAN  
 MATCHLINE - SEE SHEET 2



PROJECT DETAIL - SOUTHEAST 1/4

SCALE: 1" = 200'



INDICATES SPONGE AREA OF THE WETLANDS  
 ESTABLISHED AND ON AN AERIAL PHOTO  
 DATE: 10/10/19

### PLAN LEGEND

- WETLANDS (AERIAL PHOTO DATE)
- SPONGE AREA (AERIAL PHOTO DATE)
- PROPERTY BOUNDARY (AS SHOWN ON DEED)
- LOT CENTER
- PROPERTY CORNER
- PROPERTY CORNER (FOR COUNTY)
- PROPERTY CORNER

### PROJECT INFORMATION

PROPERTY: OWNER/DEVELOPER  
 SPRING CREEK TRAILS LLC

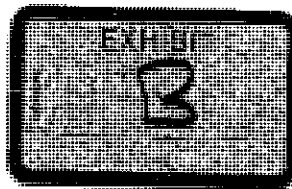
### ZONING DISTRICTS

FOR ZONING, SUBJECT PARCELS AND ALL PARCELS WITHIN 500 FEET  
 OF PROJECT LOCATION

NOTICE: THIS PLAN IS A PRELIMINARY PLAN. IT IS SUBJECT TO THE REVIEW AND APPROVAL OF THE LOCAL GOVERNMENT. THE LOCAL GOVERNMENT HAS THE RIGHT TO REQUIRE CHANGES TO THIS PLAN. THE LOCAL GOVERNMENT HAS THE RIGHT TO REQUIRE THE SUBMITTER TO OBTAIN NECESSARY PERMITS FROM THE LOCAL GOVERNMENT. THE LOCAL GOVERNMENT HAS THE RIGHT TO REQUIRE THE SUBMITTER TO OBTAIN NECESSARY PERMITS FROM THE LOCAL GOVERNMENT. THE LOCAL GOVERNMENT HAS THE RIGHT TO REQUIRE THE SUBMITTER TO OBTAIN NECESSARY PERMITS FROM THE LOCAL GOVERNMENT.

DATE: 10/10/19  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 APPROVED BY: [Name]

<p>3</p> <p>SHEET 1 OF 1</p>	<p>DATE: 10/10/19</p>	<p><b>SITE PLAN</b></p> <p><b>SPRING CREEK TRAILS</b></p> <p>SECTION 24, T28N, R13W, KASSON TOWNSHIP          GRAND TRAVERSE COUNTY, MICHIGAN</p>		<p><b>BOB MITCHELL &amp; ASSOCIATES</b></p> <p>PLANNING • ENGINEERING • SURVEYING • MANAGEMENT</p> <p>Northwestern Michigan Central Michigan          416 W. MAIN STREET 400 North De Soto, St. Louis          Kalamazoo, MI 49001 St. Louis, MO 63102          TEL: (269) 344-7121 FAX: (314) 241-7121          Toll Free 1-800-533-0927 Email: b4bmg@aol.com</p>
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550/9-74-004

**INFORMATION ON LEVELS OF  
ENVIRONMENTAL NOISE  
REQUISITE TO PROTECT  
PUBLIC HEALTH AND WELFARE  
WITH AN ADEQUATE MARGIN  
OF SAFETY**

**MARCH 1974**

**PREPARED BY  
THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF NOISE ABATEMENT AND CONTROL**

**This document has been approved for general  
availability. It does not constitute a standard,  
specification, or regulation.**

The associated interior day-night sound level within a typical home which results from outdoors is 15 dB less, or 40 dB. The expected indoor daytime level for a typical neighborhood which has an outdoor day-night sound level of 55 dB is approximately 40 dB, whereas the nighttime level is approximately 32 dB (see Figure A-7). This latter value is consistent with the limited available sleep criteria (p-5). Additionally, these resulting indoor levels are consistent with the background levels inside the home and which have been recommended by acoustical consultants as "acceptable" for many years (Table D-10).

The effects associated with an outdoor day-night sound level of 55 dB are summarized in Table D-11. The summary shows:

- (1) satisfactory outdoor average sentence intelligibility may be expected for normal voice conversations over distances of up to 3.5 meters;
- (2) depending on attitude and other factors non-acoustical the average expected community reaction is "none" although 1% may complain and 17% indicate "highly annoyed" when responding to social survey questions; and
- (3) noise is the least important factor governing attitude towards the area.

Identification of a level which is 5 dB higher than the 55 dB identified above would significantly increase the severity of the average community reaction, as well as the expected percentage of complaints and annoyance. Conversely,



identification of a level 5 dB lower than the 55 dB identified above would reduce the indoor levels resulting from outdoor noise well below the normal background indoors. It would decrease speech privacy outdoors to marginal distance. Little change in annoyance would be made since at levels below the identified level, individual attitude and life style, as well as local conditions, are more important factors in controlling the resulting magnitude of the level of the intruding noise.

In conclusion, a  $L_{dn}$  level of 55 dB is identified as outdoor level in residential areas compatible with the protection of public health and welfare. The level of 55 dB is identified as maximum level compatible with adequate speech communication indoors and outdoors. With respect to complaints and long term annoyance this level is clearly a maximum satisfying the large majority of the population (see Table D-1J). However, specific local situations, attitudes, and conditions may make lower levels desirable for some locations. A noise environment not annoying some percentage of the population cannot be identified at the present time by specifying noise level alone.

Relative Importance of Aircraft As A  
 Factor in Disliking Area or Wanting to  
 Move (Heathrow 1st Study) D-7, D-10, D-11, D-12 and D-13

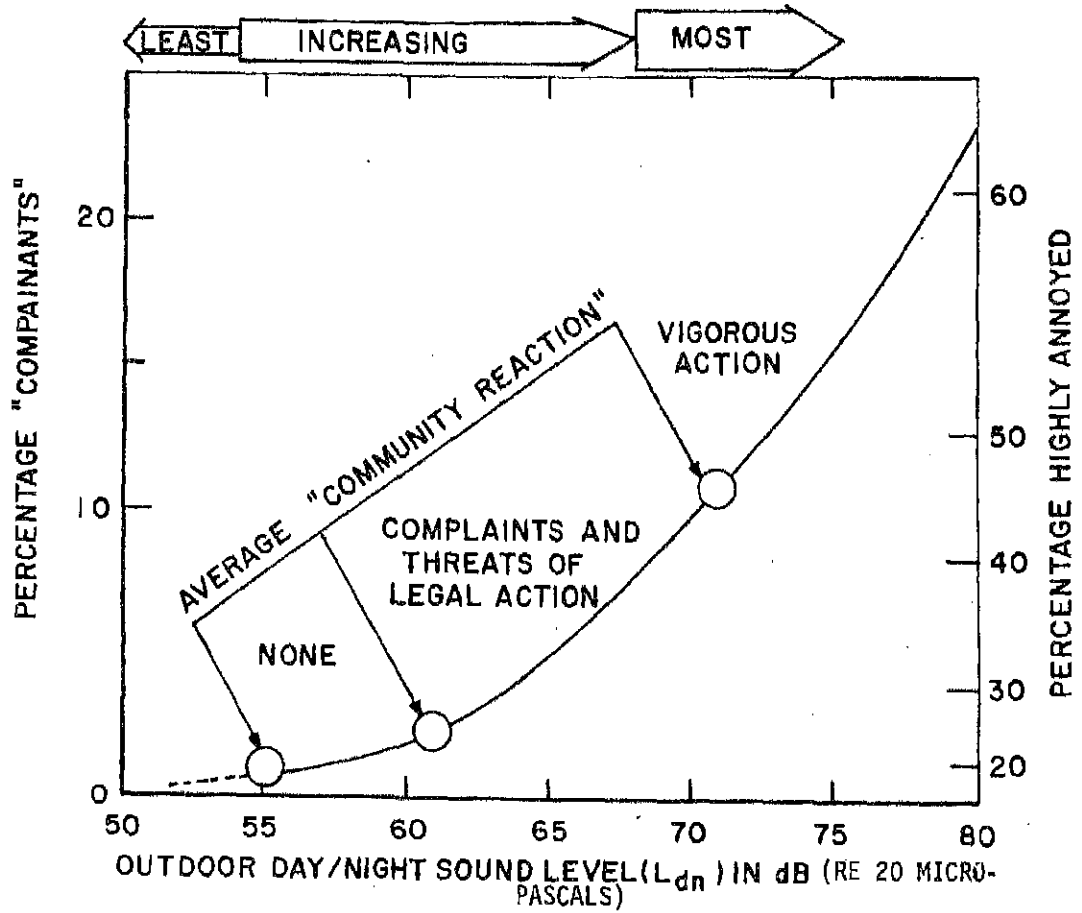


Figure D-16. Summary of Annoyance Survey and Community Reaction Results

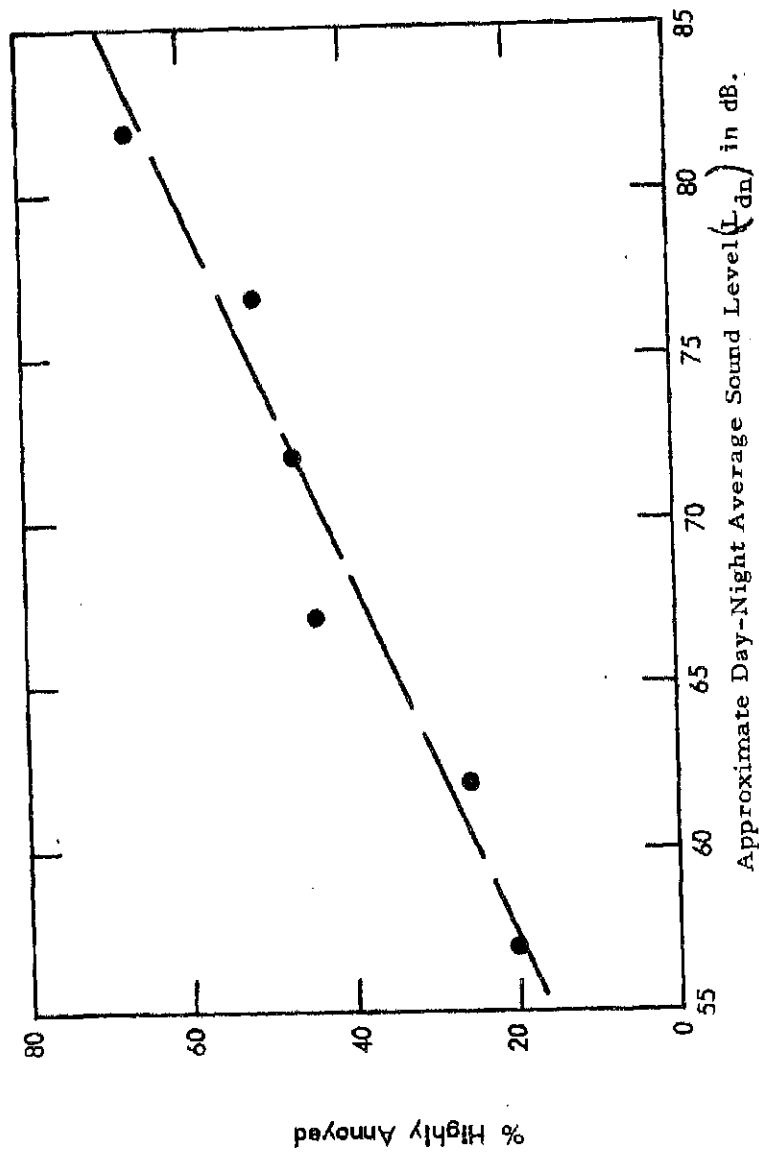


Figure D-13. Combined Results - British and U.S. Surveys D-i/

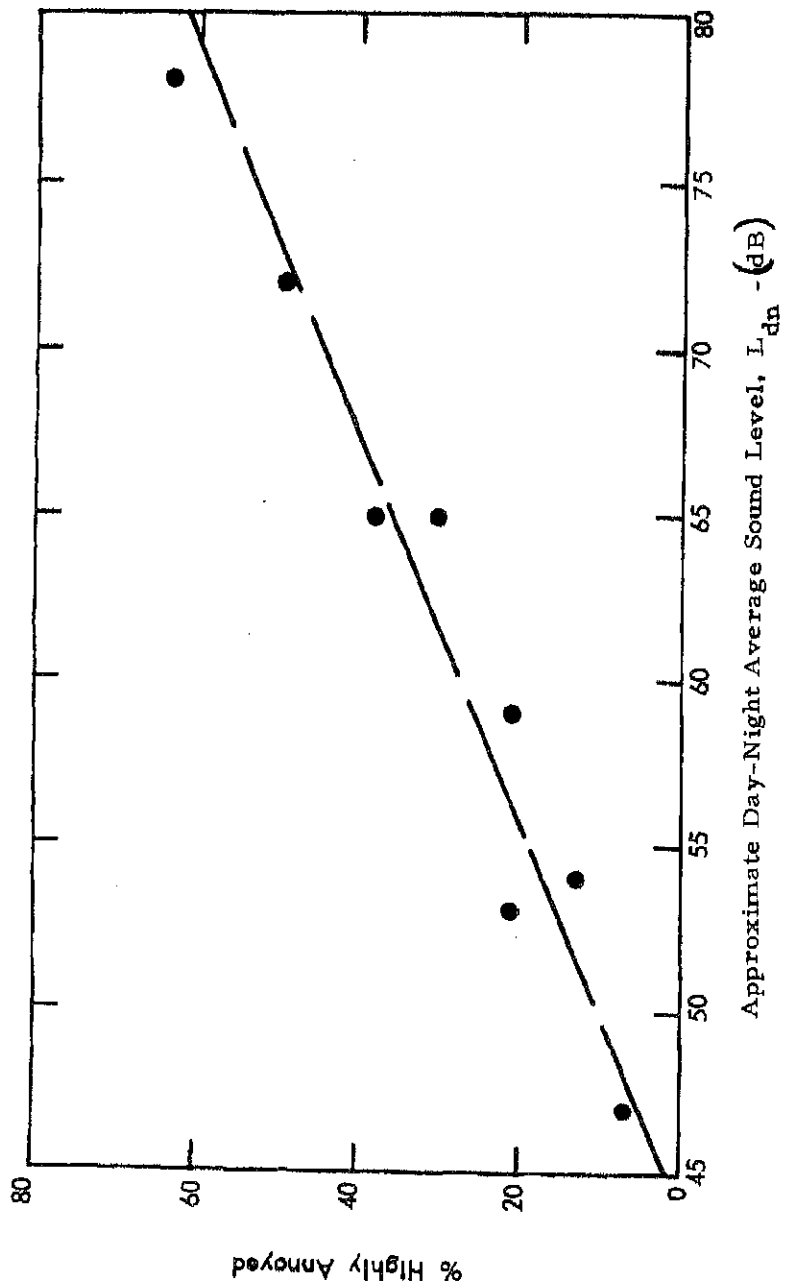


Figure D-10. Percentage Highly Annoyed as Function of Approximate Day-Night Noise Level -  
Results of First London Heathrow Survey D-39 from D-6

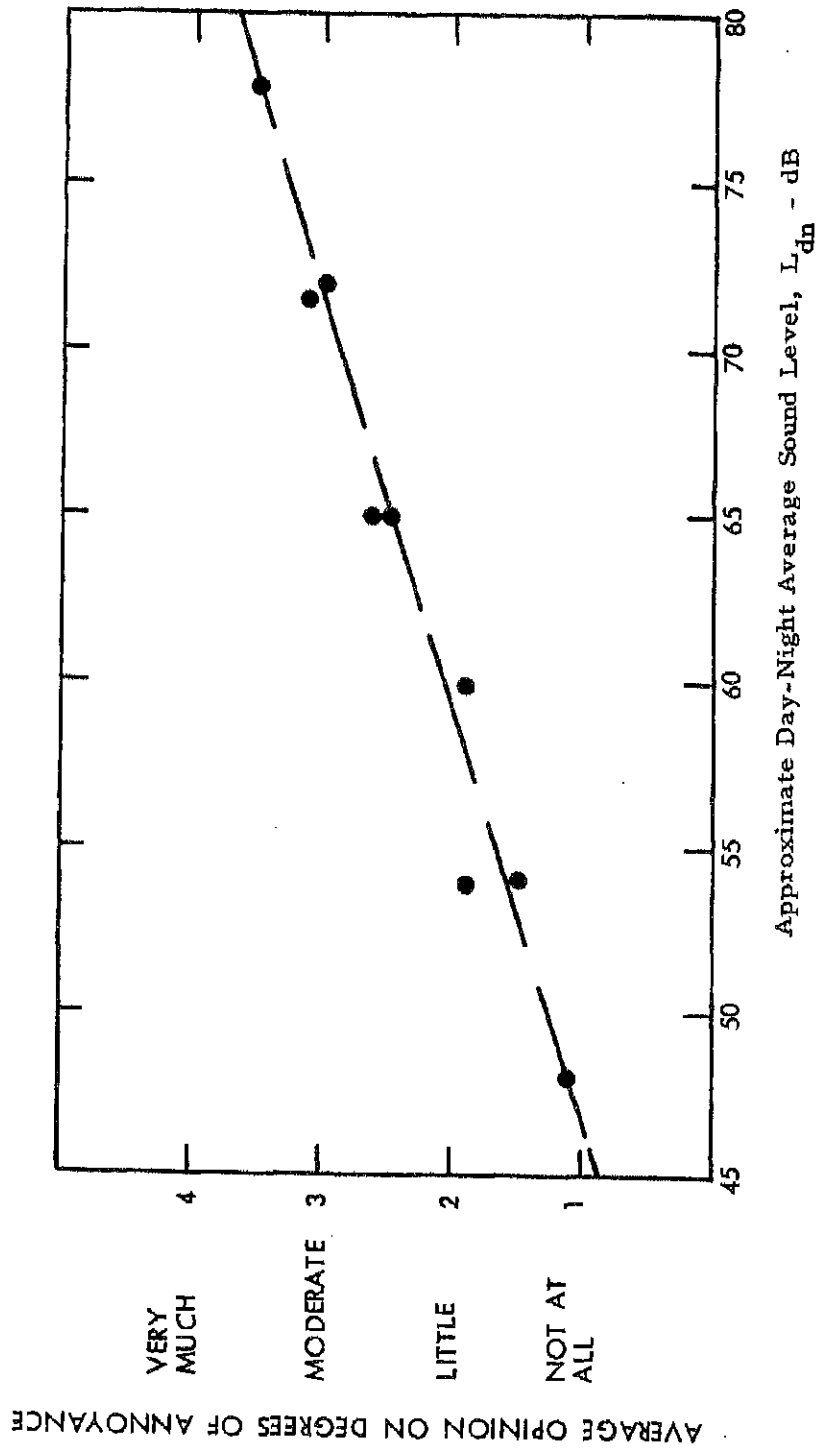


Figure D-9. Average Degree of Annoyance as a Function of the Approximate Day-Night Noise Level-Results of First London Heathrow Survey D-39 from D-6

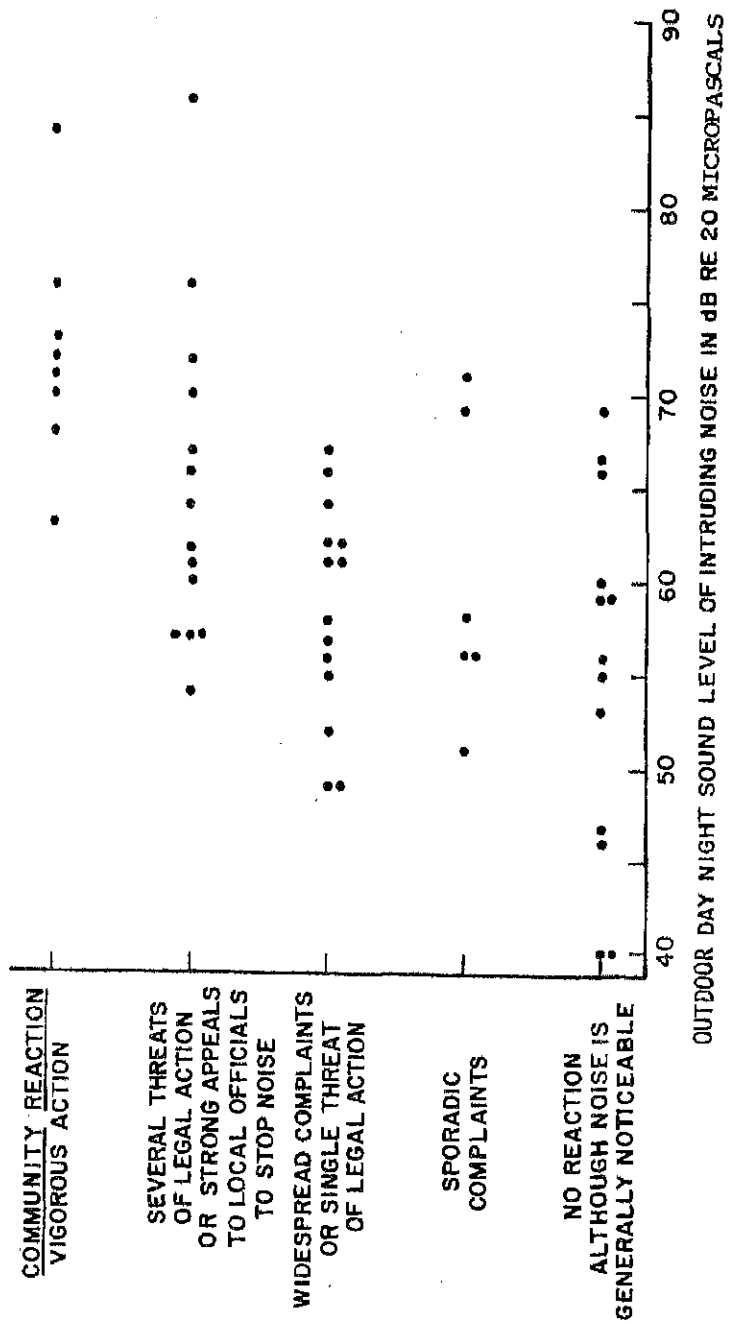


Figure D-8. Community Reaction to Intensive noises of Many Types As A Function of the Outdoor Day/Night Sound Level of the Intruding Noise D-3

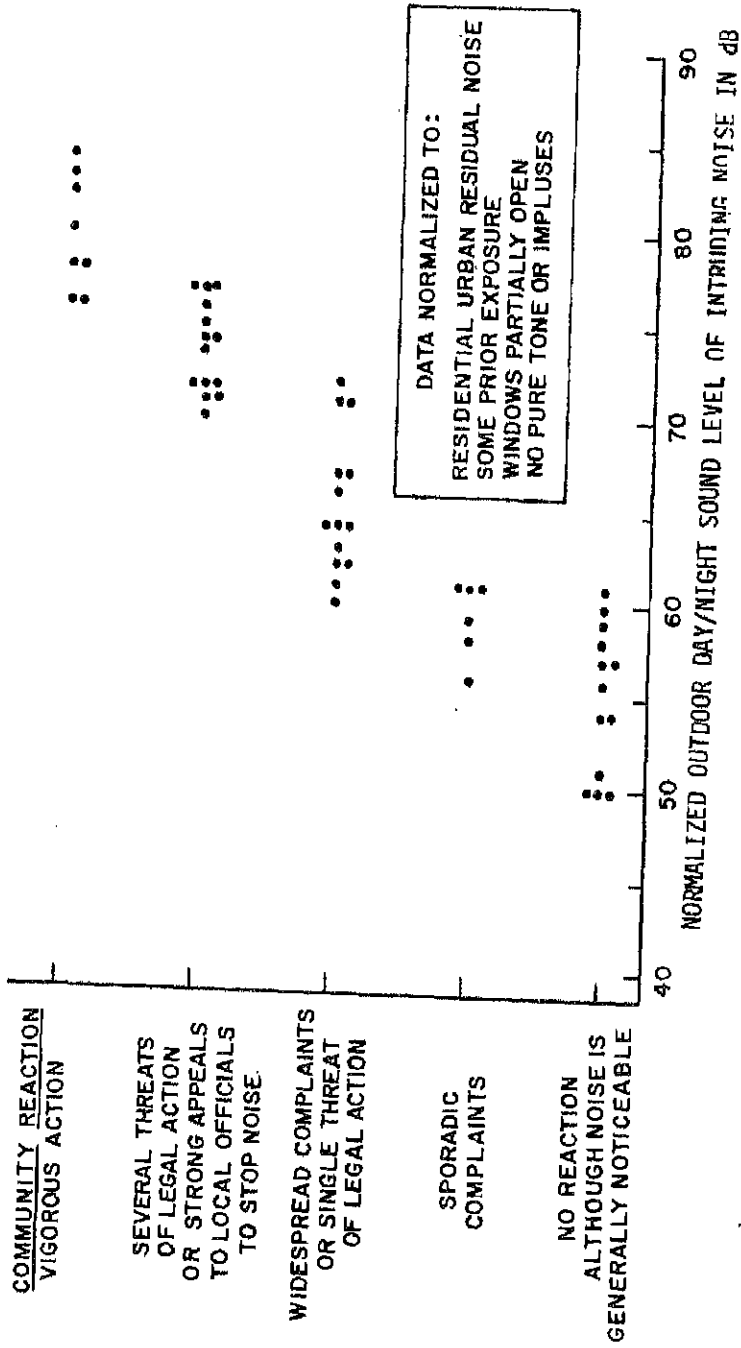


Figure D-7. Community Reaction to Intensive Noises of Many Types as a Function of the Normalized Outdoor Day Night Sound Level of the Intruding Noise D-3

TABLE D-5 (Continued)

House Vibra. YCS	Disturb. of Sleep		Nuisance Felt Subjectively	Admissibility from point of view of physical, mental and social well being, in regard to which the stress is laid on disturbance of sleep, disturbance of conversation and feeling afraid.
	P	S		
0	0	0	No nuisance	-----
21	3	7	Slight nuisance	Admissible
41	6	14	Slight to moderate nuisance	Admissible; the tolerance limit is reached for about one-fifth of the population.
56	12	21	Predominantly moderate nuisance	Limit of admissibility; the tolerance limit is reached for about one-third of the population.
72	20	20	Predominantly serious nuisance	Inadmissible; the tolerance limit is exceeded for about half of the population
83	31	33	Serious nuisance	Inadmissible; the tolerance limit is exceeded for about two-thirds of the population.
92	44	42	Intolerable	Absolutely inadmissible
100	72	20	Intolerable	Absolutely inadmissible





# YOUNG, GRAHAM & WENDLING, P.C.

Attorneys at Law  
104 E. Forest Home, P.O. Box 398  
Bellaire, Michigan 49615  
(231) 533-8635  
Facsimile (231) 533-6225  
wendling@upnorthlaw.com

Bryan E. Graham

Peter R. Wendling

May 25, 2023

**VIA EMAIL and USPS**

Tim Cypher, Zoning Administrator  
Kasson Township  
P.O. Box 62  
Maple City, MI 49664

Tom Grier, Attorney  
The Running Wise Law Firm  
1501 Cass Street Ste. D  
P.O. Box 686  
Traverse City, MI 49685

SUBJECT: Application for Special Use Permit Enduro Motocross Racing

Dear Mr. Cypher and Mr. Grier:

I have had an opportunity to review Mr. Grier's letter of May 5, 2023 to Mr. Cypher, Zoning Administrator for Kasson Township. While there are points in the letter which I disagree with, the most salient issue which I wish both of you to review directly relate to the Zoning Ordinance within the Forested Zoning District (FR). Section 4.7 of the Zoning Ordinance describes the purposes and intent of the Forested District which is to

“ . . . preserve the forest and wood lots, the dominant land cover of the township while allowing a wide range of uses in such ways that will not detract from this end. To the greatest degree of practical, the integrity and contiguity of forest lands shall be maintained.”

Section 4.7.2 outlines Special Land Uses within the FR district. One of the uses listed is “Public or private outdoor recreation or park facilities.” The Zoning Ordinance defines Outdoor Recreation Establishment as follows,

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

Clearly, motocross racing is a type of sport as well as a leisure time activity for trail riding. The operation of recreational motocross bikes or racing the same could easily be added as an example of an “Outdoor Recreation Establishment” given that the examples provided are not exclusive uses but examples of what can constitute an Outdoor Recreation Facility. When it comes to noise, one can only wonder how the Township would react to a proposed children's amusement park. In any event, it is a mystery as to why this special land use permit was attempted to be processed under Section 4.7.2's provision of “Other similar agricultural businesses or uses” and/or

Section 7.15. An Outdoor Recreation Facility matches exactly what the applicant wishes to obtain special use permit for. There is no reason to invoke Section 7.15 entitled "Other Special Land Uses" when the specific land use of outdoor recreation facility is clearly available for processing in the FR zoning district. While I do not agree with the legal analysis purportedly contained in Ms. Houle's letter to the Township as outlined on Mr. Grier's letter regarding Section 7.15 of the Zoning Ordinance, there is no reason to engage in further analysis of Section 7.15 or the Galien Township case since they are clearly not applicable to this request for a special use permit.

My final concern with Mr. Grier's letter is contained on page 5 of 9. In the letter, Mr. Grier states:

"In conclusion, unless and until the sound study has been conducted, and the study shows that the Event can proceed without harming the neighboring properties, the standards in ZO Section 7.7 A., B. And E. have not been met and the SUP should not be granted."

While the law certainly allows a municipality to consult with its attorney, including the attorney's ability to draft sample findings of fact, the ultimate decision on whether or not to grant a Special Use Permit can only be made independently by the Planning Commission after hearing all of the evidence. It is up to the Planning Commission to decide whether it wishes to obtain escrow for any type of expertise that it determines is needed to assist in making a decision.

As such, we request that the Township allow for the processing of a Special Use Permit on behalf of the applicant James Schettek within the FR district as an Outdoor Recreation Facility pursuant to Sections 4.7.2 Special Land Uses and per the definition of "Outdoor Recreation Establishment" as such a facility includes motocross recreational use and racing.

Sincerely,

Peter R. Wendling

PRW/aew



**KASSON TOWNSHIP PLANNING COMMISSION  
REGULAR MEETING  
Monday, June 19, 2023; 7:00 pm  
Kasson Township Hall  
10988 S. Newman Road, Maple City, MI 49664  
MINUTES**

I. Call Meeting to Order/Pledge of Allegiance

Chairman Roush called the meeting to order at 7:00 pm with the Pledge of Allegiance.

II. Roll Call of Commissioners and Staff

A. Present: Tad Carter, Township Board Rep; Mike Lanham, Commissioner; Chuck Schaeffer, Secretary; Dave Noonan, Commissioner; Jerry Roush, Chairman

B. Staff: Tim Cypher, Zoning Administrator; Allison Hubley-Patterson, Recording Secretary

C. Visitors present: In total, there were five members of the public present at various times during the meeting.

III. Consideration of Agenda (Attachment "A")

Chairman Roush asked for a motion to approve the agenda as presented.

**NOONAN MOVED TO APPROVE THE AGENDA AS PRESENTED;  
SCHAEFFER SECONDED. ALL PRESENT IN FAVOR, MOTION CARRIED.**

IV. Declaration of Conflicts of Interest – none

V. Public Comment – none

VI. Approval of Minutes – May 8, 2023

Chairman Roush asked for a motion to approve the minutes of May 8, 2023 as presented. **NOONAN MOVED TO APPROVE THE MINUTES OF MAY 8, 2023 AS PRESENTED; LANHAM SECONDED. ALL PRESENT IN FAVOR, MOTION CARRIED.**

VII. Correspondence Received - none

VIII. Area Reports

A. Chairperson - Chairman Roush – no report

B. Secretary - Commissioner Schaeffer – no report

C. Township Board - Commissioner Carter

Commissioner Carter reported that the Township is attempting to locate a veteran who is buried in the Kasson Township Cemetery. The Township would like to honor this veteran but needs to find the exact location of the gravesite.

Mr. Corey Flaska has been awarded the contract to remodel the Kasson Township Hall. A covered porch will be added to the front of the hall as well as in the back.

D. Zoning Board of Appeals - Commissioner Noonan – no report

E. Zoning Administrator – ZA Cypher

Cypher reported that Mr. Tom Grier, the Kasson Township attorney, has been tied up with the gravel legislation but will be submitting his comments on the use of “shall” versus “may” in the Master Plan in time for the July meeting. Mr. Grier will also provide other comments regarding the Master Plan, as he sees fit.

Regarding the Enduro Motorcycle Race, the applicants’ attorney sent Mr. Grier a letter stating that certain things were incorrect regarding the application as it relates to the zoning ordinance. Cypher and Grier are in the process of responding to this correspondence now. The applicants will be changing their business plan so that this project is represented as a business as opposed to a not-for-profit. The applicants indicated that they want more than just one event per year, which was originally proposed. The application will be submitted under the forestry section of the zoning ordinance if allowed by the zoning administrator after the response is finished to the applicant’s attorney.

Schaeffer asked about the tone of the letter that was received from the applicants’ attorney. Cypher replied that it was adversarial at first but then the letter was toned down. He is not sure that the attorney had all of the correct facts from the applicants.

Schaeffer stated that at the Public Hearing for the Enduro Motorcycle Race, he asked about the 501(c)(3) status. Schaeffer explained that he asked the applicants this question because he knows a group that would provide traffic control and other services at no charge during the event, but the applicants would need 501(c)(3) status. Schaeffer stated that he did not want to cause any issues by asking this question. Cypher stated that he conducted some research and did not find a 501(c)(3) filing. Mr. Seymour has also followed up

with legal counsel on this matter. Cypher stated that the letter he and Mr. Grier are preparing to opposing counsel will be direct and to the point.

Cypher clarified that the applicants have tabled their application but it has not been withdrawn.

Cypher reported that Bryan Cloninger of Nature has not submitted a list of events for 2023 to him despite being asked to do so several times. Two events have already been held at Nature this year on June 17<sup>th</sup> and June 22<sup>nd</sup>, respectively. The June 17<sup>th</sup> event was a wedding with over 80 people in attendance. In September, additional weddings will be held at Nature with over 50 people at each event. Another wedding will be held at Nature in October. In the past, complaints have been submitted from neighbors regarding the noise. Schaeffer stated that he lives approximately  $\frac{3}{4}$  of a mile from Nature and could let Cypher know if music is excessive. Cypher added that there is no standard for this. Mr. Cloninger will receive a civil infraction. The application that was approved for Nature specified that no events are to be held without prior approval.

For the month of May, Cypher took in \$525.00 in fees. He issued seven land use permits, three for single family residences, one addition, two accessory buildings and one commercial construction. The Enduro Special Land Use Permit request has been tabled. Cypher conducted nine inspections and continues to investigate a pending junk complaint. The residents informed him they were working towards compliance; however, Cypher has not seen any progress. He provided information via 34 phone calls and 23 internet responses.

IX. Old Business - none

X. New Business

A. Zoning Ordinance Definitions

Carter requested that this item be placed on the agenda. He explained that his son previously purchased a kit from Vermont to set up a farmstand. Once it was built, an inspector from the Building Safety Department came by and asked Carter for various permits. Carter was unaware that this was a requirement and stated that there are many farmstands in the local area. Carter spoke to Mr. Craig Brown from the Leelanau County Road Commission (LCRC). The LCRC issues driveway permits so it is uncertain why the Building Safety Department is handling this matter.

Cypher explained that anything under 200 square feet does not require a permit from the County Building Safety Department unless the structure is within three feet of the house. However, Carter's farmstand is larger than 200

square feet. Cypher read from section 4.5.1 of the Kasson Township Zoning Ordinance which pertains to "Permitted Uses":

- I. A stand for sale of agricultural products provided that:
  1. No more than one stand is allowed for each six hundred (600) lineal feet of road frontage.
  2. Adequate parking and maneuvering areas are provided to ensure safe vehicle ingress and egress and pedestrian movement within the site.
  3. The products sold on any stand are mainly grown or produced on the premises.

Cypher stated that the Building Safety Department determines if Carter is Ag use. Cypher investigated the situation and found Carter to be in compliance; a land use permit has since been issued. Cypher noted that there is always concern about people pulling off the road at a stand.

Cypher stated that what triggered this situation for Carter was the fact that the stand is over 200 square feet. Carter added that they are also looking at purchasing a windmill pump with a tower that is 47 feet in height. Cypher replied that Carter will want to make sure that the fall zone is entirely on his property. Carter should speak to the Building Safety Department about this matter. He was also advised to complete the Ag Affidavit as well as to make some phone calls to see what the process is. Cypher stated that the Building Safety Department has rules and regulations that they must follow. He informed the PC that approximately ten years ago, this Department was on probation and almost lost their certification in Leelanau County. New staff members were hired to address the problems in the Department. Cypher noted that they often hold up permits for simple things and added that there is pushback from builders in the area that things are sometimes delayed.

Schaeffer asked who signs the Ag Affidavit. Cypher replied that the County will sign the Affidavit but the applicant must bring the application forth. Cypher stated that planning and zoning does not work with Ag Affidavits; Schaeffer replied that we do Ag zoning. Schaeffer commented that it appears that different governmental units do not know what other units are doing. Cypher stated that departments try their best to take an intergovernmental approach to things.

Carter inquired about long-time residents who store boats in barns on their property. Cypher stated that he looks at advertisements in the paper and checks to see if the property is in the Commercial district; however, he added that he does not have permission to go on someone's property.



Lanham stated that Carter has a structure that is more than a farmstand. Discussion ensued regarding a farmstand versus a farm market. Cypher stated that the Building Safety Department was involved in another case where the public was being let into a building; this is a different situation.

Chairman Roush asked Carter if he was proposing that we add a new definition to the zoning ordinance based on what is being discussed this evening. Carter replied, "Yes". Cypher briefly discussed Generally Accepted Agricultural and Management Practices (GAAMPs) as they relate to roadside stands. A farm market is a commercial business where people are permitted to enter a building; a roadside stand is different. Chairman Roush asked for information to be brought to the July meeting for further discussion and to help the PC determine which definitions need to be added to the zoning ordinance.

#### XI. Public Comment

Mr. Tim Dowd resides on Hill Road in Cedar. His property is adjacent to the proposed site of the Enduro motorcycle racetrack. He is confused about how many times the applicant can amend the special land use permit before it is denied. He stated that the residential driveway permit should be brought up to a business driveway. The proposed campground site is filled with trees. He referenced a recent campfire that led to widespread fire in the Crawford County/Roscommon County area and believes this could happen at the site of the proposed Enduro event. He also inquired as to how many times the applicants might change law firms. Mr. Dowd stated that the Neighborhood Association would like to bring this matter to a conclusion.

Schaeffer stated that he continues to receive email messages but added that there has already been a Public Hearing in this matter. He asked if this was fair. Cypher replied that during the public comment portion of a PC meeting, the public does have the right to make comment on any topic. He added that any member of the public may call him directly for answers to their questions, too. Mr. Dowd stated that he is sorry to keep beating this issue but commented that the neighbors are bothered by the fact that this matter has not been resolved.

Father Mike Verschaeve lives at 11411 S. Tower Road. He stated that his family recently celebrated their mother's 95<sup>th</sup> birthday and they are all grateful for the paradise where they live.

Mr. Joe Verschaeve represents the Verschaeve Family Trust. He stated that he previously heard Mr. Seymour state that their organization would be a 501(c)(3). Mr. Verschaeve stated that he is now hearing that this has changed. He is concerned about the constant change of information that the

citizens must apprehend. Mr. Verschaeve is very concerned about the risk of fire and added that the neighbors are concerned as well.

Mr. Jim Travioli stated that everything is constantly changing. At the Public Hearing, the neighbors heard opposition expressed and things have changed since that meeting. He stated that he and his wife recently enjoyed a peaceful weekend sitting out on their deck. Mr. Travioli stated that they built their dream home with the understanding of what the zoning laws were in Kasson Township.

XII. Comments from the Commissioners

Lanham addressed the public and stated that, as a board, the PC members sit in front of the public and the board is charged with determining whether the applicant meets the ordinance requirements. He noted that at the May 8<sup>th</sup> meeting, much of what the PC members heard was repetitious and they have heard these comments before. Lanham stated that the PC is aware of the public's concerns but added that the PC must now be able to move to the next step in the process which is a review of the Findings of Fact.

Schaeffer stated that he has been bombarded with email messages but he is receiving the same comments. He stated that the PC members must make a decision that is defensible in court. He stated that many individuals are making assertions in their messages; for example, "If x happens, then this will happen". Based on the "reasonable man" doctrine, he asked that the public tell him where he can go to research things further which will allow him to defend his position on the board. He reiterated that the PC knows what the issues are but asked for the public's help in the process so that the appropriate facts can be gathered.

XIII. Next Meeting - Monday, July 17, 2023 at 7:00 p.m.

XIV. Adjournment

Chairman Roush asked for a motion to adjourn the meeting. **LANHAM MOVED TO ADJOURN THE MEETING; NOONAN SECONDED. ALL PRESENT IN FAVOR, MOTION CARRIED.**

The meeting was adjourned at 7:50 pm.

Respectfully submitted,

Allison Hubley-Patterson  
Recording Secretary

## ATTACHMENT "A" – Agenda

**KASSON TOWNSHIP PLANNING COMMISSION  
REGULAR MEETING  
Monday, June 19, 2023; 7:00 p.m.  
Kasson Township Hall, 10988 S. Newman Road, Maple City, MI 49664  
AGENDA**

1. Call Meeting to Order / Pledge of Allegiance
2. Roll Call of Commissioners and Staff / Recognition of Visitors
  - A. Commissioners present (roll call): Carter, Lanham, Noonan, Roush, Schaeffer
  - B. Staff: Cypher, Hubley-Patterson
  - C. Visitors present
3. Consideration of Agenda: Additions or Deletions
4. Declaration of Conflicts of Interest
5. Public Comment
6. Approval of Minutes – May 8, 2023
7. Correspondence Received
8. Area Reports
  - A. Chairperson – Commissioner Roush
  - B. Secretary – Commissioner Schaeffer
  - C. Township Board – Commissioner Carter
  - D. Zoning Board of Appeals – Commissioner Noonan
  - E. Zoning Administrator's Report – ZA Cypher
9. Old Business – None
10. New Business
  - A. Zoning Ordinance Definitions
11. Public Comment
12. Comments from the Commissioners
13. Next Meeting: Monday, July 17, 2023, Kasson Township Hall
14. Adjournment

**ATTACHMENT "B" – Zoning Administrator's May 2023 Report**

**Kasson Township  
Zoning Administrator's  
MAY 2023 REPORT**

6/4/2023

To: Kasson Township Board & Planning Commission

From: TIMOTHY A. CUPPER

		YEAR TO DATE 17
Land Use Permits Issued:	7	
Signs / Home Occupation	0	
Single Family Residences (SFR)	3	
Additions to SFR	1	
Garages	0	
Decks & Porches / MISC.	0	
Accessory Buildings	2	
Commercial Construction	1	
Stairs / Landings / Fences	0	
Agriculture construction	0	
Demolitions / Relocating	0	
Boat houses	0	
Solar Panels	0	
Renewal of / Change of use	0	
Z.B.A. proceedings	0	1 INQUIRY
Special Land Use Permits	1 ENCURO TABLED	1 INQUIRY
Land Divisions	0	1 INQUIRY
Property Line Adjustments	0	1 INQUIRY
Private Roads / Driveways	0	0 INQUIRY
Zoning / Site Plan Reviews	0	0 INQUIRY
Construction / Site Inspections	0	
Violations/Investigations	0 **VIOLATIONS**	
	1 INVESTIGATIONS	
	1 JUNK @ RESIDENTIAL LOCATION	
	SHIPPING CONTAINERS BEING PERMITTED	

I also supplied information via 34 phone calls, 23 via internet to Township residents & others

I also attended the PC meeting, staff attended the Township Board meeting.

Please feel free to contact me with any questions.

Phone 231-360-2557

[timj@allpermits.com](mailto:timj@allpermits.com)

## ATTACHMENT "C"

### Zoning Administrator's Monthly Permit Summary (May 2023)

#### KASSON TOWNSHIP ZA'S MONTHLY PERMIT SUMMARY

PERIOD: MAY 2023

DATE	PERMIT #	NAME	USE	RECEIPT CK.#	AMOUNT
5/8/2023	LUP 23-11	WILLIAMS	LAND USE	202311	12934 \$ 75.00
007-600-007-00	8400 S. DUNNS FARM RC	NEW DWELLING ATT. GARAGE TWO DECKS		4,886 S.F.	
5/12/2023	LUP 23-12	KASSON TWP.	LAND USE	202312	1987 \$ 75.00
007-001-016-01	1744 E. DARGA ROAD	COVERED PORCH ADDITION - CONCRETE WALKWAY		806 S.F.	
5/13/2023	LUP 23-13	METEER	LAND USE	202313	156 \$ 75.00
007-022-005-11	847 W. KASSON CENTER	NEW DWELLING & TWO DECKS		2,086 S.F.	
5/13/2023	LUP 23-14	MYERS	LAND USE	202314	1005 \$ 75.00
007-703-002-00	4251 S. DUNNS FARM RC	DWELLING ADDITION - TWO BEDROOMS/BATH		146 S.F.	
5/14/2023	LUP 23-15	DENNETT	LAND USE	202315	2369 \$ 75.00
007-033-001-30	1119 W. TRAVERSE HWY	ACCESSORY BUILDING		266 S.F.	
5/16/2023	LUP 23-16	ROUBAL & NOONAN	LAND USE	202316	13231 \$ 75.00
007-003-023-50	879 W. BURDICKVILLE RI	NEW DWELLING ATT. GARAGE TWO PORCHES		4,896 S.F.	
5/29/2023	LUP 23-17	SPITZNER	LAND USE	202317	7532 \$ 75.00
007-011-007-20	122 STONY RIDGE RD	ACCESSORY BUILDING		3,200 S.F.	

TOTAL \$ 525.00

SIGNED:

*Timothy A. Cypher*

DATE: 6/4/2023

TIMOTHY A. CYPHER  
 KASSON TOWNSHIP ZONING ADMINISTRATOR  
 231-380-2557  
 TIM@ALLPERMITS.COM







# Law Office of Kristyn J. Houle, PLC

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June 11, 2023

Tim Cypher, Kasson Township Zoning Administrator  
Kasson Township  
P.O. Box 62  
Maple City, MI 49664  
*tim@allpermits.com*

Re: Response to Wendling Letter – Enduro Motocross Race

Dear Mr. Cypher:

Please accept this letter as a response to attorney Peter Wendling’s May 25, 2023 letter regarding the “Application for Special Land Use Permit Enduro Motocross Racing.”

In support of his argument that motorcycle racing should be permitted in the forested district, Mr. Wendling quotes the intent of the FR district “to preserve the forest and wood lots, while allowing a wide range of uses in such ways that will not detract from this end.” Section 2.1.A of the Ordinance states that “the headings that title a chapter are not to be considered in interpretation of the ordinance or as enlarging or restricting any of its terms or provisions in any respect.” (Zoning Ordinance Sec. 2.1.A). Therefore, the heading should not be used as a guide to interpret the ordinance.

## **The Special Use Permit Application**

Mr. Wendling states in his letter, “it is a mystery as to why this special land use permit was attempted to be processed under Section 4.7.2’s provision of “other similar agricultural businesses or uses” and/or Section 7.15.” (5/25/23 Wendling letter, p. 1-2). The application was processed under Section 7.15 “Other Special Land Uses” because that is what the applicant requested. The application was signed by Mr. James Schettek and dated 2/18/23. In the application, Mr. Schettek states:

We are requesting a special use permit under the category of Other Special Uses for an Enduro Motorcycle **Event**. For our request, this would be a one day **event** on a Saturday. We would like to hold this event the Sunday of Memorial Day Weekend, May 28, 2023. (see attached SUP application).

At the end of his letter, Mr. Wendling requests that:

the Township allow for the processing of a Special Use Permit on behalf of the applicant James Schettek within the FR district as an Outdoor Recreation Facility pursuant to Sections 4.7.2 Special Land Uses and per the definition of “Outdoor Recreation Establishment” as such a facility includes motocross recreational use and racing. (5/25/23 Wendling letter, p. 2).



If Mr. Wendling is asking that the 2/18/23 application be processed as an Outdoor Recreation Facility, it is my opinion that the answer should be “no” since it was an application for a one-day event to happen on May 28, 2023, and the date for the proposed event has since passed.

**Motocross Racing is Not  
an Outdoor Recreation Facility**

If Mr. Wendling is asking whether the Township would process a *future* Special Use Permit application on behalf of Mr. Schettek for motocross racing under section 4.7.2 “**public or private outdoor recreation or park facilities**” the answer should still be “no.”

“**Outdoor Recreation Establishment**” is defined in the ordinance as:

a facility designed and equipped for the conduct of sports, amusement or leisure time activities and other customary recreational activities outdoors (outside of enclosed buildings) and operated as a business and open for use by the public for a fee such as tennis courts, archery ranges, golf courses, miniature golf courses, golf driving ranges, and children’s amusement parks.” (Kasson Township Zoning Ordinance, p. 18).

“**Public Park or Park**” is defined in the ordinance as:

a playground, recreation center or other public areas, created, established, designated, maintained, provided or set aside by a governmental body, for the purposes of rest, play, recreation, enjoyment or assembly for the public and all buildings, facilities and structures thereon or therein.

The common characteristic of the examples given in these definitions is that the activities are very low-intensity and low-impact. Facilities such as a golf course, tennis court, children’s amusement park, playground or other public areas “for the purposes of rest, play, recreation....” are meant for leisure and gathering, not for potentially dangerous and loud events that last over days and provide for overnight camping. Similar low-intensity outdoor recreation facilities might be a baseball diamond, a basketball court, or a pickle ball court. The definition does not include any high-intensity, high-volume or high-impact events such as an Enduro Motorcycle Event, a Motocross racetrack, Motocross recreational use or Motocross racing. In his letter, Mr. Wendling implies that a children’s amusement park may produce noise akin to Motocross racing. I disagree. The sound of children’s laughter and the operation of kiddie rides will not rise to the level of “a Boeing 737 or DC-9 aircraft at one nautical mile before landing (97 dB), a power mower (96 dB), a motorcycle at 25 feet (90 dB) or a newspaper press at 97 dB” and a person’s hearing will not likely be “damaged after eight hours of exposure” to a children’s amusement park. (See, March 20, 2023 Planning Commission meeting minutes, p.6).

Motocross racing is also not a “customary” recreational activity similar to a tennis court, archery range, golf course or children’s amusement park. Under the North American Industry Classification System (NAICS), “race tracks” are listed as their own industry [Code 711212]

which includes motorcycle race tracks, automobile race tracks, dog racing, drag strips and speedways. These land uses are simply not materially similar to the uses listed under the definitions of park or outdoor recreational establishment, and are therefore, excluded. *Independence Twp v Skibowski*, 136 Mich App 178 (1984).

Further proof of the distinguishing characteristic of motocross racing from an outdoor recreational facility is the description of the proposed use as a “dangerous event” in Mr. Schettek’s 2/18/23 application.

First, the applicant describes the proposed use as a one-day “event” not an outdoor recreational facility. An “event” is temporary, whereas an outdoor recreational facility is permanent. In his application, Mr. Schettek states, “track set up would start 1-2 months prior to the event. Within 1 week of the event finishing, all course marking material will be torn down and discarded.” (See attached application description). Tennis courts, golf courses, parks and playgrounds are not set up and torn down after each use.

Second, the proposed use described in the application is a motorcycle race along with “primitive camping” over a 3-day weekend. The applicant states, “people will start to arrive on Friday afternoon to camp for the weekend.” The definition of an outdoor recreational facility does not include a campground or temporary camping or any other overnight accommodations.

The applicant states, “all people through the front gate will be required to sign a waiver form. Basically [sic] stating they are at a potentially dangerous event and the property owners, event promoters or workers are not held liable.” A “dangerous event” is materially different from an outdoor recreation establishment such as a tennis court, a golf course, miniature golf course or a children’s amusement park. A motorcycle race track is inherently dangerous, requires a waiver form, an EMT to be on site, generates noise in the range of 94db/a to 96 db/a, and where participants bring ear protection equipment with them. (See Minutes of March 20, 2023 Planning Commission meeting, p.6). Comparing this use to a tennis court, a golf course or even a children’s amusement park is apples to oranges.

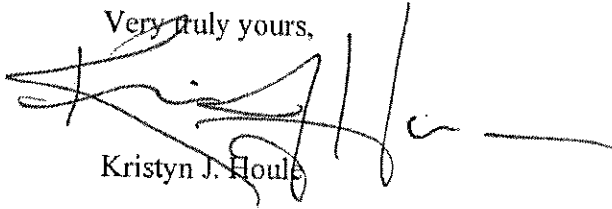
The noise that will be generated from the event alone is enough to distinguish it from the uses listed under the Outdoor Recreation Establishment definition. Patrons of a tennis court, golf course or children’s amusement park do not need to bring their own ear protection equipment because “a person’s hearing will likely be damaged after eight hours of exposure.” (Minutes of March 20, 2023 Planning Commission meeting, p. 6).

This proposed land use is a dangerous high-intensity event that per the Michigan Sprint Enduro website would include motorcycle racers starting at 15 second increments, running the course multiple times at noise ranges up to 96 db/a, [at the recent 10 Pines Farm Michigan Enduro Race Event, 418 riders participated (see attached Facebook Post)], where there would be overnight camping, and an additional 1-2 people per rider on site, amounting to potentially over 800 participants. It is unlikely that a miniature golf course or an archery range would attract such a crowd all at once.

### Conclusion

In conclusion, this proposed use is significantly and materially different than the uses intended as an outdoor recreation facility. For the reasons stated above, I request that you deny Mr. Wendling's request that the Township allow for the processing of a Special Use Permit on behalf of Mr. Schettek within the FR district as an Outdoor Recreation Facility because motocross recreational use and racing is not a use under 4.7.2 "public or private outdoor recreation or park facility."

Very truly yours,

A handwritten signature in black ink, appearing to read "Kristyn J. Houle". The signature is stylized and somewhat cursive, with a long horizontal line extending to the right.

Kristyn J. Houle

**KASSON TOWNSHIP  
PLANNING/ZONING APPLICATION**

- CONCEPTUAL DEVELOPMENT PLAN REVIEW (PLANNED DEVELOPMENT)
- DEVELOPMENT SITE PLAN REVIEW
- SPECIAL USE PERMIT - EARTH REMOVAL, QUARRYING, GRAVEL PROCESSING, MINING OP'S
- SPECIAL USE PERMIT - ALL OTHERS
- SPECIAL USE PERMIT RENEWAL
- REZONING PETITION
- ZONING BOARD OF APPEALS PETITION

In addition to this application form, you must submit one or more addenda, corresponding to the box(es) you checked above.

APPLICANT INFORMATION:

Name(s) James Schell Phone 231-218-7762  
 Street 244 W Kasson Ctr  
 City Maple City State MI Zip 49664  
 Relationship of Applicant to Owner (If different) \_\_\_\_\_

OWNER INFORMATION (IF DIFFERENT FROM APPLICANT):

Name(s) Bill Koshen Phone 231-218-6100  
 Street 1175 E Kasson Rd  
 City Maple City State MI Zip 49664

OTHER CONTACT INFORMATION (IF NECESSARY):

Name(s) Fran Seymour Phone 231-633-1648  
 Street 1145 Hastings St  
 City Traverse City State MI Zip 49686

PROPERTY INFORMATION:

Address or Description Multiple parcels at corner of E Kasson Rd & S Bright  
 Tax Parcel Number See below (Also attach full legal description. A copy of the deed or land contract is acceptable)

Current Zoning:  Ag  Forest  Commercial  Gravel  HD Village  PD  SPD  
 Proposed Zoning:  Ag  Forest  Commercial  Gravel  HD Village  PD  SPD

007-024-001-10  
 007-024-005-00  
 007-044-004-30  
 007-024-004-20  
 007-024-004-00

**KASSON TOWNSHIP  
PLANNING/ZONING APPLICATION**

**ACKNOWLEDGEMENT AND CERTIFICATION:**

It is hereby acknowledged by the undersigned, that all information provided on this application, any addendum, and other supporting documentation is true and correct to the best of my(our) knowledge. In the case of a Zoning Board of Appeals Petition, it is further acknowledged that any approval of the ZBA involving site improvement, use, and/or construction does not relieve the applicant from obtaining other applicable authorizations and permits

**SIGNATURES:**

Applicant(s) or James R. Schell Date 2/18/23  
Authorized \_\_\_\_\_  
Corporate Officer(s) \_\_\_\_\_

Owner(s) or \_\_\_\_\_ Date \_\_\_\_\_  
Authorized \_\_\_\_\_  
Corporate Officer(s) \_\_\_\_\_

**REMINDER: SUBMIT THIS APPLICATION, THE APPROPRIATE ADDENDUM, THE REQUIRED FEE, ALL ATTACHMENTS AND DRAWINGS TO EITHER THE KASSON TOWNSHIP ZONING ADMINISTRATOR OR KASSON TOWNSHIP CLERK (SEE YOUR PARTICULAR ADDENDUM).**

**ZONING ADMINISTRATOR AND CLERK USE ONLY**

Application ID \_\_\_\_\_  
Date and Time of Application Receipt \_\_\_\_\_ Received By \_\_\_\_\_  
Date Fee Received \_\_\_\_\_ Amount Received \_\_\_\_\_  
Date of Letter of Credit Received \_\_\_\_\_ Letter of Credit Amt \_\_\_\_\_  
Date of Letter of Credit Expiration \_\_\_\_\_

## **Michigan Sprint Enduro Event Information.**

**We are requesting a special use permit, under the category of Other Special Uses for an Enduro Motorcycle event. An enduro event involves motorbikes traversing a course through woods and hills in a timed event. These events are held all over Michigan, and the United States, every week.**

**For our request, this would be a one day event on a Saturday. Some participants may show up the evening prior. We would like to hold this event the Sunday of Memorial Day Weekend, May 28, 2023.**

**Here are some bullet point items of information:**

**-Roughly 100-200 riders will come in for the event.**

**-Typical average people in addition to the rider count is 1 to every 2 riders. 50-100 additional people.**

**-All people through the front 'gate' will be required to sign a waiver form. Basically stating they are at a potentially dangerous event and the property owners, Event promoters or workers are not held liable. They are agreeing to those terms. An insurance policy directly for that event is bought and paid for.**

**-The entire event is held outside. People will have their own vehicles and some may have campers for primitive camping on our site.**

**-It is up to the property owners/township if campfires are allowed.**

-People coming into the event will spend a large amount of money collectively at nearby grocery stores, gas stations, restaurants, hotels, etc.

-Very family oriented. This is not a Sturgis Bike Week crowd. Most people coming to the event come with moms, dads, brothers, and sisters. Most families get together for potluck and socializing at the event. The people part of the series are some of the most appreciative and respectable people you will meet.

-People will start to arrive on Friday afternoon to camp for the weekend. Some people will walk or bicycle the course on Friday. But other than track workers, there will be no riding motorcycles on Friday or Saturday.

-Racing will take place on Sunday only. Racing starts at 8:30am and will conclude before 5pm.

-All racing is closed course and on private property. No riding on the road will be permitted.

-Everyone will be leaving on Sunday late afternoon.

-An Ambulance or EMT is required to be on site. The event promoters arrange for this.

-Portable outhouses will be provided on site.

-Insurance for the event is provided by the promoters through the AMA (American Motorcyclist Association)

-Track set up would start 1-2 months prior to the event. Most track work is done on foot with an atv following to carry equipment such as

arrows, staples, track tape, wooden stakes, etc. This is a natural trail, no earth work or tree removal is needed. The idea is to use the characteristics of the natural land.

-Within 1 week of the event finishing, all course marking material will be torn down and discarded.

-Information regarding the event can be found on [michigansprintenduro.com](http://michigansprintenduro.com)

-Noise Requirements for the bikes. Per AMA Rules 2 Strokes must be 96db/A or under and 4 strokes must be 94db/a or under



7:51



facebook

Log in



Michigan Sprint Enduros

5d · 🌐

Wow what a day today. The @10pinesranch did an incredible job today. Course was fantastic despite the rain. We set an all time MSE record at 418 riders. @tsoenksen118 set the fastest time followed by @bodemey1an and brother @chrmeylan. Thank you to all that can't out.



👤 Matthew Brooks and 260 others

👍 261

💬 16

➦ 18

Connect with Michigan Sprint Enduros on Facebook

Log in

or

Create new account

🌐 facebook.com

**KASSON TOWNSHIP PLANNING COMMISSION  
REGULAR MEETING  
Monday, March 20, 2023; 7:00 pm  
Kasson Township Hall  
10988 S. Newman Road, Maple City, MI 49664  
MINUTES**

I. Call Meeting to Order/Pledge of Allegiance

Chairman Carter called the meeting to order at 7:00 pm with the Pledge of Allegiance.

II. Roll Call of Commissioners and Staff

- A. Present: Tad Carter, Township Board Rep; Mike Lanham, Commissioner; Chuck Schaeffer, Secretary; Dave Noonan, Commissioner
- B. Excused: Jerry Roush, Chairman
- C. Staff: Tim Cypher, Zoning Administrator (attended virtually); Allison Hubley-Patterson, Recording Secretary
- D. Visitors present: In total, there was 11 members of the public present at various times during the meeting.

\*Due to the absence of Chairman Roush, Carter served as Acting Chair for this meeting.

III. Consideration of Agenda (Attachment "A")

Chairman Carter asked for a motion to approve the agenda as presented.  
**LANHAM MOVED TO APPROVE THE AGENDA AS PRESENTED;  
NOONAN SECONDED. ALL PRESENT IN FAVOR, MOTION CARRIED.**

IV. Declaration of Conflicts of Interest – none reported at this time.

V. Public Comment - none

VI. Approval of Minutes – **Special Meeting** – January 16, 2023

**CHAIRMAN CARTER MOVED TO APPROVE THE MINUTES OF THE  
JANUARY 16, 2023 SPECIAL MEETING AS PRESENTED; NOONAN  
SECONDED. MOTION CARRIED.** Lanham abstained as he was not yet a member of the Planning Commission on January 16, 2023.

VII. Approval of Minutes – **Regular Meeting** – January 16, 2023

Chairman Carter asked for a motion to approve the minutes of the January 16, 2023 Regular Meeting as presented. **NOONAN MOVED TO APPROVE THE MINUTES OF THE JANUARY 16, 2023 REGULAR MEETING AS PRESENTED; SCHAEFFER SECONDED. MOTION CARRIED.** Lanham abstained as he was not yet a member of the Planning Commission on January 16, 2023.

VIII. Correspondence Received - none

IX. Area Reports

A. Chairperson – Commissioner Roush – absent – no report

B. Secretary – Commissioner Schaeffer

Schaeffer clarified that he will remain as a member of the Planning Commission until the Master Plan has been completed in its entirety. This includes making sure that the Plan has been published and that all necessary documentation has been placed in the file.

C. Township Board – Commissioner Carter – no report

D. Zoning Board of Appeals – Commissioner Noonan – no report

E. Zoning Administrator's Report – Zoning Administrator Cypher

Cypher reported that he issued one land use permit in February for a dwelling addition; fees collected totaled \$75.00. There were three construction/site inspections for the month. Cypher continues to investigate junk that is accumulating at a residential location across from Habitat for Humanity. In total 27 telephone calls were returned and 13 responses were provided via the Internet. He attended the Kasson Township Board Meeting on February 15, 2023.

Cypher was unable to attend the Kasson Township Annual Meeting but provided a report in advance. He shared the following information from the Annual Report: During the year, 45 land use permits were issued which was an increase from 32 that were issued in the previous year. Of these, 13 were for single family residences (SFRs), six additions, two garages, four decks/porches, 11 accessory buildings, two commercial permits, four for agriculture construction, three solar panels and ten renewal/change of use permits. There was one ZBA hearing for Elmers but the ZBA hearing for Lively was cancelled. There were five special land use permits, which included gravel pit renewals, Lively Holdings and Tom Krause (storage units).

There were two zoning amendments regarding municipal buildings and commercial mixed-use, nine land divisions and one property line adjustment. There was one site plan review and Cypher completed a total of 88 construction inspections. Two violations were noted but these have both been resolved. Two investigations for Krull's Composting and junk that is accumulating at a residential location are ongoing. Total fees for the year amounted to \$9,190.00. Cypher supplied information via 397 telephone calls and 294 responses via the Internet.

X. Old Business

A. Master Plan – Status update

Cypher and Hubley-Patterson are currently working on the Master Plan and intend to distribute the latest version of the document to all PC members and Township Board members by the end this week.

XI. New Business

A. Enduro Motorcycle Race – Application for Special Use

Fran Seymour and James Schettek presented their plans for an Enduro Motorcycle Race to be held over Memorial Day weekend of 2024. If the first event is successful, they may wish to have more events over the next couple of years. Mr. Seymour will send video clips of prior races for PC members to view.

Mr. Schettek stated that there are currently no locations in northern Michigan so racers and their families must travel down state for events. The event will be family-friendly and is multi-generational; all ages are attracted to this type of event.

There will be a single track through the woods that is handlebar width. The goal of the group is to show their support for both veterans and farmers; Mr. Schettek indicated that many of these types of events are held on farm property.

Mr. Seymour stated that they anticipate that approximately 100 to 200 people will turn out for the event. Most people will arrive on Friday night and will have a camper or will plan to stay at a local hotel. Saturday is used for walking the course and the race takes place on Sunday; by Sunday evening, all participants will have left the premises. No riding is permitted on either Friday or Saturday. There will be very little change in the land with regard to tree cutting.

The applicants have already spoken to Cedar Area Fire and Rescue. They will make arrangements to rent portable toilets and are considering having one or more food trucks on site.

Noonan asked about the hours for the race on Sunday. The race will begin at approximately 8:30 a.m. and will be finished between 4:30 p.m. and 5:00 p.m.

Carter inquired as to how many residences would be affected by the race. Mr. Schettek replied that it would affect approximately 12 local residences. Mr. Bob Needham was present and stated that his house is the closest to where the event will be held. He added that the track will be approximately 100 to 150 yards from his house. Mr. Seymour noted that the bikes are limited to a certain decibel level depending on the style of bike; the bike is not permitted to exceed certain limits. He stated that bikers have ridden on this path for many years but there have probably not been more than 15 to 20 riders up to this point.

Schaeffer asked if there would be a main entrance for the public and added that this would help with staging the event location. Schaeffer also inquired about potable water. Mr. Seymour replied that since many people will be bringing their camper, they will have their own water source. They would be happy to provide water but stated that it may not be needed; campers will come with their own supplies and this is similar to "rustic camping".

Schaeffer asked if the applicants have spoken to the Department of Natural Resources (DNR) regarding permits for the campground. This has not been done. Cypher informed the applicants that they should speak to the DNR as anything over five campers is regulated. He stated that it would be a good idea to "check the box" by following up on this matter. Although this event will be held on private land, Schaeffer noted that the PC previously dealt with a request for a campground that was also on private land. Cypher suggested that Mr. Seymour inform the DNR that the event will involve two nights.

Lanham inquired as to how many people from the general public can be expected to attend. Mr. Schettek replied that, typically, not many people from the public attend as the event normally only attracts racers and their families.

A member of the public stated that he resides in the Fife Lake area and is affiliated with District 14 of the American Motorcycle Association. An event was recently held in Mancelona and there was a great turnout. The Mancelona City Council received very positive feedback from residents and business owners regarding the event. The event was so successful that Pure Michigan will be featuring the event in an upcoming advertisement. He added that a race that is held up north will draw people to the area. People who participate in these events tend to be very responsible and he assured the PC that the site will be left clean once the event concludes.

Schaeffer asked where in Michigan do most of the people attending these events come from. The applicants replied that they typically reside in the center of the state. Schaeffer inquired if there is any other suitable location; Mr. Schettek responded that there are very few locations that would be appropriate for this event. Schaeffer also suggested that the applicants contact the Leelanau County Sheriff's Office and added that someone from the Sheriff's Office may be willing to make a statement at the upcoming Public Hearing.

Lanham asked if all events associated with the race will be contained to the property that will be used for the race. Mr. Seymour replied that this is correct. The comment was made that passersby will most likely not even see the campers from the road.

Mr. Justin Ray is with the Twin Bay Trail Riders. He stated that he grew up racing and discussed the checklist that is used to ensure that everything has been taken care of prior to the race. This includes obtaining insurance, arranging for EMS, renting portable toilets, etc.

Schaeffer asked if the group is a 501c3 and the response was "Yes". He informed the applicants that he knows a group of volunteers that may be able to help with the event if they have 501c3 status.

Cypher inquired as to how many food trucks would be on the premises as approval will be needed from the Health Department. Mr. Seymour replied that there would be two food trucks maximum. He asked Cypher if the local food trucks have already been approved by the Health Department in advance to participate in such events but Cypher responded that this is not always the case.

Cypher encouraged the applicants to think about the future. If the inaugural event is successful, they may want to hold future events but they should get their ducks in a row now in order to successfully hold additional races going forward.

Cypher asked how many campsites there would be. Mr. Seymour replied that there would be 50 to 100 campsites in total. Cypher also inquired about a back-up plan should there be torrential rains throughout the weekend. He asked if emergency vehicles would easily be able to get into the property. Mr. Seymour replied, "Yes".

Cypher asked the applicants to add Kasson Township as an additional named insured on the insurance certificate. Mr. Seymour stated that he would take care of this. Cypher also commented that the Fire Chief is very specific when

it comes to campfires; he asked the applicants to work out these details in advance of the Public Hearing.

Cypher also requested that the applicants discuss the event with Mr. Matt Ansonge, Emergency Management Director for Leelanau County. He stated that, with this number of people attending the event, there should be an emergency plan developed beforehand.

Cypher asked about the noise level on Friday night and throughout the day on Saturday as riders are preparing their bikes. Mr. Seymour replied that there could potentially be noise at these times. It was noted that typically "quiet time" is observed after 9:00 p.m. at these events. The applicants shared that the campsite will also be positioned in the center of the property so as to help diffuse the noise. Cypher also requested that portable toilets be positioned strategically throughout the property and on the course in case they are needed.

Cypher addressed the noise that will be generated by the bikes and stated that he pulled together some information regarding comparable examples of noise levels. The noise generated from the bikes will be comparable to a Boeing 737 or DC-9 aircraft at one nautical mile before landing (97 dB), a power mower (96 dB), a motorcycle at 25 feet (90 dB) or a newspaper press at 97 dB. A person's hearing will likely be damaged after eight hours of exposure.

Cypher noted that typically 300-foot letters are sent out to adjacent property owners. He suggested that the PC consider expanding this distance to notify property owners who are further away from the parcels so that they are aware of the event. He added that it may be beneficial to distribute inexpensive earplugs to people as they enter the area; it is understood that the racers will have their own ear protection equipment.

Chairman Carter asked if a motion is needed this evening. Cypher reviewed the process going forward and stated that the PC could vote to set the Public Hearing for the next meeting. He added that the application is complete except for a few details that should be finalized by the applicants prior to the Public Hearing.

Chairman Carter asked for a motion for staff to send out letters to property owners who are within 1,000 feet of the parcels where the Enduro Motorcycle Race will be held. **NOONAN MOVED FOR STAFF TO SEND OUT LETTERS TO PROPERTY OWNERS WHO ARE WITHIN 1,000 FEET OF THE PARCELS WHERE THE ENDURO MOTORCYCLE RACE WILL BE HELD; LANHAM SECONDED. ALL PRESENT IN FAVOR, MOTION CARRIED.**

Chairman Carter asked for a motion to set the Public Hearing for Monday, April 17, 2023 at 6:00 p.m. in the matter of the Enduro Motorcycle Race Application for Special Use. **NOONAN MOVED TO SET THE PUBLIC HEARING FOR MONDAY, APRIL 17, 2023 AT 6:00 P.M. IN THE MATTER OF THE ENDURO MOTORCYCLE RACE APPLICATION FOR SPECIAL USE; SCHAEFFER SECONDED. ALL PRESENT IN FAVOR, MOTION CARRIED.**

- XII. Public Comment - none
- XIII. Comments from the Commissioners – none
- XIV. Next Meeting - Monday, April 17, 2023 at 6:00 p.m. The Public Hearing will commence promptly at 6:00 p.m. followed by the Regular Meeting of the PC.
- XV. Adjournment

Chairman Carter asked for a motion to adjourn the meeting. **NOONAN MOVED TO ADJOURN THE MEETING; LANHAM SECONDED. ALL PRESENT IN FAVOR, MOTION CARRIED.**

The meeting was adjourned at 7:58 pm.

Respectfully submitted,

Allison Hubley-Patterson  
Recording Secretary



tabbles®  
EXHIBIT  
10

## Tom Grier

---

**From:** Tim <tim@allpermits.com>  
**Sent:** Friday, June 23, 2023 10:08 PM  
**To:** Tom Grier  
**Subject:** FW: Application for special use  
**Attachments:** Special Use Permit App 2-23-23.pdf; Enduro Permit App Comments Revised 6-23-23.docx

FYI

---

**From:** <fran@dwcupnorth.com>  
**Date:** Friday, June 23, 2023 at 5:29 PM  
**To:** Tim Cypher <tim@allpermits.com>  
**Cc:** 'James Schettek' <james@dwcupnorth.com>, 'Thomas Alward' <talward@nmichlaw.com>, 'Peter Wendling' <wendling@upnorthlaw.com>  
**Subject:** FW: Application for special use

Tim,

Hope you're doing well and enjoying summer. I'm forwarding our original email with application for special use attached, along with an updated Comment sheet. We'd like to amend the application to bring it current, but not sure how exactly I do that. Here are my questions:

1. On the application I did not have to specify the ordinance information we were applying under. Should we continue under the current ordinance, or the one our attorney mentioned? I know Peter Wendling sent a letter to Tom Grier about his opinion that we should be allowed under a different ordinance. Has there been a determination on that letter yet? I heard that Mr Grier needs another few weeks just to review the letter? Seems like a lot of time. Any insight you can provide would be helpful.
2. We would also like to amend the application to request four events per year, at dates to be determined. This should replace our original plan to hold an event this past Memorial Day.
3. Finally, I noticed on the original application I checked the box for Ag Zoning, when in fact it's Forestry. We'd like to amend that as well.
4. We are formally requesting to "un-table" our application and move forward with the special use permit process as soon as possible.

Look forward to discussing with you soon. Please let me know if you need any information from me or James.

Thanks,

**Fran Seymour**  
General Manager  
David Webster Construction, Inc.  
231-633-1648  
[www.davidwebsterconstruction.com](http://www.davidwebsterconstruction.com)

---

**From:** fran@dwcupnorth.com <fran@dwcupnorth.com>  
**Sent:** Thursday, February 23, 2023 4:05 PM

**To:** 'Tim' <tim@allpermits.com>  
**Subject:** Application for special use

Tim,

Wanted to at least get you some info on the event James wants to have so we can get on the schedule for the March meeting. Take a look and let me know if this works for the application. I plan on providing more detailed information at the meeting, but wanted to get the basics and the application in front of you.

Thanks,

**Fran Seymour**  
General Manager  
David Webster Construction, Inc.  
231-633-1648  
[www.davidwebsterconstruction.com](http://www.davidwebsterconstruction.com)

**KASSON TOWNSHIP  
PLANNING/ZONING APPLICATION**

- CONCEPTUAL DEVELOPMENT PLAN REVIEW (PLANNED DEVELOPMENT)
- DEVELOPMENT SITE PLAN REVIEW
- SPECIAL USE PERMIT - EARTH REMOVAL, QUARRYING, GRAVEL PROCESSING, MINING OP'S
- SPECIAL USE PERMIT - ALL OTHERS
- SPECIAL USE PERMIT RENEWAL
- REZONING PETITION
- ZONING BOARD OF APPEALS PETITION

In addition to this application form, you must submit one or more addenda, corresponding to the box(es) you checked above.

APPLICANT INFORMATION:

Name(s) James Schellke Phone 231-218-7762  
 Street 244 W Kasson Ctr  
 City Maple City State MI Zip 49664  
 Relationship of Applicant to Owner (if different) \_\_\_\_\_

OWNER INFORMATION (IF DIFFERENT FROM APPLICANT):

Name(s) Bill Kamber Phone 231-218-6100  
 Street 1175 E Kasson Rd  
 City Maple City State MI Zip 49664

OTHER CONTACT INFORMATION (IF NECESSARY):

Name(s) Fran Seymour Phone 231-633-1648  
 Street 1145 Hastings St  
 City Traverse City State MI Zip 49686

PROPERTY INFORMATION:

Address or Description Multiple parcels at corner of E Kasson Rd & S Bright  
 Tax Parcel Number See below (Also attach full legal description. A copy of the deed or land contract is acceptable)

Current Zoning:  Ag  Forest  Commercial  Gravel  HD Village  PD  SPD  
 Proposed Zoning:  Ag  Forest  Commercial  Gravel  HD Village  PD  SPD

007-024-001-10  
 007-024-005-00  
 007-024-004-30  
 007-024-004-20  
 007-024-004-00

**KASSON TOWNSHIP  
PLANNING/ZONING APPLICATION**

**ACKNOWLEDGEMENT AND CERTIFICATION:**

It is hereby acknowledged by the undersigned, that all information provided on this application, any addendum, and other supporting documentation is true and correct to the best of my(our) knowledge. In the case of a Zoning Board of Appeals Petition, it is further acknowledged that any approval of the ZBA involving site improvement, use, and/or construction does not relieve the applicant from obtaining other applicable authorizations and permits

**SIGNATURES:**

Applicant(s) or James R. Schaefer Date 2/18/23  
Authorized \_\_\_\_\_  
Corporate Officer(s) \_\_\_\_\_

Owner(s) or \_\_\_\_\_ Date \_\_\_\_\_  
Authorized \_\_\_\_\_  
Corporate Officer(s) \_\_\_\_\_

**REMINDER: SUBMIT THIS APPLICATION, THE APPROPRIATE ADDENDUM, THE REQUIRED FEE, ALL ATTACHMENTS AND DRAWINGS TO EITHER THE KASSON TOWNSHIP ZONING ADMINISTRATOR OR KASSON TOWNSHIP CLERK (SEE YOUR PARTICULAR ADDENDUM).**

**ZONING ADMINISTRATOR AND CLERK USE ONLY**

Application ID \_\_\_\_\_  
Date and Time of Application Receipt \_\_\_\_\_ Received By \_\_\_\_\_  
Date Fee Received \_\_\_\_\_ Amount Received \_\_\_\_\_  
Date of Letter of Credit Received \_\_\_\_\_ Letter of Credit Amt \_\_\_\_\_  
Date of Letter of Credit Expiration \_\_\_\_\_

## **Michigan Sprint Enduro Event Information.**

We are requesting a special use permit, under the category of Other Special Uses for an Enduro Motorcycle event. An enduro event involves motorbikes traversing a course through woods and hills in a timed event. These events are held all over Michigan, and the United States, every week.

**We are amending our original request and would now like to hold four events per year. Each event involves a one-day race on a Sunday, with some participants arriving on Saturday. Our dates will be determined in the future.**

Here are some bullet point items of information:

-Roughly 100-200 riders will come in for the event. **Due to the publicity this event has received, this number may increase.**

-Typical average people in addition to the rider count is 1 to every 2 riders. 50-100 additional people.

-All people through the front 'gate' will be required to sign a waiver form. Basically stating they are at a potentially dangerous event and the property owners, Event promoters or workers are not held liable. They are agreeing to those terms. An insurance policy directly for that event is bought and paid for.

-The entire event is held outside. People will have their own vehicles and some may have campers for primitive camping on our site.

-It is up to the property owners/township if campfires are allowed.

-People coming into the event will spend a large amount of money collectively at nearby grocery stores, gas stations, restaurants, hotels, etc.

-Very family oriented. This is not a Sturgis Bike Week crowd. Most people coming to the event come with moms, dads, brothers, and sisters. Most families get together for potluck and socializing at the event. The people part of the series are some of the most appreciative and respectable people you will meet.

-People will start to arrive on Saturday. Some people will walk or bicycle the course. But other than track workers, there will be no riding motorcycles except on Sunday.

-Racing will take place on Sunday only. Racing starts at 8:30am and will conclude before 5pm.

-All racing is closed course and on private property. No riding on the road will be permitted.

-Everyone will be leaving on Sunday late afternoon.

-An Ambulance or EMT is required to be on site. The event promoters arrange for this.

-Portable outhouses will be provided on site.

-Insurance for the event is provided by the promoters through the AMA (American Motorcyclist Association)

-Track set up would start 1-2 months prior to the event. Most track work is done on foot with an atv following to carry equipment such as arrows, staples, track tape, wooden stakes, etc. This is a natural trail,

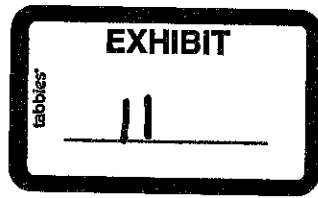
no earth work or tree removal is needed. The idea is to use the characteristics of the natural land.

-Within 1 week of the event finishing, all course marking material will be torn down and discarded.

-Information regarding the event can be found on [michigansprintenduro.com](http://michigansprintenduro.com)

-Noise Requirements for the bikes. Per AMA Rules 2 Strokes must be 96db/A or under and 4 strokes must be 94db/a or under





## Tom Grier

---

**From:** Tim <tim@allpermits.com>  
**Sent:** Monday, July 10, 2023 2:48 PM  
**To:** Tom Grier  
**Subject:** FW: ZA Determination and response to applicant's May 25th, 2023 letter  
**Attachments:** July 7 2023 Letter to Tim Cypher.pdf; Exhibits to July 7, 2023 Letter to Tim Cypher.pdf; Peter Wendling Letter.pdf; 6-9-23 ltr to Cypher .pdf; SUP Application.pdf; Enduro Race Post.pdf; 3-20-23 PC Minutes.pdf

**Importance:** High

On 7/7/23, 4:25 PM, "Tim" <tim@allpermits.com <mailto:tim@allpermits.com>> wrote:

Fran & Peter

Please find attached a letter and exhibits from the township's legal counsel Tom Grier. I had asked Mr. Grier to opine on your letter dated 5/25/23 ( attached) and as part of that opinion, review correspondence received from Ms. Kristyn Houle dated 6/12/23 (also attached with exhibits).

Upon receipt of Mr. Grier's opinion and further reviewing of the relevant documentation, I whole heartly agree with Mr. Grier's position. I further state for the record that the definition of the term "outdoor recreation establishment" used in the Kasson Township zoning ordinance is constrained by the examples used in the ordinance. Other activities are permitted but they must be of like character to the examples provided.

Therefore, the Township will not allow for the processing of a Special Use Permit application on behalf of the applicant James Schettek within the Forested zoning district as an Outdoor Recreation Facility pursuant to Section 4.7.2 Special Land Use and the ZA's determination of the definition of the "Outdoor Recreation Establishment".

If you have any questions, please let me know.  
Respectfully,  
Tim

Timothy A Cypher  
Cypher Group Inc.  
Centerville, Empire, Kasson, Glen Arbor, Leland & Solon Zoning/Planning Office  
231-360-2557  
tim@allpermits.com <mailto:tim@allpermits.com>



THE  
RUNNING WISE  
LAW FIRM

FORD • CONLON • GERBERDING • GRIER

Kent E. Gerberding  
Michael I. Conlon  
Catherine D. Jasinski  
Thomas A. Grier  
Julie A. Gillum  
Jeffrey R. Wingfield  
Thomas J. Waters

July 7, 2023

Tim Cypher  
Zoning Administrator  
Kasson Township  
P.O. Box 62  
Maple City, MI 49664

Of Counsel:  
Richard W. Ford  
John W. Kline

RE: Michigan Spirit Enduro Event Information

Dear Tim:

**Background**

**A. Prior Consideration of Section 7.15 of the Zoning Ordinance**

This letter is in follow up to my prior letter, dated May 5, 2023, concerning the Michigan Spirit Enduro Event ("Enduro"). As you may recall, that prior letter pertained to the application of Section 7.15 of the Kasson Township Zoning Ordinance ("ZO") to the Enduro application.

Harry T. Running  
(1911 – 1992)  
William L. Wise  
(1928 – 2014)  
Miles C. Gerberding  
(1930 – 2015)

The application proposed a large-scale youth motorcycle "dirt bike" race event on 304 acres of property (made up of several parcels). Because that use was not specifically identified as one of the available special land uses (SUPs") within the Forested zoning district, ZO Section 7.15 was applied because it allows the Planning Commission (or "PC") to consider "land and structural uses that are not specified in any other section of this Ordinance".

Traverse City  
1501 Cass Street, Suite D  
PO Box 686  
Traverse City, MI  
49685-0686  
Ph. 231.946.2700  
Fax. 231.946.0857

The use of ZO Section 7.15 was challenged, however, by attorney Kristyn Houle who represents the Kasson Township Neighborhood Association ("KTNA"), a citizens group opposed to the application. Concurrently, concerns about ZO Section 7.15 were also raised by the staff attorney for the Michigan Townships Association, Catherine Mullhaupt, when I discussed ZO Section 7.15 with her. Both Ms. Houle

and the MTA's Catherine Mullhaupt expressed concern that ZO Section 7.15 was unlawful because it allowed the PC unrestricted discretion to approve certain land uses as SUPs in the Forested District even though the land uses are not specifically identified as allowable SUPs there. These concerns were centered around the Court of Appeals' ("COA") Opinion, *Whitman v. Galien Township*, 288 Mich App 672. I later opined in my letter that ZO Section 7.15 should not be applied.

**B. ZO Section 4.7.2 Allowing "Public or Private Outdoor Recreation or Park Facilities as a Special Land Use"**

The Forested District under ZO Section 4.7.2 allows "Public or private outdoor recreation or park facilities" as a special land use.

ZO Section 2.2 defines an Outdoor Recreation Establishment as:

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

In a letter, dated May 25, 2023, attorney Peter Wendling, retained on behalf of the applicants, opined that the Enduro motorcycle race application can now be considered under the foregoing sections of the Zoning Ordinance rather than under ZO Section 7.15. Mr. Wendling's letter is attached as **Exhibit A**. Mr. Wendling stated:

Clearly, motorcross racing is a type of sport as well as a leisure time activity for trail riding. The operation of recreational motorcross bikes or racing the same could easily be added as an example of an "Outdoor Recreational Establishment" given that the examples provided are not exclusive uses but examples of what can constitute an Outdoor Recreation Facility.

Ms. Houle received the Wendling letter as part of her ongoing Freedom of Information Act request. She responded with her own letter, dated June 11, 2023, attached as **Exhibit B**.

Ms. Houle disagreed with Mr. Wendling's evaluation. She responded that the motorcycle racing on large acreage is much more of a high intensity event than the uses included within an Outdoor Recreation Establishment. She focused particularly on the amount of noise generated, including

reference to the 96 decibel (dB) and 94 dB levels of the motorcycles cited in Enduro's original application of February 18, 2023, **Exhibit C**. These noise issues were also discussed in your comments reflected in the minutes of the PC meeting on March 20, 2023, **Exhibit D**.

Ms. Houle further cited the definition of Public Park or Park in ZO Section 2.2 (a subset of Outdoor Recreation Establishment) which means:

a playground, recreation center or other public areas, created, established, designated, maintained, provided or set aside by a governmental body, for the purposes of rest, play, recreation, enjoyment or assembly for the public and all buildings, facilities and structures located thereon or there.

Mr. Wendling argues that a motorcycle "dirt bike" event is not all that different from a children's amusement park.

Ms. Houle strongly disagrees and states that: "Facilities such as a golf course, tennis court, children's amusement park, playground or other public areas 'for the purposes of rest, play recreation . . . ' are meant for leisure and gathering, not for potentially loud events that last over days. ."

Ms. Houle further disagrees that the noise level of a children's amusement park is comparable to the 96 dB and 94 dB sound levels at the motorcycle event.

### **Issue for Review**

It is my understanding that you have asked me to review the issue discussed in Peter Wendling's letter of May 25, 2023 and Ms. Houle's response letter, dated June 11, 2023.

This matter can be framed this way:

Can a large-scale motorcycle "dirt bike" race event constitute a "Public or private outdoor recreation or park facility" as a special land use in the Forested zoning district under ZO Section 4.7.2, particularly in the context of the definitions of Outdoor Recreational Establishment and of Public Park or Park as contained within ZO Section 2.2?

### **Discussion**

To begin the analysis, I have reviewed some of the general provisions of the Zoning Ordinance.

These include ZO Section 1.2 titled Purpose of the Ordinance

The objectives of the Kasson Township Ordinance are:

A. To promote the public health, safety, and general welfare;

B. To ensure that land uses shall be in appropriate locations and in proper relationships with other uses;

F. To eliminate the improper use of land;

ZO Section 2.1 Rules Applying to text:

I. The particular shall control the general.

J. Terms not herein defined shall have common, customary meanings.

The ZO Section 2.2 definition of Outdoor Recreational Establishment includes: "tennis courts, archery ranges, golf courses, miniature golf courses, golf driving ranges, and children's amusement parks".

The ZO Section 2.2 definition of Public Park or Park includes: "playground, recreation center . . . created for the purposes of rest, play, recreation, enjoyment or assembly for the public and all buildings, facilities and structures located thereon . . ."

The question to be explored is whether a motorcycle "dirt bike" race event with over 100 bikes racing in "heats" on 304 acres of property is similar enough, or comparable enough, to the other identified uses above to show the intention of the zoning in the Forested District to include it as an available special use.

In my view, the most salient comparison is whether a motorcycle race event will have *comparable impacts or externalities* on surrounding properties as the other identified uses. It is worth a reminder that special uses are distinct from permitted uses because the use is perceived to pose some degree of risk to neighboring properties without the application of standards of approval, and the possible application of reasonable conditions. If handled improperly, special uses can devolve into possible "spot zones".

In this context, the most distinguishing feature of such a motorcycle event is the amount of *noise* that may be produced and its impact on neighboring properties. I am going to repeat some of the discussion in my May 5, 2023 letter about noise associated with the motorcycle event.

### **Chris Grobbel Report and EPA Noise Study**

In the KTNA first correspondence, when ZO Section 7.15 was at issue, the KTNA submitted a report by an environmental consultant, Chris Grobbel. The potential noise and sound impact of the Event on neighboring properties was one strong focal point of the Report. In my May 5 letter, I also discussed my own experience with noise measurements involving land use.

At the outset, Mr. Grobbel's report, page 3, **Exhibit E**, identified that there are eight residential properties adjacent to the Event site and another 40 or so residences located within one quarter mile. The Enduro applicant James Schettek mentioned that 12 residents could be impacted in the March 20, 2023 PC Minutes, **Exhibit C**.

The applicant has indicated that each motor bike will produce a sound level of 94 dB to 96dB and that up to 200 motorbike riders may participate.<sup>1</sup> The bikes will likely compete in "heat-like" events with multiple bikes riding at one time. This would mean that the 94 dB to 96 dB sound level of one motor bike will be multiplied. The riding will occur on trails throughout the 304-acre site. The racing will occur during one full day. This calls into question how the sound level will impact the surrounding residential properties.

KTNA also attached the March 1974 US E.P.A. Environmental Report ("EPA Report"). I am previously familiar with this EPA Report. It was brought to my attention years ago by the Kolano and Saha ("K&H") sound engineering firm in Waterford, Michigan in connection with noise regulation issues both for Kasson Township (in the Deering matter) and also for other municipal and private client land use matters.

A key finding within the EPA Report, page D-59, calls for **55 decibel ("dB")** as "the outdoor level in residential areas compatible with the protection of public health and welfare". See excerpts from the EPA Report, **Exhibit F**. The 55 dB level has been used as a benchmark in many applications. For example, one of Michigan's most prominent land use planners, Mark Wykoff, used the 55 dB level as the standard for many zoning ordinances in northern Michigan that Mr. Wykoff helped to draft – that pertain to gravel mining and other outdoor uses. When working with K&H's Darren Brown on

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<sup>1</sup> Enduro has standardized entrance fees for the participants.



the Deering matter, Mr. Brown used the 55 dB level as the standard to determine the height and location of berms and setbacks on the Deering property to alleviate the noise problems that had been experienced by the residential neighborhood to the north. I have observed the 55 dB standard applied to other case circumstances.

There are a couple of other key points from the EPA Report: An increase of 10 dB doubles the sound level. Accordingly, an increase from 55 dB to 65 dB will be *twice* as loud. Correspondingly, surveys within the EPA Report show increasing levels of community annoyance above 60-65 dB with severe annoyance above 75 -80 dB. See Report excerpts, **Exhibit F**.

By comparison, the motorbike Event applicant has acknowledged sound levels averaging 95 dB for *one* bike. Multiplying the number of bikes racing in "heats" at one time would presumably increase the 95 dB level substantially. In summary, the Event sound level would be at least twice the "severe annoyance" level at 75 – 80 dB cited in the EPA Report and could be many times louder. And 95 dB is *eight times* louder than the 55 dB level recommended by the US EPA.

Prior to the March 20, 2023 PC meeting, you had mentioned your own research on this question that compared the 95 dB sound level to the sound of an approaching jet aircraft and that hearing damage was possible after eight continuous hours of the sound.

## Summary and Conclusion

Common experience shows that none of the identified uses -tennis courts, archery ranges, golf courses, miniature golf courses, golf driving ranges, and children's amusement parks, playgrounds, or recreation centers would produce the sound levels associated with the motorcycle race events. In particular, the presence of the adjective "children's" in front of "amusement parks" shows an intention that large-scale noisier "adult" amusement parks were not included in the available special uses.

When considering the rezoning of property to a different use, *the effect of the rezoning on surrounding properties* is an appropriate consideration. See Michigan Zoning, Planning and Land Use, Section 3.21, March 2010 Update.

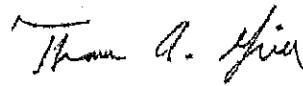
By analogy, the same concern can be one focus of whether or not a proposed use was intended to be included as a possible special land use in the Forested zoning district. Here, because of the noise associated with the motorcycle event, it would likely harm neighboring properties in a material way that the other uses – i.e. tennis courts, golf courses, even children's amusement parks, would not.

Letter to Tim Cypher  
July 7, 2023  
Page 7 of 7

For that reason, the motorcycle event is not comparable to the other uses identified in the definitions applicable to "Public or private outdoor recreation or park facilities" and should not be a basis to process the Enduro motorcycle event as a special land use in the Forested zoning district.

Please contact me with any questions or concerns.

Sincerely,



Thomas A. Grier

**YOUNG, GRAHAM & WENDLING, P.C.**

Attorneys at Law  
104 E. Forest Home, P.O. Box 398  
Bellaire, Michigan 49615  
(231) 533-8635  
Facsimile (231) 533-6225  
wendling@upnorthlaw.com



Bryan E. Graham

Peter R. Wendling

May 25, 2023

**VIA EMAIL and USPS**

Tim Cypher, Zoning Administrator  
Kasson Township  
P.O. Box 62  
Maple City, MI 49664

Tom Grier, Attorney  
The Running Wise Law Firm  
1501 Cass Street Ste. D  
P.O. Box 686  
Traverse City, MI 49685

**SUBJECT:** Application for Special Use Permit Enduro Motocross Racing

Dear Mr. Cypher and Mr. Grier:

I have had an opportunity to review Mr. Grier's letter of May 5, 2023 to Mr. Cypher, Zoning Administrator for Kasson Township. While there are points in the letter which I disagree with, the most salient issue which I wish both of you to review directly relate to the Zoning Ordinance within the Forested Zoning District (FR). Section 4.7 of the Zoning Ordinance describes the purposes and intent of the Forested District which is to

" . . . preserve the forest and wood lots, the dominant land cover of the township while allowing a wide range of uses in such ways that will not detract from this end. To the greatest degree of practical, the integrity and contiguity of forest lands shall be maintained."

Section 4.7.2 outlines Special Land Uses within the FR district. One of the uses listed is "Public or private outdoor recreation or park facilities." The Zoning Ordinance defines Outdoor Recreation Establishment as follows,

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

Clearly, motocross racing is a type of sport as well as a leisure time activity for trail riding. The operation of recreational motocross bikes or racing the same could easily be added as an example of an "Outdoor Recreation Establishment" given that the examples provided are not exclusive uses but examples of what can constitute an Outdoor Recreation Facility. When it comes to noise, one can only wonder how the Township would react to a proposed children's amusement park. In any event, it is a mystery as to why this special land use permit was attempted to be processed under Section 4.7.2's provision of "Other similar agricultural businesses or uses" and/or

Section 7.15. An Outdoor Recreation Facility matches exactly what the applicant wishes to obtain special use permit for. There is no reason to invoke Section 7.15 entitled "Other Special Land Uses" when the specific land use of outdoor recreation facility is clearly available for processing in the FR zoning district. While I do not agree with the legal analysis purportedly contained in Ms. Houle's letter to the Township as outlined on Mr. Grier's letter regarding Section 7.15 of the Zoning Ordinance, there is no reason to engage in further analysis of Section 7.15 or the Galien Township case since they are clearly not applicable to this request for a special use permit.

My final concern with Mr. Grier's letter is contained on page 5 of 9. In the letter, Mr. Grier states:

"In conclusion, unless and until the sound study has been conducted, and the study shows that the Event can proceed without harming the neighboring properties, the standards in ZO Section 7.7 A., B. And E. have not been met and the SUP should not be granted."

While the law certainly allows a municipality to consult with its attorney, including the attorney's ability to draft sample findings of fact, the ultimate decision on whether or not to grant a Special Use Permit can only be made independently by the Planning Commission after hearing all of the evidence. It is up to the Planning Commission to decide whether it wishes to obtain escrow for any type of expertise that it determines is needed to assist in making a decision.

As such, we request that the Township allow for the processing of a Special Use Permit on behalf of the applicant James Schettek within the FR district as an Outdoor Recreation Facility pursuant to Sections 4.7.2 Special Land Uses and per the definition of "Outdoor Recreation Establishment" as such a facility includes motocross recreational use and racing.

Sincerely,

Peter R. Wendling

PRW/aew



# Law Office of Kristyn J. Houle, PLC



June 11, 2023

Tim Cypher, Kasson Township Zoning Administrator  
Kasson Township  
P.O. Box 62  
Maple City, MI 49664  
*tim@allpermits.com*

Re: Response to Wendling Letter – Enduro Motocross Race

Dear Mr. Cypher:

Please accept this letter as a response to attorney Peter Wendling's May 25, 2023 letter regarding the "Application for Special Land Use Permit Enduro Motocross Racing."

In support of his argument that motorcycle racing should be permitted in the forested district, Mr. Wendling quotes the intent of the FR district "to preserve the forest and wood lots, while allowing a wide range of uses in such ways that will not detract from this end." Section 2.1.A of the Ordinance states that "the headings that title a chapter are not to be considered in interpretation of the ordinance or as enlarging or restricting any of its terms or provisions in any respect." (Zoning Ordinance Sec. 2.1.A). Therefore, the heading should not be used as a guide to interpret the ordinance.

## The Special Use Permit Application

Mr. Wendling states in his letter, "it is a mystery as to why this special land use permit was attempted to be processed under Section 4.7.2's provision of "other similar agricultural businesses or uses" and/or Section 7.15." (5/25/23 Wendling letter, p. 1-2). The application was processed under Section 7.15 "Other Special Land Uses" because that is what the applicant requested. The application was signed by Mr. James Schettek and dated 2/18/23. In the application, Mr. Schettek states:

We are requesting a special use permit under the category of Other Special Uses for an Enduro Motorcycle Event. For our request, this would be a one day event on a Saturday. We would like to hold this event the Sunday of Memorial Day Weekend, May 28, 2023. (see attached SUP application).

At the end of his letter, Mr. Wendling requests that:

the Township allow for the processing of a Special Use Permit on behalf of the applicant James Schettek within the FR district as an Outdoor Recreation Facility pursuant to Sections 4.7.2 Special Land Uses and per the definition of "Outdoor Recreation Establishment" as such a facility includes motocross recreational use and racing. (5/25/23 Wendling letter, p. 2).

If Mr. Wendling is asking that the 2/18/23 application be processed as an Outdoor Recreation Facility, it is my opinion that the answer should be “no” since it was an application for a one-day event to happen on May 28, 2023, and the date for the proposed event has since passed.

**Motocross Racing is Not  
an Outdoor Recreation Facility**

If Mr. Wendling is asking whether the Township would process a *future* Special Use Permit application on behalf of Mr. Schettek for motocross racing under section 4.7.2 “**public or private outdoor recreation or park facilities**” the answer should still be “no.”

**“Outdoor Recreation Establishment”** is defined in the ordinance as:

a facility designed and equipped for the conduct of sports, amusement or leisure time activities and other customary recreational activities outdoors (outside of enclosed buildings) and operated as a business and open for use by the public for a fee such as tennis courts, archery ranges, golf courses, miniature golf courses, golf driving ranges, and children’s amusement parks.” (Kasson Township Zoning Ordinance, p. 18).

**“Public Park or Park”** is defined in the ordinance as:

a playground, recreation center or other public areas, created, established, designated, maintained, provided or set aside by a governmental body, for the purposes of rest, play, recreation, enjoyment or assembly for the public and all buildings, facilities and structures thereon or therein.

The common characteristic of the examples given in these definitions is that the activities are very low-intensity and low-impact. Facilities such as a golf course, tennis court, children’s amusement park, playground or other public areas “for the purposes of rest, play, recreation...” are meant for leisure and gathering, not for potentially dangerous and loud events that last over days and provide for overnight camping. Similar low-intensity outdoor recreation facilities might be a baseball diamond, a basketball court, or a pickle ball court. The definition does not include any high-intensity, high-volume or high-impact events such as an Enduro Motorcycle Event, a Motocross racetrack, Motocross recreational use or Motocross racing. In his letter, Mr. Wendling implies that a children’s amusement park may produce noise akin to Motocross racing. I disagree. The sound of children’s laughter and the operation of kiddie rides will not rise to the level of “a Boeing 737 or DC-9 aircraft at one nautical mile before landing (97 dB), a power mower (96 dB), a motorcycle at 25 feet (90 dB) or a newspaper press at 97 dB” and a person’s hearing will not likely be “damaged after eight hours of exposure” to a children’s amusement park. (See, March 20, 2023 Planning Commission meeting minutes, p.6).

Motocross racing is also not a “customary” recreational activity similar to a tennis court, archery range, golf course or children’s amusement park. Under the North American Industry Classification System (NAICS), “race tracks” are listed as their own industry [Code 711212]

which includes motorcycle race tracks, automobile race tracks, dog racing, drag strips and speedways. These land uses are simply not materially similar to the uses listed under the definitions of park or outdoor recreational establishment, and are therefore, excluded. *Independence Twp v Skibowski*, 136 Mich App 178 (1984).

Further proof of the distinguishing characteristic of motocross racing from an outdoor recreational facility is the description of the proposed use as a "dangerous event" in Mr. Schettek's 2/18/23 application.

First, the applicant describes the proposed use as a one-day "event" not an outdoor recreational facility. An "event" is temporary, whereas an outdoor recreational facility is permanent. In his application, Mr. Schettek states, "track set up would start 1-2 months prior to the event. Within 1 week of the event finishing, all course marking material will be torn down and discarded." (See attached application description). Tennis courts, golf courses, parks and playgrounds are not set up and torn down after each use.

Second, the proposed use described in the application is a motorcycle race along with "primitive camping" over a 3-day weekend. The applicant states, "people will start to arrive on Friday afternoon to camp for the weekend." The definition of an outdoor recreational facility does not include a campground or temporary camping or any other overnight accommodations.

The applicant states, "all people through the front gate will be required to sign a waiver form. Basically [sic] stating they are at a potentially dangerous event and the property owners, event promoters or workers are not held liable." A "dangerous event" is materially different from an outdoor recreation establishment such as a tennis court, a golf course, miniature golf course or a children's amusement park. A motorcycle race track is inherently dangerous, requires a waiver form, an EMT to be on site, generates noise in the range of 94db/a to 96 db/a, and where participants bring ear protection equipment with them. (See Minutes of March 20, 2023 Planning Commission meeting, p.6). Comparing this use to a tennis court, a golf course or even a children's amusement park is apples to oranges.

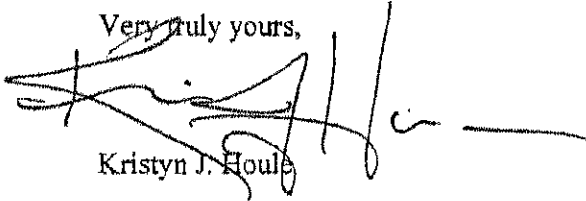
The noise that will be generated from the event alone is enough to distinguish it from the uses listed under the Outdoor Recreation Establishment definition. Patrons of a tennis court, golf course or children's amusement park do not need to bring their own ear protection equipment because "a person's hearing will likely be damaged after eight hours of exposure." (Minutes of March 20, 2023 Planning Commission meeting, p. 6).

This proposed land use is a dangerous high-intensity event that per the Michigan Sprint Enduro website would include motorcycle racers starting at 15 second increments, running the course multiple times at noise ranges up to 96 db/a, [at the recent 10 Pines Farm Michigan Enduro Race Event, 418 riders participated (see attached Facebook Post)], where there would be overnight camping, and an additional 1-2 people per rider on site, amounting to potentially over 800 participants. It is unlikely that a miniature golf course or an archery range would attract such a crowd all at once.

**Conclusion**

In conclusion, this proposed use is significantly and materially different than the uses intended as an outdoor recreation facility. For the reasons stated above, I request that you deny Mr. Wendling's request that the Township allow for the processing of a Special Use Permit on behalf of Mr. Schettek within the FR district as an Outdoor Recreation Facility because motocross recreational use and racing is not a use under 4.7.2 "public or private outdoor recreation or park facility."

Very truly yours,

A handwritten signature in black ink, appearing to read "Kristyn J. Houle", written over a horizontal line.

Kristyn J. Houle





**KASSON TOWNSHIP  
PLANNING/ZONING APPLICATION**

- CONCEPTUAL DEVELOPMENT PLAN REVIEW (PLANNED DEVELOPMENT)
- DEVELOPMENT SITE PLAN REVIEW
- SPECIAL USE PERMT - EARTH REMOVAL, QUARRYING, GRAVEL PROCESSING, MINING OP'S
- SPECIAL USE PERMIT - ALL OTHERS
- SPECIAL USE PERMIT RENEWAL
- REZONING PETITION
- ZONING BOARD OF APPEALS PETITION

In addition to this application form, you must submit one or more addenda, corresponding to the box(es) you checked above.

APPLICANT INFORMATION:

Name(s) James Schadek Phone 231-218-7762  
 Street 244 W Kasson Ctr  
 City Maple City State MI Zip 49664  
 Relationship of Applicant to Owner (if different) \_\_\_\_\_

OWNER INFORMATION (IF DIFFERENT FROM APPLICANT):

Name(s) Bill Kamban Phone 231-218-6100  
 Street 1175 E Kasson Rd  
 City Maple City State MI Zip 49664

OTHER CONTACT INFORMATION (IF NECESSARY):

Name(s) Fran Seymour Phone 231-633-1648  
 Street 1145 Wadings St  
 City Townsend City State MI Zip 49686

PROPERTY INFORMATION:

Address or Description Multiple parcels at corner of E Kasson Rd & S Bright

Tax Parcel Number See below (Also attach full legal description. A copy of the deed or land contract is acceptable)

- Current Zoning:  Ag  Forest  Commercial  Gravel  HD Village  PD  SPD  
 Proposed Zoning:  Ag  Forest  Commercial  Gravel  HD Village  PD  SPD

007-024-001-10  
 007-024-005-00  
 007-024-004-30  
 007-024-004-20  
 007-024-004-00

**KASSON TOWNSHIP  
PLANNING/ZONING APPLICATION**

**ACKNOWLEDGEMENT AND CERTIFICATION:**

It is hereby acknowledged by the undersigned, that all information provided on this application, any addendum, and other supporting documentation is true and correct to the best of my(our) knowledge. In the case of a Zoning Board of Appeals Petition, it is further acknowledged that any approval of the ZBA involving site improvement, use, and/or construction does not relieve the applicant from obtaining other applicable authorizations and permits

**SIGNATURES:**

Applicant(s) or James R. Schaefer Date 2/18/23  
Authorized \_\_\_\_\_  
Corporate Officer(s) \_\_\_\_\_

Owner(s) or \_\_\_\_\_ Date \_\_\_\_\_  
Authorized \_\_\_\_\_  
Corporate Officer(s) \_\_\_\_\_

**REMINDER: SUBMIT THIS APPLICATION, THE APPROPRIATE ADDENDUM, THE REQUIRED FEE, ALL ATTACHMENTS AND DRAWINGS TO EITHER THE KASSON TOWNSHIP ZONING ADMINISTRATOR OR KASSON TOWNSHIP CLERK (SEE YOUR PARTICULAR ADDENDUM).**

**ZONING ADMINISTRATOR AND CLERK USE ONLY**

Application ID \_\_\_\_\_  
Date and Time of Application Receipt \_\_\_\_\_ Received By \_\_\_\_\_  
Date Fee Received \_\_\_\_\_ Amount Received \_\_\_\_\_  
Date of Letter of Credit Received \_\_\_\_\_ Letter of Credit Amt \_\_\_\_\_  
Date of Letter of Credit Expiration \_\_\_\_\_

## **Michigan Sprint Enduro Event Information.**

**We are requesting a special use permit, under the category of Other Special Uses for an Enduro Motorcycle event. An enduro event involves motorbikes traversing a course through woods and hills in a timed event. These events are held all over Michigan, and the United States, every week.**

**For our request, this would be a one day event on a Saturday. Some participants may show up the evening prior. We would like to hold this event the Sunday of Memorial Day Weekend, May 28, 2023.**

**Here are some bullet point items of information:**

- Roughly 100-200 riders will come in for the event.
- Typical average people in addition to the rider count is 1 to every 2 riders. 50-100 additional people.
- All people through the front 'gate' will be required to sign a waiver form. Basically stating they are at a potentially dangerous event and the property owners, Event promoters or workers are not held liable. They are agreeing to those terms. An insurance policy directly for that event is bought and paid for.
- The entire event is held outside. People will have their own vehicles and some may have campers for primitive camping on our site.
- It is up to the property owners/township if campfires are allowed.

-People coming into the event will spend a large amount of money collectively at nearby grocery stores, gas stations, restaurants, hotels, etc.

-Very family oriented. This is not a Sturgis Bike Week crowd. Most people coming to the event come with moms, dads, brothers, and sisters. Most families get together for potluck and socializing at the event. The people part of the series are some of the most appreciative and respectable people you will meet.

-People will start to arrive on Friday afternoon to camp for the weekend. Some people will walk or bicycle the course on Friday. But other than track workers, there will be no riding motorcycles on Friday or Saturday.

-Racing will take place on Sunday only. Racing starts at 8:30am and will conclude before 5pm.

-All racing is closed course and on private property. No riding on the road will be permitted.

-Everyone will be leaving on Sunday late afternoon.

-An Ambulance or EMT is required to be on site. The event promoters arrange for this.

-Portable outhouses will be provided on site.

-Insurance for the event is provided by the promoters through the AMA (American Motorcyclist Association)

-Track set up would start 1-2 months prior to the event. Most track work is done on foot with an atv following to carry equipment such as

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arrows, staples, track tape, wooden stakes, etc. This is a natural trail, no earth work or tree removal is needed. The idea is to use the characteristics of the natural land.

-Within 1 week of the event finishing, all course marking material will be torn down and discarded.

-Information regarding the event can be found on [michigansprintenduro.com](http://michigansprintenduro.com)

-Noise Requirements for the bikes. Per AMA Rules 2 Strokes must be 96db/A or under and 4 strokes must be 94db/a or under



**KASSON TOWNSHIP PLANNING COMMISSION  
REGULAR MEETING  
Monday, March 20, 2023; 7:00 pm  
Kasson Township Hall  
10988 S. Newman Road, Maple City, MI 49664  
MINUTES**

I. Call Meeting to Order/Pledge of Allegiance

Chairman Carter called the meeting to order at 7:00 pm with the Pledge of Allegiance.

II. Roll Call of Commissioners and Staff

- A. Present: Tad Carter, Township Board Rep; Mike Lanham, Commissioner; Chuck Schaeffer, Secretary; Dave Noonan, Commissioner
- B. Excused: Jerry Roush, Chairman
- C. Staff: Tim Cypher, Zoning Administrator (attended virtually); Allison Hubley-Patterson, Recording Secretary
- D. Visitors present: In total, there was 11 members of the public present at various times during the meeting.

\*Due to the absence of Chairman Roush, Carter served as Acting Chair for this meeting.

III. Consideration of Agenda (Attachment "A")

Chairman Carter asked for a motion to approve the agenda as presented.  
**LANHAM MOVED TO APPROVE THE AGENDA AS PRESENTED;  
NOONAN SECONDED. ALL PRESENT IN FAVOR, MOTION CARRIED.**

IV. Declaration of Conflicts of Interest – none reported at this time.

V. Public Comment - none

VI. Approval of Minutes – **Special Meeting** – January 16, 2023

**CHAIRMAN CARTER MOVED TO APPROVE THE MINUTES OF THE  
JANUARY 16, 2023 SPECIAL MEETING AS PRESENTED; NOONAN  
SECONDED. MOTION CARRIED.** Lanham abstained as he was not yet a member of the Planning Commission on January 16, 2023.

VII. Approval of Minutes – **Regular Meeting** – January 16, 2023

Chairman Carter asked for a motion to approve the minutes of the January 16, 2023 Regular Meeting as presented. **NOONAN MOVED TO APPROVE THE MINUTES OF THE JANUARY 16, 2023 REGULAR MEETING AS PRESENTED; SCHAEFFER SECONDED. MOTION CARRIED.** Lanham abstained as he was not yet a member of the Planning Commission on January 16, 2023.

VIII. Correspondence Received - none

IX. Area Reports

A. Chairperson – Commissioner Roush – absent – no report

B. Secretary – Commissioner Schaeffer

Schaeffer clarified that he will remain as a member of the Planning Commission until the Master Plan has been completed in its entirety. This includes making sure that the Plan has been published and that all necessary documentation has been placed in the file.

C. Township Board – Commissioner Carter – no report

D. Zoning Board of Appeals – Commissioner Noonan – no report

E. Zoning Administrator's Report – Zoning Administrator Cypher

Cypher reported that he issued one land use permit in February for a dwelling addition; fees collected totaled \$75.00. There were three construction/site inspections for the month. Cypher continues to investigate junk that is accumulating at a residential location across from Habitat for Humanity. In total 27 telephone calls were returned and 13 responses were provided via the Internet. He attended the Kasson Township Board Meeting on February 15, 2023.

Cypher was unable to attend the Kasson Township Annual Meeting but provided a report in advance. He shared the following information from the Annual Report: During the year, 45 land use permits were issued which was an increase from 32 that were issued in the previous year. Of these, 13 were for single family residences (SFRs), six additions, two garages, four decks/porches, 11 accessory buildings, two commercial permits, four for agriculture construction, three solar panels and ten renewal/change of use permits. There was one ZBA hearing for Elmers but the ZBA hearing for Lively was cancelled. There were five special land use permits, which included gravel pit renewals, Lively Holdings and Tom Krause (storage units).

There were two zoning amendments regarding municipal buildings and commercial mixed-use, nine land divisions and one property line adjustment. There was one site plan review and Cypher completed a total of 88 construction inspections. Two violations were noted but these have both been resolved. Two investigations for Krull's Composting and Junk that is accumulating at a residential location are ongoing. Total fees for the year amounted to \$9,190.00. Cypher supplied information via 397 telephone calls and 294 responses via the Internet.

X. Old Business

A. Master Plan – Status update

Cypher and Hubley-Patterson are currently working on the Master Plan and intend to distribute the latest version of the document to all PC members and Township Board members by the end this week.

XI. New Business

A. Enduro Motorcycle Race – Application for Special Use

Fran Seymour and James Schettek presented their plans for an Enduro Motorcycle Race to be held over Memorial Day weekend of 2024. If the first event is successful, they may wish to have more events over the next couple of years. Mr. Seymour will send video clips of prior races for PC members to view.

Mr. Schettek stated that there are currently no locations in northern Michigan so racers and their families must travel down state for events. The event will be family-friendly and is multi-generational; all ages are attracted to this type of event.

There will be a single track through the woods that is handlebar width. The goal of the group is to show their support for both veterans and farmers; Mr. Schettek indicated that many of these types of events are held on farm property.

Mr. Seymour stated that they anticipate that approximately 100 to 200 people will turn out for the event. Most people will arrive on Friday night and will have a camper or will plan to stay at a local hotel. Saturday is used for walking the course and the race takes place on Sunday; by Sunday evening, all participants will have left the premises. No riding is permitted on either Friday or Saturday. There will be very little change in the land with regard to tree cutting.



The applicants have already spoken to Cedar Area Fire and Rescue. They will make arrangements to rent portable toilets and are considering having one or more food trucks on site.

Noonan asked about the hours for the race on Sunday. The race will begin at approximately 8:30 a.m. and will be finished between 4:30 p.m. and 5:00 p.m.

Carter inquired as to how many residences would be affected by the race. Mr. Schettek replied that it would affect approximately 12 local residences. Mr. Bob Needham was present and stated that his house is the closest to where the event will be held. He added that the track will be approximately 100 to 150 yards from his house. Mr. Seymour noted that the bikes are limited to a certain decibel level depending on the style of bike; the bike is not permitted to exceed certain limits. He stated that bikers have ridden on this path for many years but there have probably not been more than 15 to 20 riders up to this point.

Schaeffer asked if there would be a main entrance for the public and added that this would help with staging the event location. Schaeffer also inquired about potable water. Mr. Seymour replied that since many people will be bringing their camper, they will have their own water source. They would be happy to provide water but stated that it may not be needed; campers will come with their own supplies and this is similar to "rustic camping".

Schaeffer asked if the applicants have spoken to the Department of Natural Resources (DNR) regarding permits for the campground. This has not been done. Cypher informed the applicants that they should speak to the DNR as anything over five campers is regulated. He stated that it would be a good idea to "check the box" by following up on this matter. Although this event will be held on private land, Schaeffer noted that the PC previously dealt with a request for a campground that was also on private land. Cypher suggested that Mr. Seymour inform the DNR that the event will involve two nights.

Lanham inquired as to how many people from the general public can be expected to attend. Mr. Schettek replied that, typically, not many people from the public attend as the event normally only attracts racers and their families.

A member of the public stated that he resides in the Fife Lake area and is affiliated with District 14 of the American Motorcycle Association. An event was recently held in Mancelona and there was a great turnout. The Mancelona City Council received very positive feedback from residents and business owners regarding the event. The event was so successful that Pure Michigan will be featuring the event in an upcoming advertisement. He added that a race that is held up north will draw people to the area. People who participate in these events tend to be very responsible and he assured the PC that the site will be left clean once the event concludes.

Schaeffer asked where in Michigan do most of the people attending these events come from. The applicants replied that they typically reside in the center of the state. Schaeffer inquired if there is any other suitable location; Mr. Schettek responded that there are very few locations that would be appropriate for this event. Schaeffer also suggested that the applicants contact the Leelanau County Sheriff's Office and added that someone from the Sheriff's Office may be willing to make a statement at the upcoming Public Hearing.

Lanham asked if all events associated with the race will be contained to the property that will be used for the race. Mr. Seymour replied that this is correct. The comment was made that passersby will most likely not even see the campers from the road.

Mr. Justin Ray is with the Twin Bay Trail Riders. He stated that he grew up racing and discussed the checklist that is used to ensure that everything has been taken care of prior to the race. This includes obtaining insurance, arranging for EMS, renting portable toilets, etc.

Schaeffer asked if the group is a 501c3 and the response was "Yes". He informed the applicants that he knows a group of volunteers that may be able to help with the event if they have 501c3 status.

Cypher inquired as to how many food trucks would be on the premises as approval will be needed from the Health Department. Mr. Seymour replied that there would be two food trucks maximum. He asked Cypher if the local food trucks have already been approved by the Health Department in advance to participate in such events but Cypher responded that this is not always the case.

Cypher encouraged the applicants to think about the future. If the inaugural event is successful, they may want to hold future events but they should get their ducks in a row now in order to successfully hold additional races going forward.

Cypher asked how many campsites there would be. Mr. Seymour replied that there would be 50 to 100 campsites in total. Cypher also inquired about a back-up plan should there be torrential rains throughout the weekend. He asked if emergency vehicles would easily be able to get into the property. Mr. Seymour replied, "Yes".

Cypher asked the applicants to add Kasson Township as an additional named insured on the insurance certificate. Mr. Seymour stated that he would take care of this. Cypher also commented that the Fire Chief is very specific when

it comes to campfires; he asked the applicants to work out these details in advance of the Public Hearing.

Cypher also requested that the applicants discuss the event with Mr. Matt Ansorge, Emergency Management Director for Leelanau County. He stated that, with this number of people attending the event, there should be an emergency plan developed beforehand.

Cypher asked about the noise level on Friday night and throughout the day on Saturday as riders are preparing their bikes. Mr. Seymour replied that there could potentially be noise at these times. It was noted that typically "quiet time" is observed after 9:00 p.m. at these events. The applicants shared that the campsite will also be positioned in the center of the property so as to help diffuse the noise. Cypher also requested that portable toilets be positioned strategically throughout the property and on the course in case they are needed.

Cypher addressed the noise that will be generated by the bikes and stated that he pulled together some information regarding comparable examples of noise levels. The noise generated from the bikes will be comparable to a Boeing 737 or DC-9 aircraft at one nautical mile before landing (97 dB), a power mower (96 dB), a motorcycle at 25 feet (90 dB) or a newspaper press at 97 dB. A person's hearing will likely be damaged after eight hours of exposure.

Cypher noted that typically 300-foot letters are sent out to adjacent property owners. He suggested that the PC consider expanding this distance to notify property owners who are further away from the parcels so that they are aware of the event. He added that it may be beneficial to distribute inexpensive earplugs to people as they enter the area; it is understood that the racers will have their own ear protection equipment.

Chairman Carter asked if a motion is needed this evening. Cypher reviewed the process going forward and stated that the PC could vote to set the Public Hearing for the next meeting. He added that the application is complete except for a few details that should be finalized by the applicants prior to the Public Hearing.

Chairman Carter asked for a motion for staff to send out letters to property owners who are within 1,000 feet of the parcels where the Enduro Motorcycle Race will be held. **NOONAN MOVED FOR STAFF TO SEND OUT LETTERS TO PROPERTY OWNERS WHO ARE WITHIN 1,000 FEET OF THE PARCELS WHERE THE ENDURO MOTORCYCLE RACE WILL BE HELD; LANHAM SECONDED. ALL PRESENT IN FAVOR, MOTION CARRIED.**

Chairman Carter asked for a motion to set the Public Hearing for Monday, April 17, 2023 at 6:00 p.m. in the matter of the Enduro Motorcycle Race Application for Special Use. **NOONAN MOVED TO SET THE PUBLIC HEARING FOR MONDAY, APRIL 17, 2023 AT 6:00 P.M. IN THE MATTER OF THE ENDURO MOTORCYCLE RACE APPLICATION FOR SPECIAL USE; SCHAEFFER SECONDED. ALL PRESENT IN FAVOR, MOTION CARRIED.**

- XII. Public Comment - none
- XIII. Comments from the Commissioners -- none
- XIV. Next Meeting - Monday, April 17, 2023 at 6:00 p.m. The Public Hearing will commence promptly at 6:00 p.m. followed by the Regular Meeting of the PC.
- XV. Adjournment

Chairman Carter asked for a motion to adjourn the meeting. **NOONAN MOVED TO ADJOURN THE MEETING; LANHAM SECONDED. ALL PRESENT IN FAVOR, MOTION CARRIED.**

The meeting was adjourned at 7:58 pm.

Respectfully submitted,

Allison Hubley-Patterson  
Recording Secretary



# Grobbel Environmental & Planning Associates

8288 E North Wind Tr PO Box 58 Lake Leelanau, MI 49653



May 1, 2023

Planning Commission - Kasson Township  
10988 S. Newman Rd.  
Maple City, MI 49664

**RE: Planner's Report/Environmental Assessment - Proposed Spring Creek Trails Enduro Motorcycle Race Event, W. Kasben Properties, E. Kasson Rd., Parcel Nos. 007-024-001-00, 007-024-005-00, 007-024-004-20, 007-024-004-30 & 007024-004-00, Kasson Township, Leelanau County, Michigan.**

Dear Kasson Township Planning Commission,

Please find this planner's report and environmental assessment of the proposed Spring Creek Trails Enduro Motorcycle Race Event. Applicants James Scheffek and Fran Seymour propose an enduro motorcycle race event during the Memorial Day weekend, i.e., May 26 (Friday) through 28 (Sunday), 2023. The subject parcels are owned by William Kasben and zoned Agriculture (Ag) pursuant to the Kasson Township Zoning Ordinance.<sup>1</sup> Applicants propose a commercial three (3) day event with an 8.5 hour enduro motorcycle race event on Sunday May 28, 2023, two (2) on-site camping areas with 50-100 campsites with campfires allowed, overnight parking (with no utilities), a trash bin and Porto-John area, dumpster area, and a food truck area.<sup>2</sup> Applicants anticipate up to 200 event riders/participants and up to an additional 100 attendees.

## **Kasson Township Zoning Ordinance Requirements**

1. **Section 5.13 - General Provisions: Temporary Outdoor Uses.** The Kasson Township Zoning Ordinance Section 5.13 allows for temporary outdoor uses (or temporary outdoor events) "in any zoning

<sup>1</sup> Kasson Township, Leelanau County Zoning Ordinance, adopted April 7, 1997 with amendments through January 26, 2019.

<sup>2</sup> Kasson Township Planning/Zoning Application, dated February 18, 2023.

district provided that the temporary use is similar in nature to those uses that are allowed by right in the district... and that the Zoning Administrator shall determine off street parking requirements for the event." Within Sections 4.5.1 and 4.5.2 of the Township Zoning Ordinance, the Agricultural District does not list permitted or special land uses remotely similar in nature to a three-day motorcycle race event with associated proposed overnight camping or food service (i.e. the proposed food truck area)<sup>3</sup>, and adequate details of required or proposed off street parking are not provided within the event application. *Consequently, the application as provided does not comply with Section 5.13 of the Zoning Ordinance and cannot be approved as proposed.*

2. **Section 5.15 - General Provisions: Required Water Supply and Sanitary Sewerage Facilities.** Section 5.15 of the Ordinance requires essential services stating "(t)he owner or applicant for any Land Use Permit demonstrate the availability of potable water and public sewer connections or adequate space for septic fields with appropriate served areas and setback...etc." The application proposes a Porta-John and trash bin area within the southwest portion of the subject site, but does not propose the provision of potable/drinking water for event attendees, participants, and/or proposed overnight campers. *Consequently, the application as provided does not comply with Section 5.15 of the Zoning Ordinance, and cannot be approved as proposed.*

3. **Chapter 7 Special Land Uses and Special Permit Requirements.** The Kasson Township Zoning Ordinance Section 7.5.7, requires written impact statements for SLU applications "relative to project impact on...traffic...and upon the natural environment." Based on information and belief, no required impact statements have been provided within application documents for the Planning Commission to reasonably assess potential impact from the proposed 3-day outdoor motorcycle race event and associated camping, food service, access management, emergency services/public safety, and waste management activities. *Consequently, the application as provided does not comply with Section 7.5.7. of the Zoning Ordinance, and cannot be approved as proposed.*

**Section 7.7: Basis for Determination** of the Township Zoning Ordinance provides special and use (SLU) permit review criteria for the Planning Commission, requiring Planning Commission findings

<sup>3</sup> It is noted that Section 4.5.2 Special Land Uses within the Ag District lists "public or private outdoor recreation or park facilities," but does not list such events. Neither is the proposed land use listed within Township Zoning Ordinance Section 4.10: Special Purpose Districts.

that each of the following has been met:

- A. Be designed, constructed, operated and maintained so as to be harmonious ...with the existing or intended character of the general vicinity as indicated in the Township Master Plan or other policies of the Township.**

The site and surrounding area are typified by actively managed forest and farmland, and low density rural residential development. Based on aerial photographs and site vicinity visits, the subject site is adjacent to approximately eight (8) residences and within one-quarter mile of nearly forty (40) residences. The Kasson Township Zoning Ordinance definition of "noise" includes that "(n)o use except a temporary construction operation shall be permitted which creates a noise level of which exceeds five decibels (as defined in the Occupational Safety and Health Act of 1970) above the ambient level of the area measured at the property line. In land use planning and zoning practice, noise can also be defined as an unwanted sound that someone considers unreasonably disturbing, objectionable, obnoxious, etc.<sup>4</sup> As noted in footnote 4 below, typical sound measurements for motorcycles are 140 dBA, and such motorcycle sound is known to easily travel for distances up to 1/2 mile - depending on topography, weather

<sup>4</sup> "Sound" is a vibration that propagates as a typically audible mechanical wave of pressure and displacement, through a medium such as air or water. The properties of sound include: frequency; wavelength; wave number; amplitude; sound pressure; sound intensity; speed of sound; and direction. The decibel scale used to measure sound for the human ear is the dB A-scale (DbA). Importantly, dBA is a logarithmic scale typified by the following:

Whisper Quiet Library at 6 feet	30dBA
Normal conversation at 3 ft	60-65dBA
City Traffic (inside car)	85dBA
Train whistle at 500 ft/Truck Traffic	90dBA
Jackhammer at 50 ft	95dBA
Level at which sustained exposure may result in hearing loss	90 - 95dBA
Hand Drill	98dBA
Power mower at 3 ft	107dBA
Snowmobile/Motorcycle	100dBA
Power saw at 3 ft	110dBA
Sandblasting/Loud Rock Concert	115dBA
Pain begins	125dBA
Loudest recommended exposure WITH hearing protection (even short term exposure can cause permanent damage)	140dBA
Jet engine at 100 ft	140dBA
12 Gauge Shotgun Blast	165dBA
Death of hearing tissue	180dBA
Loudest sound possible	194dBA

and other ambient conditions. The Kasson Township Master Plan Future Land Use Map depicts the subject site as “forested,”<sup>5</sup> and emphasizes the “vital role the forests play in the Township’s ecological health and in the maintenance of its rural character. Kasson Township shall strive to preserve its woodlands by promoting wise forest management...and by including trees and other vegetation in the site plan review process.”<sup>6</sup> The Master Plan also states, “(t)his Plan is based upon the understanding that the beauty and quality of life in Kasson Township springs from the bounty of its natural resources - the hill, forests, field, and lakes; and the balanced arrangement of these with its farms and village areas. It is the harmonious blending of these elements, without one dominating the others, that produces the satisfaction of the community residents and that draws tourists and residents alike to the township. The Plan intends to maintain this balance.”<sup>7</sup>

The Master Plan’s policies and actions recognize the importance of considering impacts to forest and the Township’s rural character in the site plan review process,<sup>8</sup> and sets forth the dated goal “to mandate and enforce adequate buffers and proper regulations of nonresidential uses to ensure the quiet enjoyment of their homes by residents of the Township.”<sup>9</sup>

The noise generated from the proposed motorcycle race event will very likely result in the unreasonable interference with the comfortable use and enjoyment of these existing nearby residential uses, will not be harmonious in this setting to the intended character of the general vicinity, will exceed the Township’s prohibition of a 5 dB increase in ambient sound at nearest property lines, and will violate the intent and expressed goals, policies and actions of the Kasson Township Master Plan. *Consequently, the application as provided does not comply with this Section of the Ordinance or the Master Plan, and cannot be approved as proposed.*

**B. Not be hazardous or disturbing to existing uses in the same general vicinity, and will not have adverse effects on the market value of surrounding property and to the community as a whole.**

It is well-established in land use planning and zoning that proximity to nuisances per se and contextual

<sup>5</sup> Kasson Township Future Land Use Map, V. 4, Figure 3: Kasson Township Master Plan, January 2022, p. 13.

<sup>6</sup> Kasson Township Master Plan, January 2022, p. 23.

<sup>7</sup> Kasson Township Master Plan, p. 10.

<sup>8</sup> Kasson Township Master Plan, p. 23.

<sup>9</sup> Kasson Township Master Plan, p. 26.



nuisances negatively impact adjacent and surrounding property values. The prevention of such adverse impacts for "spill-over effects" are a primary purpose and pillar of local governmental planning and zoning as enabled by Michigan land use law. Also see comments in A above. *Consequently, the application as provided does not comply with this Section of the Ordinance, and cannot be approved as proposed.*

**C. Be served adequately by essential facilities and services, such as, but not limited to, highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, and schools.**

The application as proposed does not adequately address or detail the provision of essential services and facility, as needed for event participants, including but not limited to potable water, septic, fire protection, EMS and police services. *Consequently, the application as provided does not comply with this Section of the Ordinance, and cannot be approved as proposed.*

**D. Not create excessive additional requirements at public costs for public facilities and services.**

*See comment in C above.*

**E. Not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property or the general welfare by fumes, glare, noise odors or dust.**

The noise generated from the proposed motorcycle race event will very likely result in the unreasonable interference with the comfortable use and enjoyment of existing nearby residential uses, will not be harmonious in this setting to the intended character of the general vicinity. *Consequently, the application as proposed does not comply with this Section of the Ordinance, and cannot be approved as proposed.*

**F. Will be in general compliance with the land use policies outlined in the Township Master Plan, the principles of sound planning, and will not jeopardize the economic welfare of the Township.**

The noise generated from the proposed event will very likely result in the unreasonable interference with

the comfortable use and enjoyment of these existing nearby residential uses, will likely exceed the Township's prohibition of a 5 dB increase in ambient sound at a nearest property line, will not be harmonious in this setting to the intended character of the general vicinity, and will violate the intent and expressed goals, policies and actions of the Kasson Township Master Plan. *Consequently, the application as provided does not comply with this Section of the Ordinance or the Master Plan, does not represent or advance sound planning principles, and cannot be approved as proposed.*

**G. Will not directly or indirectly have a substantial adverse effect upon the natural resources of the Township. Including, but not limited to, prime or unique agricultural lands, water recharge areas, lakes, rivers, streams, forest, wetlands, wildlife areas and major sand, gravel or mineral deposits.**

The subject site is typified by sandy and sandy loam soils (i.e., Kaleva sands, Emmet-Leelanau sandy/gravelly sandy loams, and Leelanau-East lake sandy loams) up to 45% slopes. Such sandy slopes are inherently vulnerable to soil erosion and sedimentation from activities such as off road vehicle use or motorcycle race events such as proposed. *The proposed land use will likely result in accelerated, localized soil erosion, indirectly have a substantial adverse effect on forestlands and agricultural lands, and will likely violate this Section of the Ordinance.*

**H. Structures, landscaping, or other land uses, will not disrupt water drainage systems necessary for agricultural uses and will be in compliance with Leelanau County Drainage Commission requirements.**

*Not applicable.*

**I. Phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility services, drainage or erosion control.**

*Based on information and belief, phased development plans have not been provided, and thereby do not comply with this Section of the Ordinance - especially as it relates to likely impacts to site drainage and/or soil erosion control.*

**J. Phases of development must also be in compliance with the requirements of the district in which it is proposed and all other standards in this Ordinance, as well as with the requirements of the County Road Commission, County Building Inspector, County Drain Commissioner, District Health Department, Soil Erosion Officer, Agricultural Soil Conservation Service, area fire departments, the DNR and other applicable township, county, state and federal statutes.**

The proposed motorcycle race event does not comply with Section 4.5: Agricultural District permitted or SLUs, or Section 5.13 Temporary Outdoor Events requirements of the Ordinance. See comments above. Based on information and belief, phased development plans and permits from any state or county have not been provided. *Thereby, the proposed SUP application does not comply with this Section of the Ordinance, especially as it relates to Benzie-Leelunau District Health Department water and sewage services provision; lack of an emergency management plan; lack of compliance with MDNR campground regulations; no proof of event insurance, including Kasson Township as an additionally named/ indemnified party; no proof of agency approvals regarding fire protection, EMS and police services and traffic management; etc. Consequently, the application as proposed does not comply with the Section of the Ordinance and cannot be approved as proposed.*

**For the above stated reasons, we strongly urge the Kasson Township Planning Commission to deny the Spring Creek Trails event SLU application as proposed.**

If you have any questions regarding these public comments or this planner's report, please feel free to contact me at 231-499-7165 or grobbelenvironmental@gmail.com. Thank you.

Sincerely,  
Grobbel Environmental & Planning Associates



Christopher P. Grobbel, Ph.D.  
Sr. Planner/Project Manager

## Appendix - Sound

### **Human Perceptions of Increases in Decibel Level (i.e., an exponential scale):**

Imperceptible Change	1dBA
Barely Perceptible Change	3dBA
Clearly Noticeable Change	5dBA
About Twice as Loud	10dB
About Four Times as Loud	20dBA

**Zoning Regulations Regarding Noise** - a 55 dBA or 60 dBA standard at the nearest neighboring property line is common, e.g., is the U.S. EPA guideline for commercial wind generators.

### **Sound Measurement**

A-weighting scale (dBA) - used of the human hearing range used for all community sound measurements.

C-weighting scale (dBC) - used to evaluate very large sounds (i.e., over 100 dB) or low frequency sounds (i.e., under 60 Hz)

Hz = "hertz" - the unit of measurement of sound frequency in the International System of Units and is defined as one cycle per second. It is named for Heinrich Rudolf Hertz, the first person to provide conclusive proof of the existence of electromagnetic waves.

**Sound measurement** - must measure ambient sound level and subtract that from sound level from sound source generating operation, apparatus or activity.

i.e., ambient sound level (dBA) - sound/noise at measuring point (dBA) =  
sound from a source (dBA)

## CHRISTOPHER P. GROBBEL

### EDUCATION

**Ph. D.** Environmental Policy and Law, Michigan State University, Resource Development Department, College of Agriculture and Natural Resources, 1998, GPA 3.96.

**M.S.** Environmental Policy and Law / Hydrogeology - Michigan State University, Resource Development Department, College of Agriculture and Natural Resources, 1986, GPA 3.93.

**B.S.** Environmental Science / Forestry with High Honor - Michigan State University, Resource Development Department, College of Agriculture and Natural Resources, 1983, GPA 3.82.

### PROFESSIONAL EXPERIENCE

**Principal/Senior Associate** – Grobbel Environmental & Planning Associates, Traverse City, Michigan.

1998 to Present      Founder and president of the environmental consulting and land use planning firm, Grobbel Environmental & Planning Associates. Project experience includes watershed management and protection planning; community master planning, police power and zoning ordinance development; land use and environmental planning; ecological assessment; wetland determination, restoration and delineation; soil/groundwater investigation and remediation; risk assessment, management and communication; brownfield redevelopment; innovative stormwater treatment system design and construction; litigation support and expert witness; and all aspects of business development, media relations, financial management, marketing and administration.

**Assistant/Adjunct Professor** – Department of Community Sustainability/CARRS/Resource Development Department, College of Agriculture & Natural Resources, Michigan State University, Traverse City and East Lansing, Michigan.

1992 to 2016      Design and teaching of college undergraduate courses entitled: CSUS 425 Environmental Impact Assessment; CSUS 465 Environmental and Natural Resources Law; CSUS 200 Introduction to Sustainability; CSUS 320 Environmental Planning and Management; ESA 225 Land and Environmental Issues in Law; RD 336 State Environmental Law; RD 491 Environmental Ethics; and RD 430 Natural Resources Law. Director of MSU undergraduate environmental studies program at the University Center in Traverse City, Michigan

**Land Use Programs Consultant** – Tip of the Mitt Watershed Council, Petoskey/Traverse City, Michigan.

2002 - 2004      Land use programs consultant undertaking master planning, zoning ordinance audit and development, site conservation design/development, site plan review, and land use training and education programs. Duties also include environmental planning; ecological assessment; soil and groundwater investigation; wetland determination, assessment, delineation and restoration; risk assessment, management and communication; brownfield redevelopment; litigation support and expert witness; and all aspects of technical services development, marketing and administration.

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**Northwest Michigan Land Use Agent -- MSU Extension, Grand Traverse County, Michigan.**

1999 - 2003 Developer, co-author and coordinator of MSUE's award winning Citizen Planner statewide land use training program in Michigan. Design and teaching of college credit and adult learner non-credit courses in land use planning and law, environmental law and policy, community development, wetlands and watershed management, *etc.* Member of Leelanau County Agricultural Alliance, Antrim-Grand Traverse County farmland preservation task force involved in undertaking surveys and geographic information system mapping toward county administered farmland preservation programs.

**Director of Education and Land Stewardship -- Leelanau Conservancy, Leland, Michigan.**

1998 - 1999 Design and delivery of land use, conservation and environmental education programs for school children, landowners, professionals and local and regional units of government. Implementation of the Leelanau Geography Project, including the training of middle school teachers from ten (10) area public and private schools. Communication and outreach to visual, print, audio and electronic media. Design and implementation of web pages for Leelanau Conservancy and regional environmental education consortium. Writing and administration of numerous grants.

**Co-owner/Senior Project Manager - Compliance, Inc. Environmental Engineering, Traverse City and Detroit, Michigan.**

1996 - 1998 Founder of Southwest Detroit office for Compliance, Inc. Regulatory specialist and senior project manager for the investigation and remediation of sites of environmental contamination, brownfield redevelopment, air permitting, emergency response, expert witness and leaking underground storage tank programs. Recipient of Kresge Foundation brownfield redevelopment project grant, and board member for Cluster 5 (Southwest Detroit) of Detroit's Community Reinvestment Strategy initiative.

**Regulatory Specialist/Project Manager - Environmental Solutions, Inc., Traverse City, Michigan.**

1992 - 1996 Regulatory specialist and project manager for the investigation and remediation of sites of environmental contamination.

**Environmental Enforcement Specialist - Michigan Department of Environmental Quality, Environmental Response Division, Lansing, Michigan.**

1991 - 1992 Liaison to the Department of the Attorney General in the enforcement and litigation of state environmental regulations.

**Environmental Quality Analyst - Michigan Department of Environmental Quality, Environmental Response Division, Gaylord, Michigan.**

1989 - 1991 Compliance and enforcement of state hazardous waste, solid waste and leaking underground storage tank (LUST) regulations for eight county region. Responsible for coordination of Part 201 and LUST programs for the eight (8) county Gaylord District.

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**Water Quality Specialist** - Michigan Department of Natural Resources, Land and Water Management Division, Lansing, Michigan.

1988 - 1989 Production supervisor and design assistant for the Michigan Statewide Groundwater Data Base geographic information system.

**U.S. Peace Corps** – Returned Peace Corps Volunteer.

1987 - 1988 Worked in the development of agro-forestry systems, soil conservation and environmental education projects in Guayas Province, Ecuador.

**Consultant** - Michigan Department of Natural Resources, Groundwater Quality and Land and Water Management Divisions, Lansing, Michigan.

1986 - 1987 Staff planner and development specialist for the prototype computerized Michigan Statewide Groundwater Data Base.

**SELECT PROFESSIONAL PUBLICATIONS & PRESENTATIONS**

**The Rap Sheets: Paying for Pollution. The Misuse of Public Resources for Manure-to-Energy Projects at Industrial Dairies in Wisconsin.** Socially Responsible Agriculture Project and Kewaunee CARES, May, 2019.

**Delaware CAFO Guide.** Socially Responsible Agriculture Project, May 2019.

**Michigan CAFO Guide.** Socially Responsible Agriculture Project, January 2019.

**Local Governmental Role in Oil and Gas Regulation.** WMEAC Conference, Fracking in Michigan, December 3, 2014, Kellogg Center, E. Lansing, Michigan.

**Environmental Issues in Natural Gas Production.** Harrison, W.B. III, Peters, J., Poll, J., Grobbel, C., VanDyke, A., and Sadler, S., Foxmoor Continuing Education, a Division of Half Moon Education, Inc., publication, 2014.

**What is a Taking? Exploring the Boundary between Public Interest and Private Property.** Kohler, Ellen, Esq. and Grobbel, Christopher, Ph.D., Tip of the Mitt Watershed Council publication, 2004.

**Summary of Property Takings Case Law.** Michigan State University Land Use Series, East Lansing, Michigan, December 16, 2002, <http://www.msue.msu.edu/aoe/landuse/landindex.html>.

**Citizen Planner Program Curriculum.** training course series for non-professionals involved in local land use decision-making, Michigan State University Extension, 175 pp., copyright 2000, Legal Foundations of Planning and Zoning; Private Property Rights and the Takings Issue; Zoning for Water Quality; Farmland Preservation Tools and Techniques; Principles of the New Urbanism; Brownfield Redevelopment; Wetland Science and Regulation; and Riparian Rights.

**An Examination Of Indicators Of Social Equity In Michigan Environmental Policy: The Case Of The Michigan Environmental Response Program.** Ph.D. dissertation for the College of Agriculture and Natural Resources, Resource Development Department, Michigan State University, 200 pp., 1998.

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Environmental Justice Bibliography, 1975-1994, D. Doberneck, C. Grobbel, T. Link, and G. Guluma, Office of Diversity and Pluralism, College of Agriculture and Natural Resources, and the Resource Development Department, Michigan State University, 79 pp., 1995.

Environmental Equity and U.S. Policy, Community News & Views, Vol. 6, No. 4, Urban Affairs Programs, Michigan State University, Winter 1994.

Wellkey: User Documentation, Christopher P. Grobbel and Bruce Morrison, 69 pp., 1989.

Water Well Record Location Verification and Automation: A Pilot Project for Isabella County, Michigan, M.N. Beaulac and Christopher P. Grobbel, 50 pp., 1987.

State v.s. Federal Rights in the Regulation of Natural Resources: Legal Issues Surrounding Great Lakes Water Diversion, A Master's Thesis for the College of Agricultural and Natural Resources, Michigan State University, Christopher P. Grobbel, 120 pp., 1986.

Water Management in Michigan: Legal Issues in Michigan Water Planning, Dan Bronstein, Leighton Leighty, John Vincent and Christopher Grobbel, 214 pp., 1985.

Presenter of "Environmental Issues with Hydraulic Fracturing: Unconventional Natural Gas Development of Collingwood Shale" numerous conferences and presentations through-out Michigan, 2010 – 2014.

Panelist: "Risks of Hydraulic Fracturing: Unconventional Natural Gas Development of Collingwood Shale," Michigan State University Extension, Traverse City, Michigan, June 24, 2010.

Instructor of "Planning and Zoning Essentials" Michigan Association of Planning, February 25, 2010, Perry Davis Hotel, Petoskey, Michigan.

Presenter of "Role of Local Government in Protecting Wetlands" at the Planning Michigan Conference, Michigan Association of Planning's 2009 Planning Conference, October 2, 2009, Mt. Pleasant, Michigan.

Presenter of "Role of Local Government in Michigan Wetland Regulation" at the Michigan Wetlands: Celebrating the 25<sup>th</sup> Anniversary of the Wetland Protection Act Conference, Michigan Department of Environmental Quality, Michigan Department of Natural Resources, Northwestern Michigan College, Water Studies Institute, and U.S. Environmental Protection Agency, May 20-22, Traverse City Michigan.

Presenter of "Groundwater Disputes: Case Studies and Solutions" at the 10<sup>th</sup> Annual Michigan Environmental Health Professionals Conference, October 12-15, 2003, Shanty Creek, Bellaire, Michigan.

Presenter of "Water Quality Protection Tools for Local Government," Kellogg Foundation/People and Land Project, September 30, 2003, Inland Lakes Education Center, Indian River, Michigan.

Presenter of "Water Quality Protection Tools for Local Government," Kellogg Foundation/People and Land Project, August 22, 2003, Grand Traverse Bay Watershed Conference, Holiday Inn, Traverse City, Michigan.

Presenter of "Farmland Preservation Tools and Techniques and Landowner Options" at the 52<sup>nd</sup> Annual Benzie-Manistee Horticultural Show, March 18-20, 2003, Crystal Mountain, Thompsonville, Michigan.



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Presenter "**Riparian Rights**" for HARBOR, Inc. at the Little Traverse Township Hall, Emmet County, Michigan, March 25, 2003.

Panelist "**The Legalities of Land Use**" for MSU Extension/HARBOR, Inc. at the Little Traverse Township Hall, Emmet County, Michigan, December 10, 2002.

Presenter "**Planning and Zoning - How to Stay Out of Court**" at the Annual Michigan Society of Planning Conference, Community, Culture, Change: Planning Michigan, Kalamazoo, October 2 through 5, 2002.

Presenter of "**Michigan's Environmental Regulatory Legacy**" at the 2001 Kickoff: Michigan Groundwater Stewardship Program, Michigan Department of Agriculture, Michigania, Boyne City, Michigan, October 25, 2000.

Presenter of "**Hydrogeology, Contaminant Monitoring, Fate and Transport, and Contaminant Remediation**" at the Chemical Applications: Pesticide/Fertilizer Application Workshop, Michigan State University, East Lansing, Michigan, March 30 - 31, 2000.

Presenter at the 2000 Envirothon, "**Renewable Energy: Taking Another Look**", Northwest Michigan Horticulture Research Station, Michigan State University Extension, February 18, 2000.

Co-presenter "**Land Use Conflict: When City and Country Clash**", A project of the National Public Policy Education Committee in Cooperation with the Farm Foundation, Northwest Michigan Orchard Show, Grand Traverse Resort, Acme, Michigan, January 25, 2000.

Panelist "**Building Consensus in Land Use and Growth**", Council of Michigan Foundations annual conference, Grand Traverse Resort, Acme, Michigan, October 4, 2000.

Panelist at "**A Community Forum of Brownfield Redevelopment along Boardman Lake**", Traverse City, Michigan, October 13 and 27, 1998.

Panelist on "**Impact of the Michigan Environmental Response Act**" at the Michigan Department of Treasury's 8th Annual Directions in Public Finance Conference at the Grand Traverse Resort, Acme Michigan on June 2, 1995.

Presented an **Environmental Regulatory Update: Issues Related to Commercial Lender Liability** for Old Kent Bank, March 11, 1994 and June 7, 1995.

Presented Guidelines for the **Purchasing, Handling and Disposal of Hazardous Materials** with Benson, McCurdy & Wotila, P.C. for Northern Michigan Purchasing Agents in Kalkaska, Michigan on March 9, 1994.

Presenter - **An Overview of Michigan Environmental Response Act and Other Environmental Regulations** for Grand Traverse Area Certified Public Accountants and Attorneys at the Grand Traverse Resort, Traverse City, December 10, 1991.

Guest Lecturer in **Wetland Law** - Detroit College of Law, Michigan State University, East Lansing, Michigan, Spring 2002.

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Guest Lecturer in **Environmental Justice Studies** – University of Michigan, School of Natural Resources, Ann Arbor, Michigan, Spring 1998.

Guest Lecturer in **Environmental Justice and the Law** – Cooley Law School, Lansing, Michigan, Fall 1997.

Guest Lecturer in **Environmental Studies** – Western Michigan University, Kalamazoo, Michigan, 1994 through 1999.

**FURTHER EDUCATION**

Seminar - **New Digital Joint Permit Application (JPA) in MiWaters: Submitting Wetlands, Lakes and Streams Applications**, Water Resources Division of the Michigan Department of Environmental Quality, March 5, 2019.

Training – **Understanding the Depth of Deep Well Injection**, North Central Michigan College, Petoskey, Michigan, May 20, 2010.

Training – **Design for Rain Gardens: Stormwater and Runoff Control**, North Carolina State University and Tetra Tech, April 16, 2009.

Training – **Wetland Plant Identification**, Wetland Training Institute, Dr. Mollenberg, Lansing, Michigan, May 21-24, 2002.

Training - **Planning Hydrology for Constructed Wetlands**, Wetland Training Institute, Dr. Gary Pierce, Pierce Cedar Creek Institute, Hastings, Michigan, July 9 - 13, 2001.

Training - **U.S. Army Corps of Engineers Wetland Delineation and Management Training**, Richard Chinn Environmental Training, Inc., Chicago, Illinois, October 9 - 13, 2000.

Training – **Special Wetland Area Management Project**, Geographic Information System Wetland Data Northwest Michigan Council of Governments, Traverse City, Michigan, August 31, 2000.

Training – **Web Site Design Course**, Michigan State University Extension, University Center, Traverse City, Michigan May 4, 2000.

Training - **American Institute of Certified Planners (AICP) Comprehensive Exam Preparatory Course**, February through April 17, 2000.

Training - **Computer Technologies and Groundwater Resource Data Management**, U.S. EPA, Atlanta, Georgia, August 1986.

Seminar - **Hazardous Waste Management under the Resource Conservation and Recovery Act**, Waste Management Division of the Michigan Department of Natural Resources, February 1989.

Training - **Soil and Groundwater Sampling and Analysis** - Michigan Department of Natural Resources, April 1989.

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**Training - Innovative Remedial Action Technologies**, Environmental Response Division, Michigan Department of Natural Resources, 1989.

**Seminar - Underground Storage Tank Management**, Department of Engineering Professional Development, University of Wisconsin, 1989.

**Training - Amendments to the Michigan Environmental Response Act, 1988 P.A. 307**, Michigan Department of Natural Resources, 1990.

**Seminar - Leak Detection and Corrective Action for Underground Storage Tanks**, Department of Engineering Professional Development, University of Wisconsin, 1990.

**Seminar - Groundwater Flow and Well Hydraulics**, Department of Engineering Professional Development, University of Wisconsin, 1991.

**Cleaning The Air in West Michigan #4: Recognizing and Dealing with Non-compliance**, Varnum, Riddering, Schmidt and Howlett, and Grand Valley State University - Water Resources Institute, Grand Rapids, Michigan, September 1994.

**ASTM - Environmental Site Assessment Up-date**, Chicago, Illinois, August 1994.

**Seminar - IBM PC Applications in Groundwater Pollution and Hydrology**, Groundwater Modeling and Computer Technologies for Groundwater Quality Management - National Ground Water Association, Boston, Massachusetts, August 1994.

**Workshop - Waste Minimization and Energy Efficiency Workshop** - American Automobile Manufacturers Association, Michigan Departments of Commerce and Natural Resources and the U.S. EPA, Detroit, Michigan, December 1994.

**Seminar - Clean Air Act Amendments, Sec. 112(R) - Process Safety Management and Risk Management Compliance**, Michigan Association of Environmental Professionals Howell, Michigan, December 1994.

**Workshop - Waste Minimization and Energy Efficiency Workshop** - Michigan Departments of Commerce and Natural Resources, Traverse City, Michigan, May 1995.

**Training - Risk-Based Corrective Action (RBCA) Applied at Petroleum Sites (ASTM E38-94)**, ASTM by Foster Wheeler Environmental Corporation, Bellevue, Washington, July 14-15, 1995.

**Conference - Restructuring Rural Society and Rural Sociology**, Environmental Justice, 58<sup>th</sup> Annual Meeting, Rural Sociological Society, Ritz-Carlton Hotel, Pentagon City, Virginia, August 17-20, 1995.

**Conference - Michigan Chapter of the American Planning Association and the Michigan Society of Planning Officials**, 4<sup>th</sup> Annual Joint Conference, "Planning Michigan For the People, By the People", Amway Grand Plaza, Grand Rapids, Michigan, September 22-25, 1999.

**Seminar - Innovative Septic Technologies**, Michigan State University Engineering Department, Michigan State University Extension and Northwest Michigan Council of Governments, Traverse City Library, Traverse City, Michigan, August 25, 2000.

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**Academic Achievement:**

Phi Theta Kappa National Honor Society  
Golden Key National Honor Society  
Alpha Zeta Agriculture and Natural Resources Honor Society  
Numerous MSU scholarships and assistantships -- 3/84 through 3/86.  
MSU graduate student fellowship -- 9/92 through 8/98.

**Professional Certifications:**

OSHA 40-Hour Site Safety Training  
OSHA 8-Hour Site Safety Training  
OSHA Hazardous Waste Site Supervisory Safety Training  
Qualified Underground Storage Tank Professional #190, State of Michigan, Department of Environmental Quality.  
Michigan Association of Planning, certified instructor.

**Professional Associations:**

Michigan Association of Environmental Professionals, member.  
National Association of Environmental Professionals, member.  
National Ground Water Association, member.  
Society of Wetland Scientists, member.  
Michigan Association Planning, certified instructor and former education committee member.  
American Planning Association, member.



550/9-74-004

**INFORMATION ON LEVELS OF  
ENVIRONMENTAL NOISE  
REQUISITE TO PROTECT  
PUBLIC HEALTH AND WELFARE  
WITH AN ADEQUATE MARGIN  
OF SAFETY**

**MARCH 1974**

**PREPARED BY  
THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF NOISE ABATEMENT AND CONTROL**

**This document has been approved for general  
availability. It does not constitute a standard,  
specification, or regulation.**

The associated interior day-night sound level within a typical home which results from outdoors is 15 dB less, or 40 dB. The expected indoor daytime level for a typical neighborhood which has an outdoor day-night sound level of 55 dB is approximately 40 dB, whereas the nighttime level is approximately 32 dB (see Figure A-7). This latter value is consistent with the limited available sleep criteria (p-5). Additionally, these resulting indoor levels are consistent with the background levels inside the home and which have been recommended by acoustical consultants as "acceptable" for many years (Table D-10).

The effects associated with an outdoor day-night sound level of 55 dB are summarized in Table D-11. The summary shows:

- (1) satisfactory outdoor average sentence intelligibility may be expected for normal voice conversations over distances of up to 3.5 meters;
- (2) depending on attitude and other factors non-acoustical the average expected community reaction is "none" although 1% may complain and 17% indicate "highly annoyed" when responding to social survey questions; and
- (3) noise is the least important factor governing attitude towards the area.

Identification of a level which is 5 dB higher than the 55 dB identified above would significantly increase the severity of the average community reaction, as well as the expected percentage of complaints and annoyance. Conversely,

identification of a level 5 dB lower than the 55 dB identified above would reduce the indoor levels resulting from outdoor noise well below the normal background indoors. It would decrease speech privacy outdoors to marginal distance. Little change in annoyance would be made since at levels below the identified level, individual attitude and life style, as well as local conditions, are more important factors in controlling the resulting magnitude of the level of the intruding noise.

In conclusion, a  $L_{dn}$  level of 55 dB is identified as outdoor level in residential areas compatible with the protection of public health and welfare. The level of 55 dB is identified as maximum level compatible with adequate speech communication indoors and outdoors. With respect to complaints and long term annoyance this level is clearly a maximum satisfying the large majority of the population (see Table D-1). However, specific local situations, attitudes, and conditions may make lower levels desirable for some locations. A noise environment not annoying some percentage of the population cannot be identified at the present time by specifying noise level alone.

Relative Importance of Aircraft As A  
 Factor in Disliking Area or Wanting to  
 Move (Heathrow 1st Study) D-7, D-10, D-11, D-12 and D-13

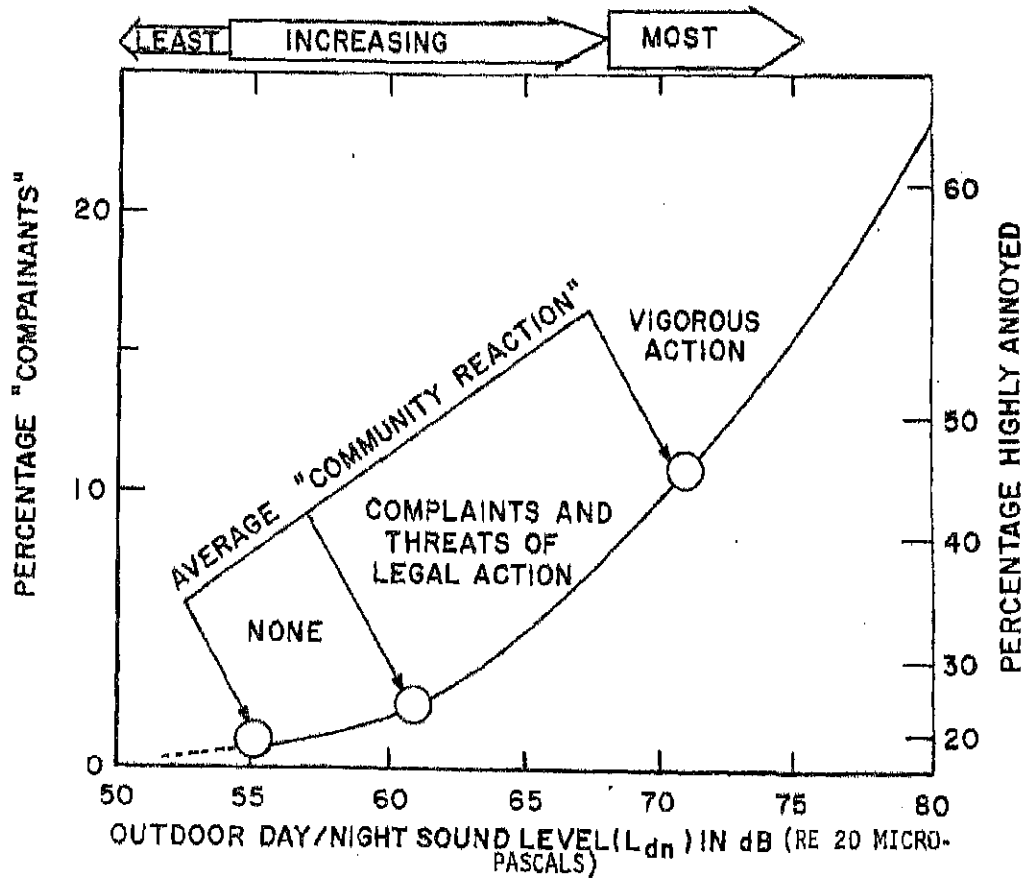


Figure D-16. Summary of Annoyance Survey and Community Reaction Results



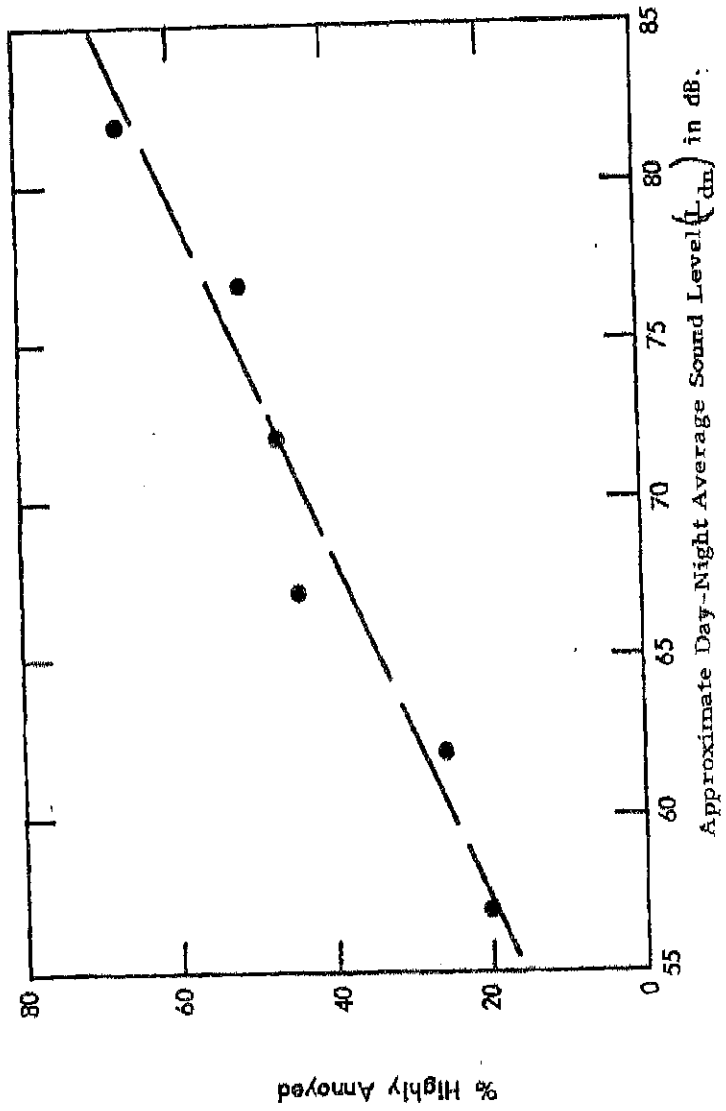


Figure D-13. Combined Results - British and U.S. Surveys D-17

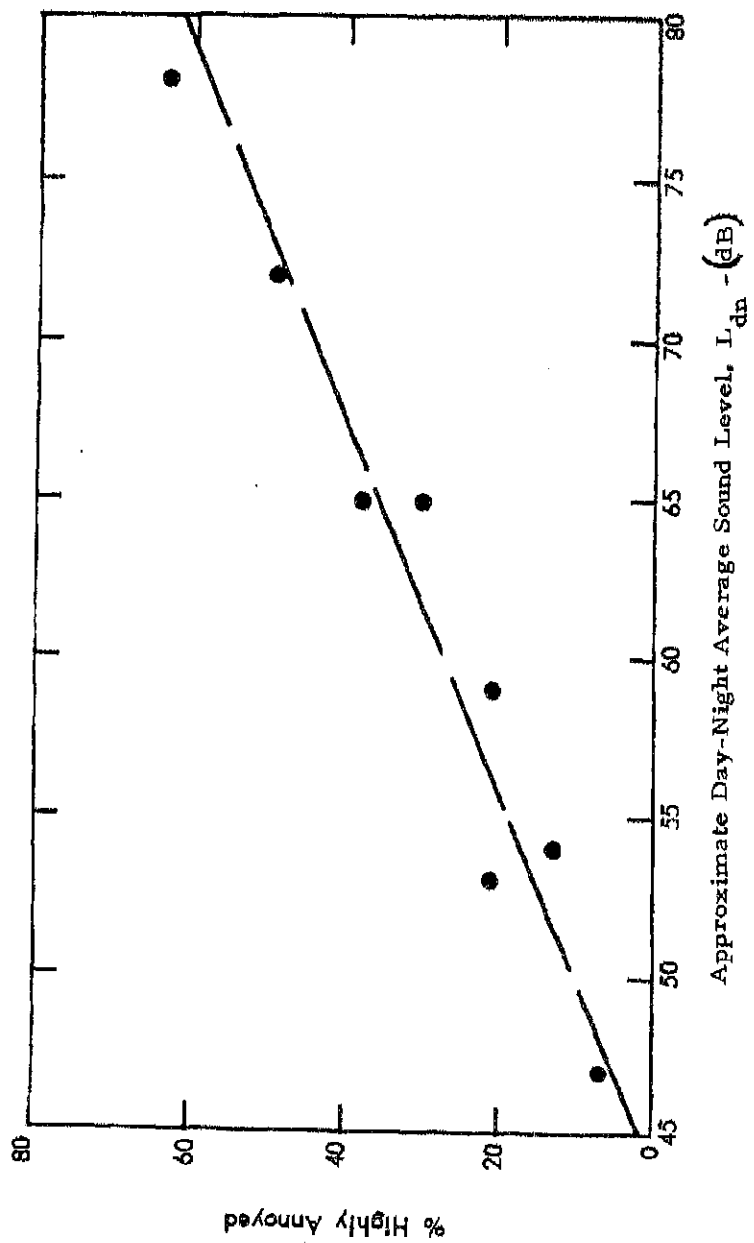


Figure D-10. Percentage Highly Annoyed as Function of Approximate Day-Night Noise Level -  
 Results of First London Heathrow Survey D-39 from D-6

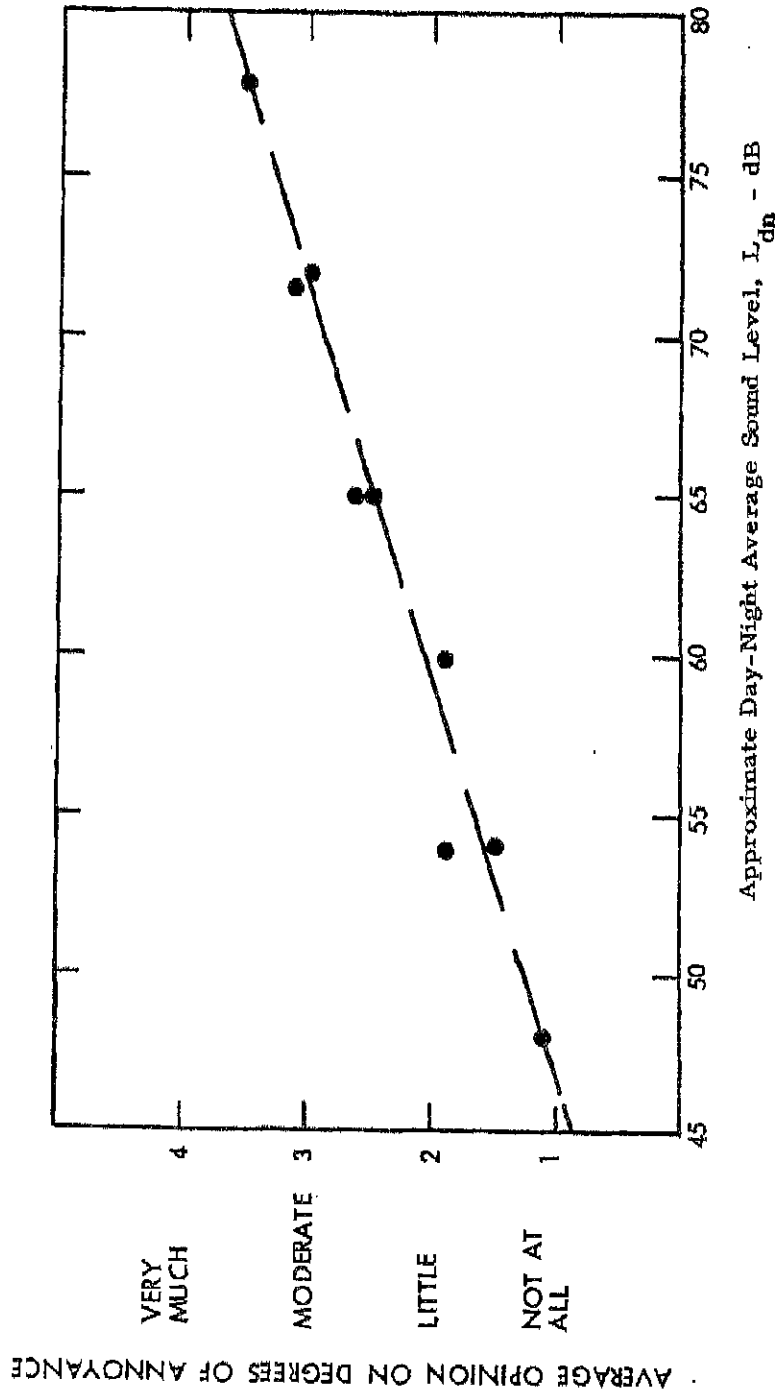


Figure D-9. Average Degree of Annoyance as a Function of the Approximate Day-Night Noise Level-Results of First London Heathrow Survey D-39 FROM D-6

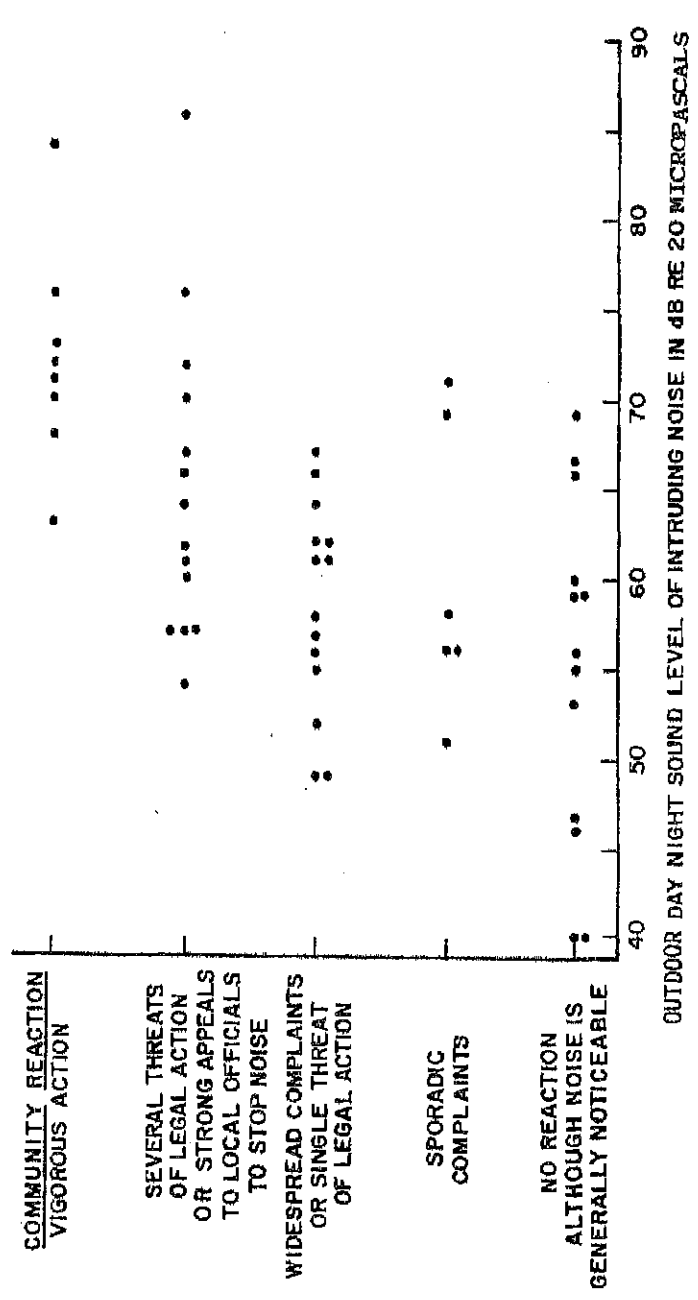
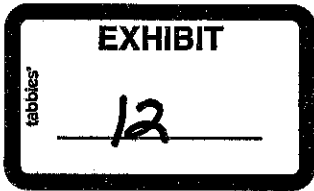


Figure D-8. Community Reaction to Intensive noises of Many Types As A Function of the Outdoor Day/Night Sound Level of the Intruding Noise D-3



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Facsimile (231) 533-6225  
wendling@upnorthlaw.com

Bryan E. Graham

Peter R. Wendling

---

July 13, 2023

Tom Grier, Attorney  
The Running Wise Law Firm  
1501 Cass Street Ste D  
P.O. Box 686  
Traverse City, MI 49685

**SUBJECT:** Appeal of Zoning Administrator's Decision and Possible Appeal of  
Planning Commission Decision

Dear Tom:


It is my understanding, from our recent conversation, that the Township is willing to toll an appeal which my client wishes to file with respect to the decision of the Zoning Administrator to not process a Special Use for Enduro races under Section 4.5.2 *Special Land Uses in the Agricultural District, Public or Private Outdoor Recreation or Park Facilities*. Given that an appeal of the Zoning Administrator's decision must be filed within ten days of the administrator's decision to deny a land use permit under Section 10.6. Clearly, a Land Use Permit would not be issued until the Special Use Permit was processed. However, it is the decision of the Zoning Administrator not to process a Special Use Permit which my client wishes to appeal to the ZBA pursuant to Section 11.4 of the Zoning Ordinance. I do note that Section 11.4 does not have such a time period with respect to appeals other than of the failure to issue a Land Use Permit by the Zoning Administrator. Regardless, I do not want to run afoul of any timelines and therefore I would ask that you provide in writing an opinion that this appeal can be pursued and as a courtesy, what the timeline is to pursue this appeal.

The reason for this is my understanding that my client's current application for a Special Use Permit, set to be processed under Section 7.15 of the Zoning Ordinance which is before the Planning Commission, will likely not be processed by the Planning Commission pursuant to your legal advice to the Township. The Zoning Ordinance also allows for appeals of Planning Commission decisions to the ZBA. My preference for efficiency is to combine those appeals in one application once any such decision has been made. Since the decision on the further processing of the application before the Planning Commission under Section 7.15 has not been made, the issue is not ripe for appeal.

Please confirm that my client has the right to appeal both of those decisions at one time and please provide the timeline to file that appeal.

I look forward to your prompt response and as always and thank you for your professionalism and courtesy.

Sincerely,



Peter R. Wendling

PRW/aew

cc: Kasson Twp Zoning Administrator Tim Cypher





## Tom Grier

---

**From:** Tom Grier  
**Sent:** Saturday, July 15, 2023 12:44 PM  
**To:** 'Anne Wendling'; Peter Wendling  
**Cc:** tim@allpermits.com; Peter Wendling  
**Subject:** RE: Enduro Permit

Peter,

I printed your letter of July 13, 2023 this morning. Sorry for the delay. I was consumed late Thursday and all day Friday with a settlement conference and then worn out afterward and did not open emails.

Per your letter of July 13: Yes. On behalf of Kasson Township, I am agreeable to the Enduro applicants doing a combined appeal to the Township Zoning Board of Appeals of 1) Tim Cypher's prior interpretation of Zoning Ordinance ("ZO") Section 4.7.2 of the Forested District (holding that the "outdoor park" language) did not allow a special use permit ("SUP") and 2) the Planning Commission's anticipated decision to deny further processing of the Enduro application under ZO Section 7.15 pursuant the draft motion that I shared yesterday with you and attorney Kristyn Houle.

I would further agree to toll the filing date for Appeal No. 1 (Tim Cypher's interpretation) until the Planning Commission acts on the second matter.

In reviewing ZO Section 10.6, I do not believe that the 10-day filing date there applies to a ZBA appeal, and as you pointed out, there does not appear to be a ZBA filing deadline in Section 11.4.

I would propose then that the combined ZBA appeal can be filed within 21 days of whenever the Planning Commission acts on the proposed motion on the second matter, which may be as early as this Monday.

Thereafter, once the combined appeal is filed, we can set the hearing date at the ZBA and we can work on a future protocol for dates within which to file briefing, etc. i.e. no need to worry about filing all of your briefing and argument within 21 days. That can wait for later. I suspect that Kristyn Houle, on behalf of her citizen's group, will want to weigh in as well under such a protocol..

Thank You

Tom Grier

EXHIBIT

tabbies

14

**MOTION TO DISCONTINUE CONSIDERATION OF SPECIAL USE PERMIT  
APPLICATION FOR MICHIGAN SPRINT ENDURO MOTOR CYCLE EVENT UNDER  
SECTION 7.15 OF THE KASSON TOWNSHIP ZONING ORDINANCE**

**TOWNSHIP OF KASSON  
LEELANAU COUNTY, MICHIGAN**

At a regular meeting of the Kasson Township Planning Commission held in said Township on the 17<sup>th</sup> day of July 2023 there were:

Present: Roush, Lanzan, Carter, Noman, Schaeffer  
\_\_\_\_\_

Absent: \_\_\_\_\_  
\_\_\_\_\_

The following motion was offered by Lanzan and seconded by Schaeffer:

**BACKGROUND**

1. An Application was filed on February 18, 2023 for a Special Use Permit by James Schettek, Bill Kasben and Fran Seymour to conduct a motorcycle race event identified as the Michigan Sprint Enduro Event ("Motorcycle Event") on 304 acres of combined parcels within the Township's Forested zoning district.
  
2. Because the Motorcycle Event was not identified as either an available permitted use or special land use within under Section 4.7 of the Zoning Ordinance ("ZO") for the Forested district, the application proceeded under ZO Section 7.15 which allows consideration as special land uses of:  

Land and structural uses that are not specified in any other section of this Ordinance, but, upon being applied for under the provisions of Chapter 7, may be considered by the Planning Commission as long as they meet all the conditions and requirements of this Chapter and the spirit and intent of the Ordinance.
  
3. The Motorcycle Event application was thereafter processed under the special land use procedures of ZO Chapter 7 including the holding of a public hearing and preliminary work to develop proposed findings under the special use approval standards of ZO Chapter 7.

4. During consideration of the Motorcycle Event as a special land use, however, the Township's legal counsel, after consultation with the Michigan Townships Association's legal counsel, and others, advised Township Zoning Administrator Tim Cypher, in a letter dated May 5, 2023, that ZO Section 7.15 was determined to be unlawful in accordance with the Michigan Court of Appeals' decision in *Whitman v. Galien Township*, 288 Mich App 672 (2010).
5. As a consequence, if the Motorcycle Event application is approved as a special land use under ZO Section 7.15, it would be unlawful and subject to immediate legal challenge.

**MOTION**

Therefore, a motion is made that the Planning Commission immediately terminate any further action, including, but not limited to, consideration of findings of fact, on the Motorcycle Event application, as a special land use within the Forested zoning district.

Adopted this 17<sup>th</sup> day of July 2023.

YEAS: Carter      Lanham  
Schaeffer

NAYS: Abstain: Noonan (ZBA Conflict)

**CERTIFICATION**

I hereby certify that the foregoing is a true and complete copy of a Motion adopted by the Planning Commission of the Township of Kasson, County of Leelanau and State of Michigan, at a meeting held on July 17<sup>th</sup>, 2023, the original of which is on file in my office and available to the public. Public notice of said meeting was given pursuant to and in compliance with the Open Meetings Act, Act No. 267 of the Public Acts of Michigan 1976, including in the case of a special or rescheduled meeting, notice by posting at least eighteen (18) hours prior to the time set for said meeting.

Dated: 7/17/23

  
 Planning Commission Secretary

**YOUNG, GRAHAM & WENDLING, P.C.**

Attorneys at Law  
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Bellaire, Michigan 49615  
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Facsimile (231) 533-6225  
wendling@upnorthlaw.com

Bryan E. Graham

Peter R. Wendling

---

July 13, 2023

Tom Grier, Attorney  
The Running Wise Law Firm  
1501 Cass Street Ste D  
P.O. Box 686  
Traverse City, MI 49685

**SUBJECT:** Appeal of Zoning Administrator's Decision and Possible Appeal of  
Planning Commission Decision

Dear Tom:

It is my understanding, from our recent conversation, that the Township is willing to toll an appeal which my client wishes to file with respect to the decision of the Zoning Administrator to not process a Special Use for Enduro races under Section 4.5.2 *Special Land Uses in the Agricultural District, Public or Private Outdoor Recreation or Park Facilities*. Given that an appeal of the Zoning Administrator's decision must be filed within ten days of the administrator's decision to deny a land use permit under Section 10.6. Clearly, a Land Use Permit would not be issued until the Special Use Permit was processed. However, it is the decision of the Zoning Administrator not to process a Special Use Permit which my client wishes to appeal to the ZBA pursuant to Section 11.4 of the Zoning Ordinance. I do note that Section 11.4 does not have such a time period with respect to appeals other than of the failure to issue a Land Use Permit by the Zoning Administrator. Regardless, I do not want to run afoul of any timelines and therefore I would ask that you provide in writing an opinion that this appeal can be pursued and as a courtesy, what the timeline is to pursue this appeal.

The reason for this is my understanding that my client's current application for a Special Use Permit, set to be processed under Section 7.15 of the Zoning Ordinance which is before the Planning Commission, will likely not be processed by the Planning Commission pursuant to your legal advice to the Township. The Zoning Ordinance also allows for appeals of Planning Commission decisions to the ZBA. My preference for efficiency is to combine those appeals in one application once any such decision has been made. Since the decision on the further processing of the application before the Planning Commission under Section 7.15 has not been made, the issue is not ripe for appeal.

Please confirm that my client has the right to appeal both of those decisions at one time and please provide the timeline to file that appeal.

I look forward to your prompt response and as always and thank you for your professionalism and courtesy.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter R. Wending", with a stylized flourish at the end.

Peter R. Wending

PRW/aew

cc: Kasson Twp Zoning Administrator Tim Cypher



**YOUNG, GRAHAM & WENDLING, P.C.**

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Bellaire, Michigan 49615  
(231) 533-8635  
Facsimile (231) 533-6225  
wendling@upnorthlaw.com

Bryan E. Graham

Peter R. Wendling

---

July 17, 2023

Jerry Roush  
Chairman of Kasson Planning Commission  
10982 S. Maple City Road  
Maple City, MI 49664

VIA EMAIL

**SUBJECT:** Planning Commission Meeting of July 17, 2023 Proposed Written  
Resolution Provided by Kasson Township Legal Counsel Tom Grier

Dear Planning Commission Members:

Please be advised that I represent the applicants James Schettek, Bill Kasben and Fran Seymour with respect to their application pending before the Planning Commission. This SUP application was approved for processing by the Township Zoning Administrator for Planning Commission review to conduct periodic Michigan Sprint Enduro events. The application which was edited by the Zoning Administrator, states that it was for a single Enduro event. Please be advised that this is not the case and that the applicants wish to have Enduro events periodically on the property pursuant to the application.

The Planning Commission has a motion to discontinue this Special Use Permit before you is based upon your legal counsel Tom Grier's analysis of Section 7.5 entitled *Other Special Land Uses* contained within your zoning ordinance. The motion is largely based upon the case of Whitman v. Galien Township (attached exhibit 1). The *Galien Township* case analyzed provisions based upon the facts of how the Galien Township Ordinance was drafted and applying those facts to the Michigan Zoning Enabling Act. Before delving into the analysis of that case, it is important to look at the factual distinctions between the Kasson Township Zoning Ordinance and the zoning provision at issue in the *Galien Township* case.

The Galien Township Zoning Ordinance involved a listed special use which stated as follows,

“Establishments for the conducting of commercial or industrial activities, subject to approval of the Zoning Board.”

Note that the Galien Township Ordinance provision for the special use does not consider uses which are similar to existing special uses within the district of a “commercial or industrial” nature. Rather the Galien Township ordinance listed a use which lacked parameters and was over broad. It did not attempt to address any uses otherwise specifically excluded in all other zoning districts.

The Kasson Township provision under Section 7.15 entitled *Other Special Land Uses* states as follows:



"Land and structural uses that are not specified in any other section of this ordinance, but upon being applied for under the provisions of Chapter 7, may be considered by the Planning Commission as long as they meet all the conditions and requirements of this chapter and the spirit and intent of the ordinance."

The point of the language under Section 7.15 is to address uses which are not specifically listed under any zoning district so as to avoid the problem of exclusionary zoning under the Kasson Township Zoning Ordinance. The objection that the Michigan Court of Appeals had with respect to the Galien Township Ordinance is that their ordinance did not define "commercial" or "industrial." Therefore, any such commercial or industrial activity of any type was essentially listed as an allowed use in that district subject to special use conditions. The Court of Appeals in the *Galien Township* case was not addressing an issue of potential exclusionary zoning such as where a use is not specifically listed in any zoning district within the zoning ordinance.

Under the Kasson Township Zoning Ordinance, the Enduro races would logically constitute a Special Use Permit under Section 4.5.2 *Special Land Uses as Public or Private Outdoor Recreation or Park Facilities*. However, the Zoning Administrator has made a decision not to allow such an application to come before the Planning Commission under that subsection. The Zoning Administrator further stated to my clients that the Enduro events, which my client wishes to utilize his property for, are not uses allowed in any zoning district within Kasson Township. As such, the issue is not the overbreadth of a zoning use as in the *Galien Township* case, but rather the ability of Kasson Township to address uses purportedly not listed as an allowed use in any zoning district. As such the only way to avoid exclusionary zoning is to allow for an application under Section 7.15 entitled *Other Special Land Uses*.

It appears to be the position of the Township that the *Galien Township* case logically resulted in no further applications for land use permits, special use permits or PUD's if the uses were not otherwise specifically stated in any municipality's zoning ordinance. However, two subsequent, albeit unpublished, Michigan Court of Appeals cases since *Galien* says otherwise. Attached as exhibits 2 and 3 are the cases of *Common vs. City of Pontiac* and *NSC Walker, LLC v. City of Walker*. The *City of Pontiac* case was decided in 2012 two years after *Galien*, and the *City of Walker* case was published just recently in December of 2022. In the *City of Pontiac* case, note that the City of Pontiac Zoning Ordinance contained a provision within their C-2 zoning district which stated "Other uses similar to those uses." (see page four of the case) This is further explained on page 11 in the case where the court noted that "permitted principal uses in the C-2 zone included " . . . the catch-all " provision of Section 7.47(15) expressly allowing "other uses similar to the above uses, provided that they are conducted within completely enclosed buildings." While the *Pontiac* case involved a site restriction related to a similar but undefined use being that it must be conducted in a completely closed building, any other use in similar but not specifically stated or enumerated, is allowed under that provision of Pontiac's zoning ordinance.

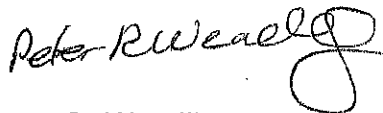
In the *City of Walker* case (attached as exhibit 3), page two of six lists the provision in the Zoning Ordinance within the City of Walker C-1 district which allows for:

"Other retail businesses or service uses determined by the Board of Zoning Appeals to be similar to the permitted principal uses in this zoning district and compatible with the intent of the zoning district."

Again, those "other retail businesses or service uses" are not specifically enumerated in the City of Walker's Zoning Ordinance. However the goal under the City of Walker's Zoning Ordinance is to avoid the issue of exclusionary zoning. The *Gallen* case is fine with respect to the decision made by the Michigan Court of Appeals given the unique facts in the *Gallen Township* case which are materially different with respect to the zoning ordinance language under Kasson Township's Zoning Ordinance. As you can see from the *Walker* case as well as the *City of Pontiac*, the Michigan Court of Appeals does indeed allow for discretion on the part of the Township such as the language under Section 7.5 of the Kasson Township zoning ordinance to address other uses under the zoning ordinance given that it is almost impossible to address every use under every district within any municipality that has zoning. This does not mean that the Planning Commission will necessarily approve the application, but my clients deserve to have the Special Use Permit processed. There is no legal support for this denial under existing statutory and case law including the *Gallen Township* case.

We ask that the Planning Commission move forward and hear the application, make findings of fact under the application and come to a decision based upon all of the evidence that is presented and all materials on the record.

Respectfully submitted,



Peter R. Wendling

PRW/aew

cc: Tom Alward  
Fran Seymour



## Tom Grier

---

**From:** Anne Wendling <awendling@upnorthlaw.com>  
**Sent:** Monday, July 17, 2023 2:37 PM  
**To:** groush@centurytel.net  
**Cc:** fran@dwcupnorth.com; tim@allpermits.com; Tom Grier  
**Subject:** Re: Enduro Application Correspondence  
**Attachments:** City of Walker; Galien Township; City of Pontiac

Also attached are the cases that are referenced in the letter.

On 7/17/2023 2:30 PM, Anne Wendling wrote:

> Gentlemen - Please see the attached correspondence in the Enduro  
> matter from Mr. Wendling. Thank you.  
>

--

Anne E. Wendling  
Secretary, Young, Graham & Wendling, P.C.  
104 E. Forest Home Ave. P.O. Box 398  
Bellaire, MI 49615  
231-533-8635

This email message and any attached file is intended only for the use of the individual or entity to which it is addressed and contains information that is privileged, confidential and exempt from disclosure under applicable law if sent to a client. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this communication in error, please notify the sender of this message and delete all copies of the original message.

**NSC Walker, LLC v. City of Walker**

Court of Appeals of Michigan

December 15, 2022, Decided

No. 358403

**Reporter**

2022 Mich. App. LEXIS 7090 \*; 2022 WL 17724288

NSC WALKER, LLC, Plaintiff-Appellant, v  
CITY OF WALKER, Defendant-Appellee.

PER CURIAM.

**Notice:** THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

**Prior History:** [\*1] Kent Circuit Court. LC No. 21-002833-AA.

NSC Walker LLC v. City of Walker, 2021 Mich. App. LEXIS 5846 (Mich. Ct. App., Oct. 12, 2021)

**Core Terms**

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ordinance, trucks, self-storage, storage, trailers, circuit court, indoor, principal use, parking, long-term, customers, rental, zoning, zoning district, accessory use, appeals, site-plan-approval, customarily, outdoor, incidental

**Counsel:** For NSC WALKER LLC, Plaintiff-Appellant: ASHLEY GRACE CHRYSLER.

For WALKER CITY OF, Defendant-Appellee: ANDREW JOSEPH GORDON.

**Judges:** Before: GLÉICHER, C.J., and MARKEY and RICK, JJ.

**Opinion**

---

Plaintiff, NSC Walker, LLC (NSC), appeals by right the circuit court's opinion and order affirming a decision that was rendered in favor of defendant, City of Walker (the city), by the city's Zoning Board of Appeals (ZBA). The circuit court concluded that the ZBA's decision precluding a certain use of NSC's property was consistent with the city's zoning ordinance and a site-plan-approval condition. We reverse and remand for further proceedings.

**I. BACKGROUND**

The real property at issue in this case is located in a C-1 local commercial zoning district. In 2017, when the property was owned by Everkept Storage, Inc. (Everkept), the ZBA had approved the property for use as an indoor self-storage facility. Although an indoor self-storage operation did not constitute an express permitted principal use for a C-1 zoning district, the ZBA found that it was sufficiently similar to such a use and compatible with the intent of the zoning district. The pertinent ordinance section [\*2] relied on by the ZBA to allow Everkept to operate an indoor self-storage business was Walker Ordinance, § 94-176(b), which provides:

Principal uses. Except as expressly otherwise permitted by this chapter, no building or part of a building in the "C-1" district, local commercial, shall be used,

erected, altered or converted or land used, in whole or in part, except for:

(1) Food stores, grocery stores, meat markets, bakeries, coffee shops, delicatessens and restaurants. [This ordinance subsection goes on at some length specifically identifying a variety of businesses which do not expressly include indoor self-storage.]

\* \* \*

(18) Other retail business or service uses determined by the board of zoning appeals to be similar to the permitted principal uses in this zoning district and compatible with the intent of the zoning district. . . . [Emphasis added.]

The ZBA's decision under Walker Ordinance, § 94-176(b)(18) to authorize Everkept's planned indoor self-storage operation was subject to a site-plan review by the city's planning commission. The planning commission subsequently granted approval of Everkept's business subject to, in pertinent part, a condition that there could be "[n]o long-term [\*3] trailer parking or storage, long-term vehicle parking or storage, or outdoor storage of any material." Everkept accepted the condition, along with other conditions, so it was allowed to operate its indoor self-storage facility. In 2018, while Everkept still owned the property, the city amended its zoning ordinance to add indoor self-storage<sup>1</sup> as a "special exception" use within the C-1 district permissible upon review and approval by the planning commission. Walker Ordinance, § 94-176(d).

In 2020, Everkept sold the property to NSC, which continued to operate an indoor self-storage facility, but with an additional service or feature made available to its customers and

others in the form of U-Haul trucks and trailers that could be rented and that were shuttled back and forth from the property on an as-needed basis. The circuit court provided the following description:

NSC purchased the property in 2020. Shortly after, the City received complaints that the property was being used as a location to rent U-Haul moving trucks and trailers. This was being done through U-Haul's "equipment shunting" system. Under this system, the property is used as a pick-up and drop-off point for the trucks and [\*4] trailers. According to the record, at any given time there would typically be three or four trucks and trailers on the property which are either reserved for rental or returned and waiting for pick-up by U-Haul. NSC claims that 75% of the U-Haul customers are also customers of the self-storage.

Following multiple citizen complaints, the city's code enforcement specialist sent a violation notice and order to abate to NSC. The notice and order indicated that the local ordinance did not permit "the use of a rental truck business (U-Haul) or the open storage of commercial vehicles" on the property. NSC lodged a challenge of the notice and order with the city's ZBA. NSC argued, in part, that running the U-Haul business in connection with the indoor self-storage facility constitutes a permitted accessory use under Walker Ordinance, § 94-176(c). This provision states that "[a]ny use customarily incidental to the *permitted principal uses* in the 'C-1' district shall be a permitted accessory use." Walker Ordinance, § 94-176(c) (emphasis added). After a public meeting, the ZBA determined as follows:

1. A truck rental use is not customarily incidental or accessory to a self-storage use.
2. Truck [\*5] rental and open outdoor

<sup>1</sup>The actual language employed by the ordinance section is "self-storage: interior-access." Walker Ordinance, § 94-176(d)(5).

storage of vehicles, trucks or trailers are uses that are not permitted by right or by special exception in the C-1, Local Commercial zoning district.

3. A property owner does not have the right to commence an activity or use that is customarily accessory to a special exception principal use without prior Planning Commission approval.

4. A truck rental operation as a principal OR accessory use is one that could be reasonably judged similar to uses permitted by right or by special exception in the C-4, Outdoor Commercial zoning district.

5. The long-term outdoor storage of vehicles on the subject site is specifically prohibited per the conditional site plan approval granted by the Planning Commission on April 5, 2017.

6. Truck rental is not a use that is consistent with the 2020 Walker Master Plan and the future land use and community character designations of the Northwest Neighborhood.

On appeal by NSC, the circuit court affirmed the ZBA's findings and determinations. The court ruled that because indoor self-storage was not a *permitted principal use* in a C-1 district but only judged to be *similar* to a permitted principal use, Walker Ordinance, § 94-176(b)(18), the [\*6] U-Haul component of NSC's business could not qualify as an "accessory use" as a matter of law under Walker Ordinance, § 94-176(c).<sup>2</sup> The circuit

<sup>2</sup> Because of the circuit court's ruling, it expressly found it unnecessary to make a determination whether operating the U-Haul aspect of NSC's business is "customarily incidental" to running the indoor self-storage business such that the U-Haul operation qualifies as an "accessory use" under Walker Ordinance, § 94-176(c). As indicated earlier, the ZBA found that the U-Haul operation was not customarily incidental to NSC's indoor self-storage business; therefore, the accessory-use provision was unavailable to NSC.

court further ruled that even if those Walker Ordinance sections were construed contrary to their plain language, NSC would still not be entitled to relief because the U-Haul operation violated the site-plan-approval condition barring "long-term trailer parking or storage, long-term vehicle parking or storage, or outdoor storage of any material." The circuit court explained:

There was ample evidence for the ZBA's finding that the renting of U-Hauls breached this condition. NSC was doing repeated "short-term" rental of trucks and trailers in such a way that the storage and parking became "long-term," or at least could reasonably be construed as such. As one member of the public explained at the hearing before the ZBA, "It may not be the same trucks, but there are trucks there all the time . . . ." [Omission in original.]

The circuit court denied the appeal, closing its opinion and order by ruling that "NSC could not take advantage of the accessory-use provision, and even if it could, the use of the property for U-Haul rental was expressly barred [\*7] by the [planning commission's] conditions." NSC now appeals the circuit court's opinion and order.

## II. ANALYSIS

### A. GOVERNING STANDARDS AND PRINCIPLES

In general, this Court reviews de novo a circuit court's decision in an appeal from a zoning board, Edw C Levy Co v Marine City Zoning Bd of Appeals, 293 Mich App 333, 340; 810 NW2d 621 (2011), as well as the interpretation and application of municipal ordinances, Great Lakes Society v Georgetown Charter Twp, 281 Mich App 396, 407; 761 NW2d 371 (2008). MCL 125.3606(1) provides:

Any party aggrieved by a decision of the zoning board of appeals may appeal to the circuit court for the county in which the

property is located. The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:

- (a) Complies with the constitution and laws of the state.
- (b) Is based upon proper procedure.
- (c) Is supported by competent, material, and substantial evidence on the record.
- (d) Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.

"Substantial evidence is evidence that a reasonable person would accept as sufficient to support a conclusion." Edw C Levy, 293 Mich App at 340 (quotation marks omitted). It may be substantially less than a preponderance of the evidence but requires more than a scintilla of evidence. Id. at 340-341. "The court may affirm, reverse, or modify the decision of the zoning board [\*8] of appeals[,] [and] [t]he court may make other orders as justice requires." MCL 125.3606(4).

In Hughes v Almena Twp, 284 Mich App 50, 60; 771 NW2d 453 (2009), this Court observed:

This Court reviews the circuit court's determination regarding ZBA findings to determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the [ZBA]'s factual findings. This standard regarding the substantial evidence test is the same as the familiar "clearly erroneous" standard. A finding is clearly erroneous if the reviewing court, on the whole record, is left with the definite and firm conviction that a mistake has been made. [Quotation marks and citations omitted; alteration in original.]

With respect to the construction of ordinal language, this Court in Great Lakes Society,

281 Mich App at 407-408, stated:

Ordinances are treated as statutes for the purposes of interpretation and review. Hence, the interpretation and application of a municipal ordinance presents a question of law, which this Court reviews de novo. The goal of statutory construction, and thus of construction and interpretation of an ordinance, is to discern and give effect to the intent of the legislative body. Terms used in an ordinance must be given their plain and [\*9] ordinary meanings . . . . [Citations omitted.]

In general, "a reviewing court is to give deference to a municipality's interpretation of its own ordinance." Macenas v Village of Michiana, 433 Mich 380, 398; 446 NW2d 102 (1989). With respect to how much deference should be given, our Supreme Court explained that "in cases of ambiguity in a municipal zoning ordinance, where a construction has been applied over an extended period by the officer or agency charged with its administration, that construction should be accorded great weight in determining the meaning of the ordinance." Id. But when the language of an ordinance is clear and unambiguous, it "must be enforced as written." Kalinoff v Columbus Twp, 214 Mich App 7, 11; 542 NW2d 276 (1995).

## B. DISCUSSION AND RESOLUTION

For a property owner in a C-1 district to take advantage of the accessory-use provision, the "use" at issue must be "customarily incidental to [a] permitted principal use[.]" Walker Ordinance, § 94-176(c). The question that arose in this case was whether the operation of an indoor self-storage facility under Walker Ordinance, § 94-176(b)(18) constituted a permitted principal use which would potentially allow for an accessory use. The ZBA, the circuit court, and the city took the position that the indoor self-storage business was merely



*similar* to [\*10] a permitted principal use in the C-1 district and not an actual permitted principal use.<sup>3</sup> We disagree with this stance because it is contrary to the plain and unambiguous language of the ordinance.

Walker Ordinance, § 94-176(b), sets forth a list of permitted principal uses, specifically identifying particular businesses or services, with Subdivision (18) as a catchall to cover businesses or services of a similar nature to those expressly identified. The drafters of the ordinance clearly realized the impossibility of identifying every conceivable business or service that would be a proper fit in a C-1 district, resulting in the language in Subdivision (18). The reference in Subdivision (18) to businesses or services that are "*similar*" to the list of permitted principal *uses* merely serves as one of the criteria to guide the ZBA in deciding whether Subdivision (18) is applicable to a given use, along with the requirement that a contemplated use be "compatible with the intent of the *zoning* district." When the ZBA designates a business or service as qualifying for inclusion in a C-1 district under Subdivision (18), it effectively and necessarily becomes a permitted principal use, entitled to the same treatment as the expressly-identified [\*11] permissible uses, including the potential to operate accessory uses. Accordingly, we hold that the circuit court misinterpreted Walker Ordinance, § 94-176(b), thereby applying incorrect legal principles to the case.

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<sup>3</sup>We note that the ZBA permitted Everkept to operate an indoor self-storage facility under Walker Ordinance, § 94-176(b)(18), and not under the "special exception" use provision in Walker Ordinance, § 94-176(d), which did not become effective until after Everkept was granted permission under Walker Ordinance, § 94-176(b)(18). Accordingly, we will not treat indoor self-storage use as a special-exception use under the particular circumstances of this case. Therefore, we decline to address NSC's argument that a special-exception use for an indoor self-storage operation under Walker Ordinance, § 94-176(d)(5) essentially amounts to a permitted principal use for purposes of seeking an accessory use.

With respect to the site-plan-approval condition precluding any "long-term trailer parking or storage, long-term vehicle parking or storage, or outdoor storage of any material," we note there was evidence that U-Haul trucks and trailers are parked on NSC's property at times and to some extent stored on the property. But the parking or storage must be long-term to violate the site-plan-approval condition. Because the operation of an indoor self-storage facility would necessarily entail customer's employing cars, trucks, and trailers to transport items to and from the facility, the planning commission's condition clearly sought to allow short-term parking and storage of vehicles and trailers. The circuit court ruled that "NSC was doing repeated 'short-term' rental of trucks and trailers in such a way that the storage and parking became 'long-term,' or at least could reasonably be construed as such." We hold that the circuit court misconstrued the plain language of the site-plan-approval [\*12] condition. In barring long-term trailer or vehicle parking or storage, the planning commission's condition plainly and unambiguously requires a focus on individual vehicles and trailers and whether they are being parked or stored long-term on the property. Repeated short-term rentals are not prohibited by the clear language of the site-plan-approval condition. To interpret the condition otherwise would potentially result in violations any time multiple self-storage customers, *using their own vehicles and trailers*, are at the facility at the same time or one right after the other. To be clear, U-Haul trucks and trailers must be shuttled on and off the property in a timely manner consistent with a customer's use of a self-storage unit. In other words, the U-Haul operation must come close to paralleling or mimicking circumstances in which customers using their own vehicles are typically arriving at, using, and leaving the facility. By way of example, if a customer is finished using a U-Haul truck and leaves it on

the property, NSC cannot allow it to sit there because another customer has signed up to use that particular truck two days later. But if the wait between uses by two customers [\*13] is an hour, the U-Haul truck cannot be characterized as being stored or parked on the property long-term. Where the line is crossed would need to be assessed on a case-by-case basis.<sup>4</sup>

*Importantly*, our ruling above is subject to a determination by the circuit court regarding whether operating the U-Haul component of NSC's business is "customarily incidental" to operating the indoor self-storage facility such that the U-Haul aspect of the business qualifies as an "accessory use" under Walker Ordinance, § 94-176(c). The ZBA determined that the U-Haul business is not "customarily incidental" to operating an indoor self-storage business. The circuit court did not address this issue in light of its rulings on the other matters. Therefore, we remand the case to the circuit court for consideration of the issue.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher

/s/ Jane E. Markey

/s/ Michelle M. Rick

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End of Document

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<sup>4</sup>Assuming the issue ultimately needs to be addressed, perhaps the parties can even come to an understanding regarding how long a U-Haul truck or trailer can remain on the property in between uses before a violation of the site-plan-approval condition occurs.



**Whitman v. Galien Twp.**

Court of Appeals of Michigan

June 10, 2010, Decided

No. 287991

**Reporter**

288 Mich. App. 672 \*; 808 N.W.2d 9 \*\*; 2010 Mich. App. LEXIS 1042 \*\*\*

DANIEL H. WHITMAN, LARRY PICCOLI, and MARY PICCOLI, Plaintiffs-Appellants, and GEORGE KLINGSPON, ETTA KLINGSPON, EDWARD HOWARD, LOIS HOWARD, and JOYCE CHASE, Plaintiffs, v GALIEN TOWNSHIP and GALIEN TOWNSHIP ZONING BOARD OF APPEALS, Defendants-Appellees.

**Prior History:** [\*\*\*1] Berrien Circuit Court. LC No. 2006-003177-AA.

*Whitman v. Galien Twp.*, 485 Mich. 859, 771 N.W.2d 783, 2009 Mich. LEXIS 2018 (2009)

**Core Terms**

zoning ordinance, special-use, zoning, land use, eligible, ordinance, zoning board, Township, zoning district, agricultural, circuit court, permits, racetrack, regulations, districts, industrial activity, definitions

**Case Summary**

**Procedural Posture**

Applicants sought a special use permit to construct and operate a snowmobile, dirt bike, and ATV racetrack on their property. Defendant Galien Township, Mich., Zoning Board of Appeals granted the permit. Plaintiffs, property owners, filed suit and the Berrien Circuit Court, Michigan, affirmed the grant of the permit. The owners sought review.

**Overview**

The court agreed with the owners' claim that the Board's decision did not comport with the law because the zoning ordinance did not comply with the Michigan Zoning Enabling Act. The Galien Township, Mich., Agric. Zoning Ordinance § 2.4B(2) did not comply with MCL 125.3502(1)(a), which provided that if a zoning ordinance allowed for special use permits, the ordinance shall specify the special land uses and activities eligible for approval. Section 2.4B(2) of the zoning ordinance provided that establishments for the conducting of commercial or industrial activities were eligible for special use permits within the agricultural zoning district. Because the zoning ordinance failed to "specify" the land uses and activities that were eligible for special use permits it did not comply with the Act's specificity requirement. Therefore, because § 2.4B(2) did not comply with MCL 125.3502(1), the Board's decision to grant a special use permit did not comport with the law, and the circuit court erred in affirming the Board's decision.

**Outcome**

The court reversed the circuit court's order affirming the Board and vacated the special use permit.

**LexisNexis® Headnotes**

Business & Corporate  
Compliance > ... > Real Property  
Law > Zoning > Ordinances

Governments > Local  
Governments > Ordinances & Regulations

Business & Corporate  
Compliance > ... > Real Property  
Law > Zoning > Variances

### HN1 [📌] Zoning, Ordinances

Gallen Township, Mich., Agric. Zoning Ordinance § 2.4A, Permitted Uses, states that the following uses and regulations shall apply in the Agricultural District: 1. Any use allowed in "A" Residential District; 2. farming, including the raising of livestock, raising trees, and harvesting wood, excluding animal confinement or production feeding operations; 3. sale of products produced mainly on the premises; 4. mobile homes subject to the provisions of § 3.1. Gallen Township, Mich., Agric. Zoning Ordinance § 2.4B, Uses by Special Permit as Provided for by § 3.13, states: 1. Rooming Houses or Boarding Houses, subject to the provisions of § 3.13 (Special Use Permits & Building Standards); 2. establishments for the conducting of commercial or industrial activities, subject to approval of the Zoning Board; 3. animal confinement or production feeding operations; 4. Outdoor display and advertising media as provided by § 3.17.5. Automobile or travel trailers subject to the provisions of § 3.11.

Business & Corporate  
Compliance > ... > Real Property  
Law > Zoning > Variances

Governments > Local  
Governments > Ordinances & Regulations

### HN2 [📌] Zoning, Variances

Gallen Township, Mich., Agric. Zoning Ordinance § 3.13 provides, in part: Uses requiring special permits are those uses of land which are not essentially incompatible with the uses permitted in a zoning district, but possess characteristics or locational qualities which require individual review and restriction in order to avoid incompatibility with the character of the surrounding area, public services and facilities, and adjacent uses of land. Proposed uses will be evaluated according to their compatibility with the nature, extent and density of the surrounding area. Special permit uses may be permitted only in those zoning districts where they are designated by this Ordinance, and only when specifically approved by the Gallen Township Zoning Board in accordance with the provisions of this Ordinance.

Business & Corporate  
Compliance > ... > Real Property  
Law > Zoning > Variances

Governments > Local  
Governments > Ordinances & Regulations

### HN3 [📌] Zoning, Variances

Gallen Township, Mich., Agric. Zoning Ordinance § 3.13 provides, in part: Prior to the approval of a Special Use Permit, the Zoning Board shall insure that the standards specified in this Section, as well as standards established elsewhere in this Ordinance shall be satisfied. All uses by special permit shall comply with each of the following standards and requirements: (a) The nature, location, and size of the special use shall not change the essential character of the surrounding area, nor disrupt the orderly and proper development of the district as a whole. The use shall not be in conflict with, or discourage

the adjacent or neighboring lands or buildings; (b) the special use shall not diminish the value of the land, buildings or structures in the neighborhood; (c) the special use shall not increase traffic hazards or cause congestion on the public highways or streets of the area. Adequate access to the parcel shall be furnished.

Business & Corporate  
Compliance > ... > Real Property  
Law > Zoning > Variances

Governments > Local  
Governments > Ordinances & Regulations

#### HN4 [L] **Zoning, Variances**

Galien Township, Mich., Agric. Zoning Ordinance § 3.13 provides, in part: (d) The water supply and sewage disposal system shall be adequate for the proposed special use by conforming to State and County Health Department requirements, and the special use shall not over-burden any existing services or facilities; (e) any agricultural use shall be conducted in conformity with generally accepted agricultural practices and shall not be located within 1000 feet of existing residential structures; (f) uses by special permit shall not be significantly more objectionable to nearby properties by reason of traffic, noise, vibrations, dust, fumes, odor, smoke glare, lights, or disposal of waste than the operation of any principal permitted use, nor shall the special use increase hazards from fire or other damages to either the property or adjacent property; (g) the Zoning Board may require that the premises be permanently screened from adjoining or contiguous properties by a wall, fence, plant screen and/or other approved enclosure when deemed necessary to buffer the surrounding uses from objectionable noise, light, etc., created by the special use; (h) the special use

shall be consistent with the intent and purpose of this Ordinance. The special use shall be compatible with the natural environment and shall not be inimical to the public health, safety, and general welfare.

Civil Procedure > Appeals > Reviewability  
of Lower Court Decisions > Preservation  
for Review

#### HN5 [L] **Reviewability of Lower Court Decisions, Preservation for Review**

An appellate court may overlook preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented.

Administrative Law > Judicial  
Review > Standards of Review > De Novo  
Standard of Review

Real Property Law > Zoning > Judicial  
Review

#### HN6 [L] **Standards of Review, De Novo Standard of Review**

An appellate court reviews de novo a circuit court's decision in an appeal from a zoning board. When reviewing a zoning board's decision whether to issue an exception to a zoning ordinance, the appellate court must review the record and the board's decision to determine whether it (1) comports with the law, (2) was the product of proper procedure, (3) was supported by competent, material, and substantial evidence on the record, and (4) was a proper exercise of reasonable discretion. A decision by a zoning board that

violates a statute or the Constitution is not authorized by the law.

Governments > Local

Governments > Ordinances & Regulations

Civil Procedure > Appeals > Standards of Review > De Novo Review

Governments > Legislation > Interpretation

Governments > Local

Governments > Ordinances & Regulations

### HN7 [★] Standards of Review, De Novo Review

An appellate court reviews de novo issues involving statutory and ordinance construction.

Governments > State & Territorial

Governments > Legislatures

Real Property Law > Zoning > General Overview

Governments > Local

Governments > Ordinances & Regulations

### HN8 [★] State & Territorial Governments, Legislatures

Municipalities have no inherent power to regulate land use through the enactment of zoning legislation; instead, a local unit of government must be specifically authorized by the Legislature to exercise any zoning authority. The Legislature has granted municipalities the power to zone through the enactment of enabling legislation. A local unit of government may regulate land use through zoning only to the limited extent authorized by that legislation.

Business & Corporate

Compliance > ... > Real Property

Law > Zoning > Ordinances

### HN9 [★] Zoning, Ordinances

The Michigan Zoning Enabling Act governs the creation and administration of local zoning ordinances and provides in part that the legislative body of a local unit of government may provide by ordinance for the manner in which the regulations and boundaries of districts or zones shall be determined and enforced or amended or supplemented. Amendments or supplements to the zoning ordinance shall be adopted in the same manner as provided under this act for the adoption of the original ordinance. MCL 125.3202(1).

Business & Corporate

Compliance > ... > Real Property

Law > Zoning > Ordinances

Governments > Local

Governments > Ordinances & Regulations

Business & Corporate

Compliance > ... > Real Property

Law > Zoning > Variances

### HN10 [★] Zoning, Ordinances

The Michigan Zoning Enabling Act provides that a local zoning ordinance may include provisions for special use permits within a zoning district as follows: The legislative body may provide in a zoning ordinance for special land uses in a zoning district. A special land use shall be subject to the review and approval of the zoning commission, the planning commission, an official charged with administering the zoning ordinance, or the legislative body as required by the zoning ordinance. The zoning ordinance shall specify all of the following: (a) The special land uses and activities eligible for approval and the body

or official responsible for reviewing and granting approval; (b) The requirements and standards for approving a request for a special land use; (c) The procedures and supporting materials required for the application, review, and approval of a special land use. MCL 125.3502(1). If the zoning ordinance authorizes the consideration and approval of special land uses or otherwise provides for discretionary decisions, the regulations and standards upon which those decisions are made shall be specified in the zoning ordinance. MCL 125.3504(1).

Business & Corporate  
Compliance > ... > Real Property  
Law > Zoning > Ordinances

Governments > Local  
Governments > Ordinances & Regulations

Business & Corporate  
Compliance > ... > Real Property  
Law > Zoning > Variances

#### HN11 [🚩] Zoning, Ordinances

MCL 125.3502(1)(a), provides that if a zoning ordinance allows for special use permits, the ordinance shall specify the special land uses and activities eligible for approval.

Governments > Legislation > Interpretation

Governments > Local  
Governments > Ordinances & Regulations

#### HN12 [🚩] Legislation, Interpretation

For purposes of interpretation, ordinances and statutes are reviewed in the same manner. The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. When a statute's language is clear, a court assumes that the Legislature

intended the plainly expressed meaning, and we enforce it as written. However, when a statute's language is ambiguous, the court applies a reasonable construction that best accomplishes the intent of the Legislature. Unless otherwise defined by statute, every word or phrase should be accorded its plain and ordinary meaning. Statutes granting power to Michigan townships are construed liberally in the township's favor.

Business & Corporate  
Compliance > ... > Real Property  
Law > Zoning > Spot Zoning

Real Property Law > Zoning > Judicial  
Review

#### HN13 [🚩] Zoning, Spot Zoning

Michigan courts closely scrutinize instances of "spot zoning."

Business & Corporate  
Compliance > ... > Real Property  
Law > Zoning > Zoning Methods

Governments > State & Territorial  
Governments > Property

#### HN14 [🚩] Zoning, Zoning Methods

Rezoning is exclusively a legislative function.

Business & Corporate  
Compliance > ... > Real Property  
Law > Zoning > Ordinances

Governments > Local  
Governments > Ordinances & Regulations

#### HN15 [🚩] Zoning, Ordinances

The Michigan Zoning Enabling Act provides

that a local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare. MCL 125.3201(1).

Business & Corporate  
Compliance > ... > Real Property  
Law > Zoning > Ordinances

Governments > Local  
Governments > Ordinances & Regulations

Business & Corporate  
Compliance > ... > Real Property  
Law > Zoning > Variances

### HN16 [↓] **Zoning, Ordinances**

The Michigan Zoning Enabling Act provides in relevant part that a zoning ordinance shall specify both the special land uses and activities eligible for approval and the body or official responsible for reviewing and granting the approval and the requirements and standards for approving a request for a special land use. MCL 125.3502(1).

**Judges:** Before: OWENS, P.J., and O'CONNELL and TALBOT, JJ.

**Opinion by:** Peter D. O'Connell

### Opinion

[\*673] [\*\*11] O'CONNELL, J.

On September 30, 2008, plaintiffs filed an application for leave to appeal the circuit court's September 9, 2008, order affirming defendant Galien Township Zoning Board of Appeals' grant of a special-use permit to Timothy Richter and Corrine Hoetger (the applicants). The permit was granted pursuant to the Galien Township Zoning Ordinance. Specifically, the circuit court affirmed the zoning board's grant of a special-use permit to allow the operation of a snowmobile, dirt bike, and ATV racetrack during the summer months in the township's agricultural zoning district. This Court denied plaintiffs' application for leave to appeal. Whitman v Galien Twp, unpublished order of the Court of Appeals, entered February 20, 2009 (Docket No. 287991), 2009 Mich. App. LEXIS 2737. The Supreme Court subsequently remanded the case to this Court for consideration as on leave granted. Whitman v Galien Twp, 485 Mich 859; 771 NW2d 783 (2009).<sup>1</sup> For the reasons stated in this opinion, we reverse the circuit court's order affirming the zoning board and vacate the special-use permit.

The applicants own a 70-acre parcel of property in Galien Township located at the corner of Mt. Zion Road [\*674] and US-12, a major highway in the township's agricultural zoning district. Several residential homes are located near the property. The township's agricultural zoning district is governed by a

<sup>1</sup> By stipulation of the [\*\*\*2] parties, George Klingspon, Etta Klingspon, Edward Howard, and Lois Howard were dismissed from the application for leave to appeal in the Michigan Supreme Court. Whitman v Galien Twp, 764 NW2d 788 (Mich. 2009). As used in this opinion, the term "plaintiffs" refers to Daniel H. Whitman, Larry Piccoli, and Mary Piccoli.



zoning ordinance that provides in pertinent part:

**HN1** The following uses and regulations shall apply in the Agricultural District.

**SECTION 2.4 A — PERMITTED USES**

1. Any use allowed in an "A" Residential District.

**\*\*12** 2. Farming, including the raising of livestock, raising trees, and harvesting wood, excluding animal confinement or production feeding operations.

3. Sale of products produced mainly on the premises.

4. Mobile homes subject to the provisions of Section 3.1.

**SECTION 2.4 B — USES BY SPECIAL PERMIT AS PROVIDED FOR BY SECTION 3.13**

1. Rooming Houses or Boarding Houses, subject to the provisions of Section 3.13 <sup>2</sup>

<sup>2</sup> **HN2** Section 3.13 provides, in relevant part:

Uses requiring special permits are those uses of land which are not essentially incompatible with the uses permitted in a zoning district, but possess characteristics or locational qualities which require individual review and restriction in order to avoid incompatibility with the character of the surrounding area, public services and facilities, and adjacent uses of land. Proposed uses will be evaluated according to their compatibility with the nature, extent and density of the surrounding area.

Special permit uses may be permitted only in those zoning districts where they are designated by this Ordinance, and only when specifically approved by the Gallen Township Zoning Board in accordance with the provisions of this Ordinance.

**HN3** Prior to the approval of a Special Use Permit, the Zoning Board shall insure that the standards specified in this Section, **\*\*\*4** as well as standards established elsewhere in this Ordinance shall be satisfied. All uses by special permit shall comply with each of the following standards and requirements:

(a) The nature, location, and size of the special use shall not change the essential character of the surrounding area, nor disrupt the orderly and proper development of

(Special Use Permits & Building Standards).

**\*675** 2. Establishments **\*\*\*3** for the conducting of commercial or industrial activities, subject to approval of the Zoning Board.

3. Animal confinement or production feeding operations.

4. Outdoor display and advertising media as provided by Section 3.17.

**\*676** 5. Automobile or travel trailers

the district as a whole. The use shall not be in conflict with, or discourage the adjacent or neighboring lands or buildings.

(b) The special use shall not diminish the value of the land, buildings or structures in the neighborhood.

(c) The special use shall not increase traffic hazards or cause congestion on the public highways or streets of the area. Adequate access to the parcel shall be furnished.

**HN4** (d) The water supply and sewage disposal system shall be adequate for the proposed special use by conforming to State and County Health Department requirements, and the special use shall not over-burden any existing services or facilities.

(e) Any agricultural use shall be conducted in conformity with generally accepted agricultural practices and shall not be located within 1000 feet of existing residential structures.

(f) Uses by special permit shall **\*\*\*5** not be significantly more objectionable to nearby properties by reason of traffic, noise, vibrations, dust, fumes, odor, smoke glare, lights, or disposal of waste than the operation of any principal permitted use, nor shall the special use increase hazards from fire or other damages to either the property or adjacent property.

(g) The Zoning Board may require that the premises be permanently screened from adjoining or contiguous properties by a wall, fence, plant screen and/or other approved enclosure when deemed necessary to buffer the surrounding uses from objectionable noise, light, etc., created by the special use.

(h) The special use shall be consistent with the intent and purpose of this Ordinance. The special use shall be compatible with the natural environment and shall not [be] inimical to the public health, safety and general welfare. [Gallen Township Zoning Ordinance, art III, § 3.13.]

subject to the provisions of Section 3.11. [Galien Township Zoning Ordinance, art II, § 2.4.]

On or about September 11, 2006, the applicants applied for a special-use permit to construct and operate a snowmobile, [\*\*13] dirt bike, and ATV racetrack on their property during the summer months. Specifically, the applicants requested a special-use permit to allow the operation of ATV and dirt bike drag races on dirt tracks and snowmobile races on a [\*\*\*6] pond that the applicants planned to construct on the property.<sup>3</sup> The zoning board granted the permit without making any findings of fact or conclusions of law on the record. Plaintiffs, and several neighboring landowners, appealed the board's decision in the circuit court. Thereafter, because the board had failed to create a proper record for review, the parties stipulated that the board would hold a rehearing.

The zoning board concluded that the proposed racetrack was a permissible commercial use for purposes of a special-use exception in the agricultural district, but found that the applicants failed to submit a proper site plan. After receiving the requested information and holding another hearing, the board found that the applicants' plan satisfied all requirements listed in section 3.13 of the zoning ordinance for granting a special-use permit.

After making findings on the record, the zoning board approved the special-use permit with restrictions.<sup>4</sup> On appeal, the circuit court ruled

<sup>3</sup> The applicants referred to snowmobile racing in the summer over a body of water as "watercross."

<sup>4</sup> In particular, the zoning board restricted operation of the racetrack to four Saturdays a year in July, August, September, and October. The board restricted the timing of the races to 8:00 a.m. to 10:00 p.m. in July and August and 8:00 a.m. to 8:00 p.m. in September and October. The board allowed the applicants to hold races on Sunday if scheduled Saturday races were rained out. In addition, the board required two weeks' notice of the races and prohibited commercial camping

that the board [\*677] had properly concluded that it had authority to grant a special-use permit for the racetrack in the agricultural district. The circuit court held that the zoning board had authority under the [\*\*\*7] ordinance to issue a special-use permit because a racetrack qualified as a "commercial use" under § 2.4B(2) of the ordinance. In so holding, the circuit court determined that a zoning board may authorize a special-use permit even if the proposed use is not specifically enumerated in the applicable zoning ordinance. The circuit court held that the board's findings with respect to seven of the eight factors listed in § 3.13 of the zoning ordinance were supported by competent, material, and substantial evidence on the record, but remanded the case back to the zoning board for further findings regarding whether the proposed racetrack would diminish the value of the land, buildings, or structures in the surrounding neighborhood.

After another hearing and an opportunity [\*\*\*8] for public comment, the zoning board found that the racetrack would not diminish the value of neighboring properties. On appeal, the circuit court ruled that the board's findings were supported by competent, material, and substantial evidence and affirmed the board's decision to grant the applicants a special-use permit.

On appeal, plaintiffs contend that the zoning ordinance unlawfully delegates legislative power to the zoning board by allowing the board to issue special-use permits within the agricultural zoning district to any establishment for "commercial or industrial activities." Galien Township Zoning Ordinance, art II, § 2.4B(2). However, the question whether the zoning ordinance [\*678] unlawfully delegates legislative power to the zoning board was not raised in the circuit court. Thus, plaintiffs failed

on the property.

to preserve this issue for our review. **[\*\*14]** Polkton Charter Twp v Pellegroni, 265 Mich App 88, 95; 693 NW2d 170 (2005). **HN5** [¶] "[T]his Court may overlook preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented." Smith v Foerster-Bolser Constr, Inc, 269 Mich App 424, 427; 711 NW2d 421 (2006) (citation omitted). **[\*\*\*9]** Because this Court is not obligated to address issues raised for the first time on appeal, and considering that manifest injustice would not result from our failure to consider this issue, we decline to address it. See Polkton Charter Twp, 265 Mich App at 95-96.

Next, plaintiffs claim that the zoning board's decision did not comport with the law because the zoning ordinance does not comply with the Michigan Zoning Enabling Act (MZEA), MCL 125.3101 et seq. We agree. Although this issue is also unpreserved, it involves a question of law, and the facts necessary for its resolution have been presented. In addition, failure to consider this issue would result in manifest injustice because the grant of the special-use permit did not comport with the law. See Smith, 269 Mich App at 427. Therefore, we will consider the issue on the merits.

**HN6** [¶] We review de novo a circuit court's decision in an appeal from a zoning board. Risko v Grand Haven Charter Twp Zoning Bd of Appeals, 284 Mich App 453, 458; 773 NW2d 730 (2009). When reviewing a zoning board's decision whether to issue an exception to a zoning ordinance, "this Court must review the record and . . . **[\*\*\*10]** [the board's decision] . . . to determine whether **[\*679]** it (1) comports with the law, (2) was the product of proper procedure, (3) was supported by

competent, material, and substantial evidence on the record, and (4) was a proper exercise of reasonable discretion." *Id.* (citations omitted). A decision by a zoning board that violates a statute or the constitution is not authorized by the law. Northwestern Nat'l Gas Co v Ins Comm'r, 231 Mich App 483, 488; 586 NW2d 563 (1998). **HN7** [¶] We review de novo issues involving the construction of statutes and ordinances. Soupal v Shady View, Inc, 469 Mich 458, 462; 672 NW2d 171 (2003).

**HN8** [¶] Municipalities have no inherent power to regulate land use through the enactment of zoning legislation; instead, a local unit of government must be specifically authorized by the Legislature to exercise any zoning authority. Krajenke Buick Sales v Hamtramck City Engineer, 322 Mich 250, 254; 33 NW2d 781 (1948). The Legislature has granted municipalities the power to zone through the enactment of enabling legislation. Sun Communities v Leroy Twp, 241 Mich App 665, 669; 617 NW2d 42 (2000). A local unit of government may regulate land use through zoning only to the limited extent authorized **[\*\*\*11]** by that legislation. Krajenke, 322 Mich at 254-255.

In 2006, the Legislature consolidated the three separate zoning enabling acts for cities and villages, townships, and counties into the MZEA. **HN9** [¶] The MZEA governs the creation and administration of local zoning ordinances and provides in relevant part:

The legislative body of a local unit of government may provide by ordinance for the manner in which the regulations and boundaries of districts or zones shall be determined and enforced or amended or supplemented. Amendments or supplements to the zoning ordinance shall be adopted in the same manner as provided under this act for the adoption of **[\*\*15]** the original ordinance. [MCL

125.3202(1).

[\*680] HN10 The MZEA also provides that a local zoning ordinance may include provisions for special-use permits within a zoning district as follows:

The legislative body may provide in a zoning ordinance for special land uses in a zoning district. A special land use shall be subject to the review and approval of the zoning commission, the planning commission, an official charged with administering the zoning ordinance, or the legislative body as required by the zoning ordinance. The zoning ordinance shall [\*\*\*12] specify all of the following:

(a) The special land uses and activities eligible for approval and the body or official responsible for reviewing and granting approval.

(b) The requirements and standards for approving a request for a special land use.

(c) The procedures and supporting materials required for the application, review, and approval of a special land use.

MCL 125.3502(1).

MCL 125.3504(1) further states that "[i]f the zoning ordinance authorizes the consideration and approval of special land uses . . . or otherwise provides for discretionary decisions, the regulations and standards upon which those decisions are made shall be specified in the zoning ordinance."

In this case, Galien Township apparently enacted its zoning ordinance in 2001 pursuant to the MZEA's predecessor, the Township Zoning Act (TZA), MCL 125.271 et seq., repealed by 2006 PA 110. Hughes v Almena Twp, 284 Mich App 50, 59; 771 NW2d 453 (2009); MCL 125.3702(1)(c). The provisions governing the issuance of special-use permits under the TZA were substantively identical to the language used in the MZEA. Compare

MCL 125.286b(1) and MCL 125.286d(1) with MCL 125.3502(1) and MCL 125.3504(1). In any event, because this action arose after the effective date of the [\*\*\*13] enactment [\*681] of the MZEA, the MZEA governs the resolution of this proceeding. Hughes, 284 Mich App at 59, citing MCL 125.3702(2).

The central issue in this case is whether § 2.4B(2) of the zoning ordinance complies with HN11 MCL 125.3502(1)(a), which provides that if a zoning ordinance allows for special-use permits, the ordinance "shall specify . . . [t]he special land uses and activities eligible for approval . . . ." Section 2.4B(2) of the zoning ordinance provides that "[e]stablishments for the conducting of commercial or industrial activities" are eligible for special-use permits within the agricultural zoning district, subject to the zoning board's approval and compliance with the requirements set forth in § 3.13 of the ordinance. Plaintiffs contend that the zoning ordinance fails to "specify" the land uses and activities that are eligible for special-use permits because the ordinance generalizes that any establishment for commercial or industrial activities is eligible for special-use status. Thus, we must determine whether the provision of the ordinance conflicts with the MZEA. Resolution of this question necessarily involves the interpretation of statutes and ordinances.

HN12 For purposes [\*\*\*14] of interpretation, ordinances and statutes are reviewed in the same manner. Hughes, 284 Mich App at 61. "The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature . . ." USAA Ins Co v Houston Gen Ins Co, 220 Mich App 386, 389; 559 NW2d 98 (1996). When a statute's language is clear, "we assume that the Legislature intended the plainly expressed meaning, and we enforce it as written." [\*\*\*16] Hughes, 284 Mich App at 62. However, when a statute's language is ambiguous, "we apply a

reasonable construction that best accomplishes the intent of the Legislature." *Id.* Unless otherwise [\*682] defined by statute, every word or phrase should be accorded its plain and ordinary meaning. *Risko, 284 Mich App at 460.* Statutes granting power to Michigan townships are construed liberally in the township's favor. *Hughes, 284 Mich App at 62.*

As stated earlier, the language from the MZEA at issue provides that a zoning ordinance "shall specify . . . [t]he special land uses and activities eligible for approval . . . ." *MCL 125.3502(1)*. When used in a statute, the term "shall" is considered to mandate conduct. *Hughes, 284 Mich App at 62.* Because the terms at issue are not defined [\*\*\*15] in the statute, see *MCL 125.3102*, consultation of dictionary definitions is appropriate. *Risko, 284 Mich App at 460.* *Random House Webster's College Dictionary* (1997) defines "specify" as "to mention or name specifically or definitely; state in detail" and as "to give a specific character to." It defines "specific" as "having a special application; bearing, or reference; explicit or definite" and as "specified, precise, or particular." *Id.* It defines "use" as "an instance or way of using something," as "a way of being used; a purpose for which something is used," as "continued, habitual, or customary employment or practice; custom," and as "the enjoyment of property, as by occupation or employment of it." *Id.* It defines "activity" as "a specific deed, action, function, or sphere of action[.]" *Id.* When these definitions are considered together, the statute can be read to mandate that a zoning ordinance must set forth in explicit, precise, definite, and detailed language both the customary uses and the specific actions and functions that are eligible for special-use permits. The legal definition of "special-use permit" supports this reading of the statute. Black's Law Dictionary (9th ed) [\*\*\*16] defines a "special-use permit" as "[a] zoning board's authorization to use property in

a way that is identified as a special exception in a zoning [\*683] ordinance." Accordingly, the MZEA's specificity requirement ensures that property uses and activities eligible for special-use status are identified in the language of the zoning ordinance.

The MZEA's requirement that a zoning ordinance specifically identify the land uses and activities that are eligible for special-use status encourages uniformity within a zoning district by placing limits on discretionary zoning decisions. See *MCL 125.3201(2)* ("Except as otherwise provided under this act, the regulations shall be uniform for each class of land or buildings, dwellings, and structures within a district."). The MZEA's specificity requirement encourages consistency within a zoning district and guards against undesirable "spot zoning," which has been defined as "[a] zoning ordinance or amendment . . . creating a small zone of inconsistent use within a larger zone." <sup>5</sup> *Penning v Owens, [\*\*17] 340 Mich 355, 367; 65 NW2d 831 (1954)*. By requiring a zoning ordinance to specifically enumerate all land uses and [\*684] activities that are eligible

<sup>5</sup> *HN13* [†] Michigan courts closely scrutinize instances of "spot zoning." See *Raabe v City of Walker, 383 Mich 165, 166-170, 174-179; 174 NW2d 789 (1970)* (invalidating rezoning of a 180-acre parcel within a residential district from agricultural to industrial use when the industrial use was inconsistent with the surrounding area and there was no showing of a valid need for the rezoning for the sake of the public health, safety, and welfare); *Trenton Dev Co v Village of Trenton, 345 Mich 353, 357-358; 75 NW2d 814 (1956)* (invalidating the rezoning of three city blocks to single-family residential when the surrounding area was zoned for multiple dwellings and commercial use and noting that the inconsistency was invalid because there were no purported health, safety, or welfare considerations); cf. *Bruni v Farmington Hills, 96 Mich App 664; 293 NW2d 609 (1980)* (affirming special-use permit for cluster housing within low-density housing district because of unique character of the land); *Essexville v Carrollton Concrete Mix, Inc, 259 Mich App 257, 277-278; 673 NW2d 815 (2003) [\*\*\*18]* (concluding that rezoning of an area from industrial to developmental despite the area's being surrounded by industrial use was not "spot zoning" when rezoning was in accordance with the master land-use plan).

for a special- [\*\*\*17] use permit, the MZEA guards against an administrative body's ability to haphazardly create small zones of inconsistent use within a larger district.

The MZEA's specificity requirement also operates to prevent an administrative body from engaging in rezoning by approving wholesale changes to the character of a zoning district. HN14 [¶] Rezoning is exclusively a legislative function. Sun Communities, 241 Mich App at 669. The specificity requirement, when coupled with the MZEA's requirement that the zoning ordinance include standards governing a zoning board's discretionary authority, serves to ensure that the ordinance complies with the Michigan Constitution and does not amount to an improper delegation of legislative authority.

Finally, one of the purposes of the MZEA is to provide for and facilitate the orderly development of land-use districts, whether residential, agricultural, industrial, or commercial. "The foundation of traditional zoning has been, the division of the municipality into one or more land use districts. The intent is that, these districts will be separated, organized, and regulated to achieve legitimate zoning objectives as set forth in the [MZEA] [\*\*\*19] . . . ." Fisher et al., *Michigan Zoning, Planning & Land Use* (2010), § 1.3, p 5. In order to effectuate this intent, HN15 [¶] the MZEA provides:

A local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations

and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation [\*\*\*685] systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare. [MCL 125.3201(1).]

By requiring that a zoning ordinance specifically enumerate the land uses and activities that are eligible for special-use status, the MZEA helps [\*\*\*20] to ensure that land-use districts are separated and created in an orderly manner.

Applying the interpretation of the language in the MZEA to the zoning ordinance at issue in this case, we conclude that the zoning ordinance does not comply with the enabling legislation. The zoning ordinance provides that "[e]stablishments for the conducting of commercial or industrial activities" are eligible for special-use status within the agricultural zoning district. Galien Township Zoning Ordinance, art II, § 2.4B(2). The ordinance does not define "commercial" or "industrial." *Random House Webster's College Dictionary* (1997) defines "commercial" as "of, pertaining to, or characteristic of commerce" and as "engaged in, used for, or suitable to [\*\*\*18] commerce or business, [especially] of a public or nonprivate nature[.]" It defines "industrial" as "of or pertaining to a type of the nature of, or resulting from industry" and as "used or appropriate for use in industry[.]" *Id.* It defines "industry" as "any general business activity" and as "trade or manufacture in general[.]" *Id.* Considering these definitions, the language in the zoning ordinance sweeps broadly and makes all actions or functions (i.e., activities) pertaining to commerce, business, trade, manufacture, or industry [\*\*\*21] in general

eligible for special-use status within the agricultural zoning district. Section 2.4B(2) does not comply with MCL 125.3502(1) because it does [\*686] not specify the special land uses and activities eligible for approval, but identifies only general categories of uses or activities.

Section 3.13 of the ordinance does not change our conclusion. Section 3.13 does not identify which land uses or activities are eligible for special-use permits; instead, it sets forth standards to govern the zoning board's decision whether to grant a special-use permit to an eligible land use or activity. In addition to requiring that an ordinance specifically enumerate the land uses and activities that are eligible for special-use status, the MZEA also requires that a zoning ordinance specifically provide standards and criteria to govern a zoning board's discretionary decision whether to grant a permit for an eligible special use. HN16 [¶] The MZEA provides in relevant part that a zoning ordinance "shall specify" both "[t]he special land uses and activities eligible for approval and the body or official responsible for reviewing and granting approval" and "[t]he requirements and standards for approving a request [\*\*\*22] for a special land use." MCL 125.3502(1). The fact that § 3.13 is specific and detailed regarding the "requirements and standards for approving a request for a special land use" does not save § 2.4B(2) from noncompliance with the statute for failure to specify the special land uses and activities eligible for approval.

Defendants' reliance on Reilly v Marion Twp, 113 Mich App 584; 317 NW2d 693 (1982), is unpersuasive. In Reilly, the plaintiffs appealed the zoning board's issuance of a special-use permit authorizing a commercial trucking operation within the township's agricultural-residential zoning district, arguing that the zoning board had acted outside the scope of its authority under the township's zoning

ordinance. Id. at 585-587. This Court explained that the zoning ordinance [\*687] did not limit the zoning board's authority to grant special exceptions in cases involving only a use specified in the ordinance. Id. at 588. It noted, "The board is empowered under the ordinance to add to the list of special use exceptions those exceptions deemed necessary to protect adjacent properties, the general neighborhood, and its residents and workers . . . ." Id. The central issue in [\*\*\*23] Reilly involved the interpretation of a zoning ordinance, while the central issue in this case concerns whether the zoning ordinance complies with the MZEA.

Because the zoning ordinance does not comply with the MZEA, the zoning board's decision to grant a special-use permit did not comport with the law, and the circuit court erred by affirming the board's decision. <sup>6</sup>

[\*\*19] The circuit court's order affirming the zoning board is reversed. We vacate the special-use permit.

/s/ Peter D. O'Connell

/s/ Donald S. Owens

/s/ Michael J. Talbot

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End of Document

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<sup>6</sup> Plaintiffs also argue that the circuit court erred by affirming the zoning board's decision to grant the special-use permit because the board's conclusion that the racetrack qualified as a "commercial use" and its application of the factors set forth in § 3.13 of the ordinance were not supported by the evidence. Because we have determined that the zoning ordinance in question does not comply with the MZEA, we need not address this issue.

**Common v. City of Pontiac**

Court of Appeals of Michigan

May 3, 2012, Decided

No. 302536

**Reporter**

2012 Mich. App. LEXIS 850 \*; 2012 WL 1560339

COMMON GROUND, Plaintiff-Appellee, v  
CITY OF PONTIAC, PONTIAC PLANNING  
COMMISSION, and PONTIAC CITY  
COUNCIL, Defendant-Appellant.

**Notice:** THIS IS AN UNPUBLISHED  
OPINION. IN ACCORDANCE WITH  
MICHIGAN COURT OF APPEALS RULES,  
UNPUBLISHED OPINIONS ARE NOT  
PRECEDENTIALLY BINDING UNDER THE  
RULES OF STARE DECISIS.

**Prior History:** [\*1] Oakland Circuit Court. LC  
No. 08-096323-CZ.

**Core Terms**

conditions, planning commission, permitted  
use, principal use, ordinance, site plan,  
ambulance, clinic, zoning ordinance, patients,  
outpatient, circuit court, the will, proposed use,  
planning, lock, zoning, downtown, detention,  
fact finding, trial court, reasons, health  
services, crisis center, medical clinic,  
lockdown, meetings, staff, city council,  
transported

**Judges:** Before: M. J. KELLY, P.J., and  
FITZGERALD and DONOFRIO, JJ.

**Opinion**

PER CURIAM.

Defendants City of Pontiac, its Planning

Commission, and its City Council [hereinafter  
referred to in the singular as defendant],  
appeal as of right from the circuit court's  
January 31, 2011, final order that was entered  
after the court granted summary disposition in  
favor of plaintiff and remanded to the planning  
commission for further proceedings. We affirm.

**I. FACTS AND PROCEDURAL HISTORY**

Plaintiff sought to develop a parcel of land on  
South Saginaw Street in Pontiac for use as  
administrative offices and to provide mental  
health services "for children, youth, and  
families in crisis." The proposed 48,000 square  
foot building would consist of administrative  
and counseling offices. The original plan  
provided for a short-term residential care  
component. That plan was subsequently  
modified to eliminate any provision for  
residential or overnight care of patients. The  
mental health services provided would consist  
of psychiatric screening, referrals, and  
outpatient counseling.

Plaintiff's land is zoned C-2, Central Business  
District. Section 7.47 of defendant's zoning  
ordinance [\*2] lists the following relevant  
permitted principal uses under C-2 zoning:

1. Any principal use permitted in the C-1  
local business district ....

\*\*\*

6. Physical culture and health services.

\*\*\*

12. Churches, charitable institutions,  
hospitals.



\* \* \*

15. Other uses similar to the above uses, provided they are conducted within completely enclosed buildings.

Section 7.41 of the ordinance lists the permitted principal uses in the C-1 local business district. Those permitted principal uses include "[a]ny principal use permitted in the C-O office business district." Section 7.35 lists the following relevant uses as permitted principal uses under C-O zoning:

4. Offices for ... other commercial and civic organizations ....

5. Medical clinics (outpatient only) and offices of doctors ... and similar or allied professionals ....

\* \* \*

9. Convalescent and nursing home[s] ...

10. Hospitals ....

Plaintiff submitted its application for site plan approval to the planning commission on January 2, 2008. The planning commission considered the site plan at meetings held February 6, 2008, March 5, 2008, June 3, 2008 and June 11, 2008. At the end of each of those meetings the commission tabled the matter for later [\*3] consideration. Staff reports or memorandum by defendant's planning administrator, Madhu Oberoi, and city planner, David Breneau, were prepared in advance of each of those meetings addressing the concerns raised by the commission and other entities. The staff reports prepared before August of 2008 conclude that plaintiff's proposed uses -- administrative offices and outpatient counseling center -- were principal permitted uses in the C-2 zoning district. Defendant's planners concluded that the ordinance made no distinction between medical clinics and clinics that provided mental health services. However, other entities and individuals objected to plaintiff's site plan on the grounds that it was not consistent with their

plans to redevelop downtown Pontiac as a commercial district. Pontiac's Downtown Development Authority (DDA) objected to plaintiff's proposal on the basis that it believed that downtown Pontiac was "oversaturated ... with mental health care facilities." Pontiac's mayor-elect Leon Jutkowski owned property near plaintiff's site and objected that plaintiff's proposed use was incompatible with his proposed developments and would prevent him from obtaining financing for his [\*4] projects.

In August of 2008 the planning commission met with an outside attorney at a closed meeting and received a legal opinion concluding that plaintiff's proposed use was a "crisis center" that was not specifically defined under the zoning ordinance and did not appear to be a permitted use under C-2 zoning. A subsequent staff memorandum dated August 29, 2008, reached the same conclusion. Following a meeting held September 3, 2008, the planning commission voted 8-1 to deny approval of plaintiff's site plan. No explanation for the vote or findings of the commission appears in the minutes of that meeting. In a letter dated September 9, 2008, Oberoi explained that the planning commission denied approval based on the following findings:

- a. Services for children, youth, and families in crisis as requested in your application is not a stated use within the C-1 or C-2 District.
- b. The proposed development will not be compatible with the surrounding neighborhood<sup>1</sup> to the extent that it will adversely affect the value of adjacent or abutting properties and have an adverse impact on economic activity within the downtown area.

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<sup>1</sup>The city's downtown development authority originally complained that downtown Pontiac was "oversaturated ... with mental health care facilities."

c. Services for children, youth, and families in crisis is a single [\*5] destination 24 hour, seven days a week use which is incompatible with the stated purpose of the C-2, Central Business District . . .

d. Common Ground failed to provide compelling evidence that their proposed use meets the criteria for uses permitted within the C-2 District.

e. The site plan does not comply with the design standards recommended by the 2001 downtown plan adopted by the Downtown Development Authority [DDA].

Plaintiff appealed the planning commission's denial of site plan approval to the city council, which considered it at a meeting held November 13, 2008. The council meeting's minutes recite the reasons stated in Oberoi's September 9, 2008, letter. The city council affirmed the planning commission's denial by a majority vote denying a resolution to accept plaintiff's appeal and overturn the commission's decision.

Plaintiff appealed to the circuit court. The parties presented the matter to the circuit court on cross-motions for summary disposition pursuant to MCR 2.116(C)(10), which the circuit court decided in its November 30, [\*6] 2009, opinion and order.<sup>2</sup> The court found that there was no genuine issue of material fact that the planning commission's decision was procedurally defective and so must be vacated. The court also found that there was no genuine issue of material fact that plaintiff's proposed uses of the property "clearly and unambiguously fall within 'permitted principal uses' under the City's Ordinance," so denial on that basis was improper. Based on those findings the court remanded the matter back to the planning commission to address whether plaintiff's site met the remaining requirements

for approval.

The circuit court noted that under MCL 125.3501(4), a decision rejecting a site plan must be based upon the requirements and standards contained in the zoning ordinance. Under MCL 125.3606, the circuit court reviewed the denial of site plan review to ensure that the decision was based upon proper procedure and supported under the substantial evidence standard. The circuit court pointed out that §5.11 of Pontiac's zoning ordinance required the planning commission to make findings [\*7] of fact and articulate the reasons for its decision. The court found no issue of material fact that the commission made no findings and stated no reasons when it voted to deny approval of plaintiff's site plan on September 3, 2008. Instead, the purported reasons were provided 6 days later in the letter from Ms. Oberoi, who was not a member of the planning commission. The planning commission did not make any of the determinations made in Oberoi's letter by vote, nor did Oberoi even show the letter to the commission before mailing it to plaintiff. The court found that the planning commission's denial was ineffective because it never articulated its reasons or determinations for denying the application as required by §5.11 of its zoning ordinance. For the same reason, the city council's review affirming the denial was procedurally defective.

With regard to whether plaintiff's proposed use was permitted under the ordinance, the parties had stipulated that the C-2 district allowed for all the principal uses listed under §7.47 of the zoning ordinance. The principle permitted uses in C-2 zoning included any principal permitted use allowed in the C-1 zoning district, which included all principal [\*8] uses permitted in the C-O office business district, which included outpatient medical clinics and offices for commercial and civic organizations. Under §7.47, principal permitted uses included

<sup>2</sup> The circuit court found MCR 2.116(C)(8) inapplicable since the parties relied on evidence beyond the scope of the pleadings.

health services, charitable institutions, hospitals, and "other uses similar to [those] uses." The circuit court noted that, regardless of the label applied, the nature of plaintiff's proposed use had not changed: plaintiff's proposed building included administrative offices, a medical director's office, a doctor's office, a nurse's station, and rooms for psychiatric or psychological screening. The court reviewed the planning commission record and staff memorandum and pointed out that before August of 2008 defendant's planners had characterized plaintiff's uses as office and medical clinic, both of which were permitted uses under the C-2 zoning classification. However, after August 2008 the city planners started referring to plaintiff's use as a "crisis center" and claimed that it was not a permitted use under the ordinance.

The circuit court found that under the substantial evidence test "reasonable minds could not differ in concluding that the facts in this case, taken together, describe a situation [\*9] in which the proposed functions and services offered by CGS fall within and otherwise constitute 'permitted principal uses' under the ordinance." The court found this to be so regardless of the label attributed to the proposed uses, whether it was called administrative functions, mental health care facility, administrative office and outpatient psychiatric clinic, or "crisis center." The court noted "[a]fter all, it is the substance, not the label, that controls and must be analyzed." The court continued:

[T]he competent, material, and substantial evidence on the record establishes that, regardless of the label attributed to the proposed use[s], its substance clearly and unambiguously falls within "permitted principal uses" of the ordinance — not even a scintilla of evidence on the record substantiates the City's bald claim in its briefing that the proposes use[s] "actually

encompassed a multitude of services" that do not fit within any principal use. Nor does a scintilla of evidence support the City's claim that it was unaware that the CGS application included a psychiatric facility. Rather, the competent, material and substantial evidence, taken in context, describe a situation where [\*10] reasonable minds could not differ in concluding that, from the outset, the "administrative functions" component of the proposed use plainly fall within Section 7.47(1) (offices "for commercial and civic organizations") and that, at a minimum, the "services for children, youth and families in crisis" component clearly falls within the catchall of Section 7.47(15), namely "other uses similar to the above uses ...."

Even if not squarely within the "permitted principal use" of "medical clinics (outpatient only)" because CGS does not provide "treatment" (part of the definition of "clinic" in a planner's dictionary ...) the substance of the services proposed (e.g. counseling, emergency psychiatric services, and assessments by medical personnel), together with the process explained (e.g., evaluation/assessment/screening upon physical presentation by a RN or Master's Level Clinician and a doctor) and the drawings submitted with the application showing multiple screening assessment rooms, a doctor's office, a medical director's office, and a nurse's station, all confirm beyond dispute that the substance of the proposed "services for children, youth and families in crisis" is sufficiently similar [\*11] to an outpatient medical clinic to plainly so as to plainly fall within the catchall "uses similar to the above uses" of Section 7.47(15).

The circuit court further found that plaintiff's services could fall under the principal use of "physical culture and health services" in §7.47(6), or at least was substantially similar to

"health services" to fall within the catchall provision of §7.47(15). The circuit court rejected defendant's claim that plaintiff's use was a crisis center, and crisis centers were not listed in the ordinance or permitted, stating "[s]uch a conclusion impermissibly rests on form rather than analysis of the substance." The court also rejected defendant's argument that there was an "oversaturation of mental health care facilities" in defendant's downtown, finding that "such claims are irrelevant to the analysis of whether the uses are permitted principal uses under Section 7.46." The circuit court remanded the matter as follows:

REMANDS the matter to the Planning Commission and the City Council so that proper analysis, evaluation and development of facts can be conducted consistent with the findings in this Court's Opinion to determine whether the Application must [\*12] be approved as is, or whether to approve the Application with conditions in order to bring it into compliance with conditions imposed by the Ordinance beyond permitted principal uses — namely Section 5.11(c), and possible [sic] Section 7.47 — as opposed to outright denial."

Footnote 38 in the court's opinion states: "Because the proposed uses clearly and unambiguously fall within the principal permitted uses of Section 7.47, this issue is not to be revisited on remand."

Defendant filed an application for leave to appeal the trial court's November 30, 2009, opinion and order. On April 30, 2010, this Court denied defendant's application for leave to appeal "for lack of merit in the grounds presented."

The planning commission reviewed the remand issues at its July 7, 2010, meeting, at which time it "conditionally approved" the site plan by entering "Findings of Fact" and

establishing "Conditions of Site Plan Approval" as follows:

### Findings of Fact

1. Pursuant to Pontiac's Zoning Ordinance, Section 7.47 clinics are a Principal Permitted Use.
  2. Common Grounds' Principal Permitted Use is a Clinic.
  3. The Planning Commission finds that clinics are found to provide the following services under the [\*13] common usage of the term and within the City of Pontiac:
    - a. A building other than a hospital used for the purpose of treating patients;
    - b. A facility providing medical, psychiatric or surgical services for the sick or injured on an exclusively outpatient basis;
    - c. A facility providing emergency treatment, diagnosis, training and administration services to outpatients, employees or visitors;
    - d. A facility where patients are not admitted for any extended stay to exceed eighteen (18) hours;
    - e. A facility where patients are not admitted against their will, and freely and voluntarily seek services;
    - f. A clinic does not include a detention area, lockdown area or any involuntary restraint of an individual
  4. Pursuant to Pontiac's Zoning Ordinance Section 7.48 the permitted accessory uses are warehousing, packaging and trucking connected with retail sales uses; signs in accordance with the city sign ordinance; off street parking and loading as required by Article X; Any use customarily incidental to the permitted principals uses.
- The Planning Commission finds that an ambulance bay does not fall within any permitted accessory uses to a clinic.

5. The Planning Commission finds that having a lockdown [\*14] facility is contrary to the goal of the C-2 Central Business District as it does not attract "intense pedestrian activity" or enhance the "economic welfare" of merchandising activities in the downtown district. Releasing individuals who may or may not be a danger to themselves or others confined against their will, does not foster a feeling of safety amongst individuals.

6. The Planning Commission finds that having individuals brought to Common Ground in restraints either by ambulance or police car, is contrary to the goal of the C-2, Central Business District as it does not encourage "intense pedestrian activity" or enhance the "economic welfare" or merchandising activities in the downtown district, and does not foster a feeling of safety amongst individuals.

7. The Planning Commission finds that allowing an involuntary lockdown area or permitting individuals to be brought against their will would be contrary to the Zoning Ordinance Section 5.11 by having an adverse affect on the value of adjacent or abutting properties.

### Conditions of Site Plan Approval

a. No residential quarters, sleeping rooms, 'lock down' facility, detention areas or any other locked area where patients are held against [\*15] their will shall be permitted within the facility.

\*\*\*

f. The building's exterior shall be modified to comply with the design guidelines established by the 2001 downtown plan to the satisfaction of the Planning staff and the DDA Design Committee.

g. Patients to the subject facility shall not

be transported by ambulances or police vehicles against an individual's will.

On August 10, 2010, plaintiff filed a claim of appeal from certain of the planning commission's findings and conditions with the Pontiac City Council. Specifically, plaintiff appealed as follows:

1. Common Ground appeals all of the Findings of Fact because they relate to whether Common Ground's use is a permitted use and purport to put restrictions on its use. This portion of the Planning Commission action is beyond the scope of the remand because the court unequivocally declared the proposed use a permitted use. The proposed use has not changed.

2. Common Ground appeals parts (a) and (g) of the conditions because they similarly restrict the proposed use which the court has unequivocally approved.

3. Alternatively to parts of paragraph 1 above, Common Ground appeals all Findings of Fact and conditions that relate to the existence [\*16] of an ambulance by, or that relate to who may be transported to or from the property by ambulance or police vehicle, or that purport in any way to regulate such vehicles or the ambulance bay, because —

a. such issues were in the record before the lawsuit and are merged into the court's order. See eg Planning Dept. report 1/31/08 ¶ 6.3; *Id.* 2/20/08 ¶ 6.h; *Id.* 8/29/08 ¶ 6.k; Planning Committee minutes 6/11/08 p 5-6.

b. ambulance (and police) transport is ancillary to the principal use, and is also a permitted use in a C-2 District.

c. the record made at the July 7, 2010 meeting does not comply with MCL 125.3606(1)(c) and (d).

d. such conditions to approval are not

within the scope of Zoning Ordinance ¶ 5.11(c).

4. Alternatively to parts of paragraphs 1 and 2 above, Common Ground appeals all findings of fact and conditions that relate to whether parties are on the property against their will, are brought in restraints, or are detained in a lockdown area or by any involuntary restraint because —

a. such issues were in the record before the lawsuit and are merged into the court's order. \* \* \*

b. the rare instances where such conditions occur is ancillary to the principal use, and is also a permitted [\*17] use in a C-2 District.

c. the record made at the July 7, 2010 meeting does not comply with MCL 125.3401(4)(c) and (d).

d. such conditions to approval restrictions are not within the scope of Zoning Ordinance ¶ 5.11(c).

5. Common Ground appeals part (f) of the conditions because —

a. the remand directed the Planning Commission to establish the conditions under Section 5.11(c) and not to defer such conditions to a later time.

b. the reference to modifying the building's exterior to the design guidelines is vague and the Planning staff had drawings of the exterior since early 2008.

c. the Planning Commission may not delegate modifying the building's exterior to the satisfaction of the "DDA Design Committee."

At a meeting of the Pontiac City Council on November 8, 2010, the council noted that it had considered plaintiff's appeal and "agrees with the Planning Commission's Findings of Fact and other conditions of Site Plan Approval" and,

NOW, THEREFORE, BE IT RESOLVED,

that the City Council hereby denies the appeal of Common Ground Sanctuary, 147 South Saginaw Street, and approves its Site Plan consistent with the Findings of Fact and certain conditions of Site Plan approval adopted by the Planning [\*18] Commission on July 7, 2010, for a medical office and clinic . . .

On December 22, 2010, plaintiff filed a "Motion to Compel Defendants to Issue Site Plan Approval and Declaration" in the trial court. In the motion, plaintiff noted that it "accepts all of the conditions of the site plan approval on remand as set forth by the Planning Commission in the July 12, 2010, document, except subsections (a) and (g), discussed below, and part of subsection (f)." Specifically, plaintiffs alleged as follows in pertinent part:

13. Subsection (f) states:

The building's exterior shall be modified to comply with the design guidelines established by the downtown plan to the satisfaction of the Planning staff and the DDA committee.

14. Subsection (f) does not comply with the remand because the conditions do not identify the modifications required to comply. The court remanded for a determination of proper conditions, not to postpone the subject to an indefinite later time, possibly requiring a second court review. Moreover, this Court held that the master plan is only a "guide."

15. Subsection (f) also does not comply because the Ordinance does not provide for any delegation of authority to impose conditions [\*19] to another entity such as the DDA Design Committee. The Ordinance states that the planning commission shall prescribe the conditions. Moreover, this Court held that "DDA recommendations are not binding on the Planning Commission.

The Planning Commission Findings and Conditions are Beyond the Scope of the Remand

16. This Court directed defendants not to revisit the proposed use on remand. See ¶ 4 above. Conditions of approval (a) and (g) and Findings 1 — 7 (ex 1) violate that direction. They are also improper for the additional reasons set forth below.

17. Conditions of approval (a) and (g) state:

(a) No residential quarters, sleeping rooms, lockdown facility, detention areas or any other locked area where patients are held against their will shall be permitted within the facility.

(g) Patients to the subject facility shall not be transported by ambulance or police vehicles against their will.

18. These conditions are not within the scope of § 5.11(c) because conditions (a) and (g) relate to activities and the use of the site. Section 5.11(c) is limited to physical characteristics of the building exterior and the site.

19. Conditions (a) and (g) are also improper because:

(a) The rare instances [\*20] where detention or lock down occurs is ancillary to the principal use, and is also a permitted use in a C-2 District.

(b) Ambulance (and police) transport is ancillary to the principal use, and is also a permitted use in the C-2 District.

20. Conditions (a) and (g) are also beyond the scope of the remand because these issues were in the record and are merged in the Court's Opinion and Order. The ambulance bay is listed in the Planning Department written reports, verbal reports at meetings, and proposed resolutions. . . . The proposed resolutions addressed sirens. . . . At the September 3, 2008 meeting of the Planning Commission, the chair reported on his visit to a facility the

new building would replace. The minutes state he "indicated there was a portion that was a locked facility, which concerned him . . ." . . . The transcripts of the Planning Commission meetings of March 5 and September 3, 2008 confirm the issues in the new Findings had been discussed at the meetings before this lawsuit was filed. . . .

21. The Planning Commission Findings 1 — 7 are also contrary to this Court's Opinion and Order and this Court should set them aside. . . . These include findings that define the permitted [\*21] use to be a "clinic." From that findings, the Planning Commission found that a "clinic" does not include patients admitted against their will, a detention area, an ambulance bay, individuals brought in restraints, or an involuntary lock down area. . . .

In sum, plaintiffs requested that the court "compel defendants to issue a site plan approval, subject to the conditions of the July 12, 2010, letter to Common Ground, excluding Sections (a), (f), and (g).

In response to plaintiff's motion, defendants asserted that the trial court had determined that plaintiffs proposed use was sufficiently similar to an outpatient clinic and, on remand, the planning commission placed conditions on the facility accordingly. Specifically, defendants noted that:

Clinics are a principal permitted use in the C2 zoning district, which is where Common Ground seeks to establish their facility, however these clinics differ from Common Ground's proposed usage in several ways. The first, and most important distinction is that these existing clinics do not have a lock-down or holding facility where individuals are held against their will. Secondly, they do not have an ambulance bay where ambulances and

police staff [\*22] can bring in restrained individuals. This has been the City of Pontiac's primary concern from the beginning . . .

Defendants also noted that the City of Pontiac's Zoning Ordinance provides that "any use that is not expressly permitted is prohibited" and that "Just because a clinic and anything substantially similar is a principal permitted use, does not mean that they can operate in any way they see fit, nor can they use their facility in ways not contemplated under the ordinance." After noting that the dictionary definition of "clinic" defines a clinic as a "facility for diagnosis and treatment of outpatients, and 'outpatient' as a patient who is not hospitalized overnight but who visits a hospital, clinic, or associated facility for diagnosis and treatment," defendants asserted that:

These terms all define a voluntary activity where a patient seeks treatment, are free to come and go as they please, and under no circumstances be kept overnight. What these definitions clearly lack is any indication that a clinic would be any sort of holding facility for the mentally ill where they would be kept against their will. Therefore, a holding facility is not expressly permitted, and is therefore [\*23] expressly prohibited under the City of Pontiac's Zoning Ordinances when looking to the ordinary meaning assigned to words.

The Planning Commission made a finding of fact that they do not believe that a clinic is a facility where patients are admitted against their will, and is a place where they freely and voluntarily seek services.

Plaintiff further argues that an ambulance bay and lock-down facility are permitted accessory uses. The City of Pontiac's Zoning Ordinance defines "accessory use" as a "subordinate use that is customarily

incidental to the principal use on the same lot." The Planning Commission made a finding of fact that they do not believe that an ambulance bay is a permitted accessory use to a clinic. Other clinics within the City of Pontiac, and primarily within the C2 district, do not have ambulance bays or lock-down facilities.

Defendants further asserted that the intent section of the zoning ordinance which describes the types of businesses sought in the C-2 district clearly establishes restrictions for the zoning district. They further asserted that the 2001 downtown plan was on file and available to plaintiff when it applied to have its project approved and that the [\*24] plan should be adhered to.

A hearing was held on plaintiff's motion on January 19, 2011. Following a discussion during which the parties agreed not to object to any procedural irregularities in the manner in which plaintiff was raising the issues presented in its motion, the trial court ruled in pertinent part as follows:

With regard to the ambulance, I find that it is — or, ambulance bay, I find that that condition is not appropriate, it was clearly within the application, it was on the drawings. The various transcripts reveal — or transcripts of planning commission meetings, etcetera, reveals that this was always part and parcel of the application process and that it, therefore, falls within the permitted use that the court has previously ruled on in connection with application.

And, therefore, I grant the relief requested by the Common Ground in connection with the condition of trying to bar the ambulance bay, which — and the use of ambulances thereto, which would be condition — sub-paragraph G, which "Patients of the subject facility shall not be transported by ambulance or police



vehicles against an individual's will." I find that is not appropriate.

With regard to — and I've already [\*25] ruled that condition F, I believe, is appropriate, which leaves condition A. Condition A, much of it has been conceded by the moving party, they agree there will be no residential quarters or sleeping rooms. It comes down to a lock down facility, detention areas or other locked areas where patients are held against their will and shall be permitted within the facility. This is the hardest issue before the court, I find that for the reasons articulated by *Common Ground*, that if it falls within the definition of permitted use and that it is contemplated and it's been contemplated from the beginning that there would be detention and lock down areas and that the decision of the defendant to try to exclude that would be inappropriate in light of the court's prior rulings and, therefore, I will in part, affirm condition A which is, no residential quarters or sleeping rooms but strike down the lock down facility and detention areas or other locked area where patients are held against their will shall be permitted within the facility.

II

Defendants first argue that the trial court erred in determining that the proposed use of the property clearly and unambiguously falls within the permitted uses [\*26] of property in the C-2 district and that the trial court erred in its "form over substance" analysis when considering the proposed facility. Following the circuit court's grant of summary disposition in favor of plaintiff with a remand to the circuit court, defendant filed an interlocutory appeal in this Court. The present issues were raised in that application for leave to appeal. This Court's previous order denying defendant's application for leave to appeal the trial court's order granting plaintiff's motion for summary

disposition is the law of the case because this Court denied the application "for lack of merit in the grounds presented." *Common Ground v City of Pontiac*, unpublished order of the Court of Appeals, Docket No. 295626 (entered April 30, 2010). Cf. *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000).

Even if this Court were to exercise its discretion and revisit the merits of the issue, see *Freeman v DEC Int'l, Inc.* 21 Mich App 34, 37-38; 536 NW2d 815 (1995), relief would not be warranted because the circuit court did not misinterpret defendant's zoning ordinance or misapply the substantial evidence standard of review when it determined that plaintiff's [\*27] proposed use of the property was a permitted principal use of the land and that the planning commission erred by concluding otherwise.

The rules of statutory construction apply to the interpretation of municipal ordinances. *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998); *Great Lakes Society*, 281 Mich App 407; *Kalinoff v Columbus Township*, 214 Mich App 7, 10; 542 NW2d 276 (1995). As a general rule courts should defer to the interpretation of the statute by the administrative agency which is legislatively charged with enforcing it. *Ford Motor Co v Bruce Township*, 264 Mich App 1, 7; 689 NW2d 764 (2004). However, where the language used in the zoning ordinance is clear, the ordinance must be enforced as written. *Kalinoff*, 214 Mich App at 10-11. Where specific definitions are not provided, "terms used in an ordinance must be given their plain and ordinary meanings." *Great Lakes Society*, 281 Mich App at 408.

It is undisputed that plaintiff's land is **zoned** C-2, and that §§7.47(1) and 7.41 of defendant's **zoning** ordinance allow the principal permitted uses allowed in C-1 and C-O districts as

permitted principal uses in the C-2 district. Section 7.35 of the ordinance lists the [\*28] principal permitted uses for the C-O zoning district as including "offices for ... commercial and civic organizations," "medical clinics (outpatient only) and offices of doctors ... and similar or allied professionals" ... and "hospitals." Since these uses are permitted on properties zoned C-O, they are also allowed on land zoned C-2. In addition to the principal permitted uses allowed in C-1 and C-O zones, §7.47(6) and (12) of the ordinance allows "health services," "charitable institutions [and] hospitals" as permitted principal uses in a C-2 zone. Furthermore, the "catchall" provision of §7.47(15) expressly allows "[o]ther uses similar to the above uses, provided they are conducted within completely enclosed buildings."

While defendant characterizes plaintiff's proposed facility as a "crisis center," it does not cite any portion of the ordinance referring to a "crisis center," nor has this writer found any reference to crisis centers in the ordinance. Nor does defendant provide any authority for its argument that a "crisis center" is anything other than a form of outpatient mental health clinic. Review of plaintiff's plans shows that it proposes a 48,000 square foot facility consisting [\*29] of both offices for administrative purposes and a place where physicians, nurses, and psychologists can conduct assessments, counseling, and other psychiatric-related services on an outpatient basis. Offices, outpatient medical clinics, hospitals, and "health services" are all permitted uses under the C-2 zoning classification, as are other uses similar to those uses. Defendant's assertions to the contrary were not supported by the plain language of the ordinance, nor were they supported by competent, material, and substantial evidence.

Additionally, the circuit court did not err by

finding that the planning commission's decision was not based on proper procedure since it did not state its reasons or findings on the record when it rejected plaintiff's site plan application.

Section 5.11 of defendant's zoning ordinance states in relevant part:

In granting approval of, or rejecting a site plan, ***the record shall be expressed in writing and/or drawings as to the findings of fact and the reason for the decision***, with a statement of any conditions or limitations to which an approval is subject. [Emphasis added.]

The record shows that at the end of its September 3, 2008, meeting, the planning [\*30] commission voted 8-1 in support of its resolution to deny approval of plaintiff's site plan. The commission did not state its reasons in writing or on the record at the time it voted to reject the plan, nor do its reasons appear in the minutes of the meeting. Instead, defendant's planning administrator drafted some reasons in a letter dated September 9, 2008, and sent it on to plaintiff, apparently without even consulting the planning commission. The procedure followed was contrary to the plain language of §5.11, which requires some sort of findings made by the actual decision-makers, rather than an after-the-fact explanation made by the planning official. Whether this procedural error required vacating the planning commission's decision is irrelevant, since the circuit court also concluded that the planning commission's ultimate determination [as presented in the September 9, 2008, letter] was not supported by the language of the zoning ordinance or by competent, material, and substantial evidence on the record presented.

III

Defendant asserts that the trial court erred in denying the city's conditions for site plan

approval. This issue concerns events that occurred after the court [\*31] granted summary disposition in favor of plaintiff and remanded "to determine whether the Application must be approved as is, or whether to approve the Application with conditions in order to bring it into compliance with conditions imposed by the Ordinance beyond permitted principal uses — namely Section 5.11(c),<sup>3</sup> and possible [sic] Section 7.46 — as opposed to outright denial."

On remand, plaintiff accepted all of the planning commission's conditions of site plan approval in the July 12, 2010, document that had been included in prior planning commission reports, but did not accept new conditions (a) — which precluded a "lock down facility, detention areas or any other locked area where patients are held against their will," and (g) — which precluded transportation of patients against their will by ambulance [\*32] or police vehicle.<sup>4</sup> Plaintiff asserted that defendant was simply attempting to relitigate the issue of permissible uses, and that the trial court had specifically ordered that the issue of permissible use was not to be addressed on remand.

Citing *Const 1963, art 7, § 29*, defendant now argues that it was within the city's police power to place conditions upon site approval pursuant to city ordinance Section 7.46, labeled "Intent." Section 7.46 provides:

This district is designed to serve a complex of urban functions that are enhanced both

by the centrality of the location and the ease of access of being at the hub of a system of radial thoroughfares and also being types of activities that gain economic advantage from a close proximity organized relationship to each other. It is desired to have this district be more than a regional shopping center and to find here the main offices of banks, headquarters and main offices of public utility companies and other office center activities, the main library, theaters, hotels, and restaurants and other activities that [\*33] attract the congregation of people. Activities such as warehousing, for example should be discouraged since they take up space without adding to pedestrian activity.

A prime characteristic of this district is a core of intense pedestrian activity. Most persons entering the district will come by automobile and typically will park once to carry out several errands.

Defendant argues that conditions (a) and (g) reflect the planning commission's findings that these activities are contrary to the zoning goal of the C-2 district because they do not attract "intense pedestrian activity," enhance the "economic welfare" of merchandising activities, and do not foster a feeling of safety among individuals. However, no citation to legal authority, other than as noted above, nor any citation to the record on remand, is offered. Rather, defendant merely asserts that the use of an ambulance bay and a lock down/detention area is inconsistent with the intent of the C-2 district as described in § 7.46 of the city ordinance.

Section 7.47 then addresses the permitted principal uses and/or exceptions in the C-2 district. However, the trial court had previously concluded that plaintiff's facility is a permitted [\*34] principal use and that the issue of use could not be revisited on remand. Given the limited scope of remand, we find that the trial

<sup>3</sup> The scope of § 5.11(c), as explained by Oberi at the June 11, 2007, planning commission meeting, "relates to the physical characteristics of the building and site. The goals and objectives in the Master Plan specify architectural design standards that should be followed." Neither of the conditions at issue in this appeal involve the physical characteristics of plaintiff's building.

<sup>4</sup> Plaintiff also did not accept condition (f), but the court upheld this condition; this condition is not involved in this appeal.

court properly concluded that condition (g) was not appropriate because the ambulance bay was clearly included within the application for site plan approval, was on the drawings, and was always part of the application process. Similarly, the court properly concluded that the detention area was contemplated from the beginning and that a new condition "would be inappropriate in light of the court's prior rulings." In other words, the trial court properly concluded that conditions (a) and (g) amounted to restrictions on a permitted principal use, not conditions imposed by ordinance, and, therefore, were improper.

Affirmed.

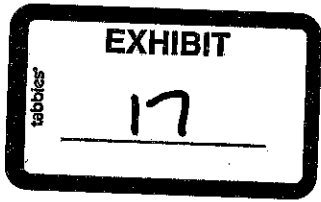
/s/ Michael J. Kelly

/s/ E. Thomas Fitzgerald

/s/ Pat M. Donofrio

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End of Document



## Tom Grier

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**From:** Tim <tim@allpermits.com>  
**Sent:** Tuesday, July 18, 2023 2:25 PM  
**To:** Allison Hubley  
**Cc:** Tom Grier; Dana Boomer  
**Subject:** FW: [Scan] 2023-07-17 22:07  
**Attachments:** 2023-07-17 22-07.pdf

On 7/18/23, 1:16 PM, "fran@dwcupnorth.com <mailto:fran@dwcupnorth.com>" <fran@dwcupnorth.com <mailto:fran@dwcupnorth.com>> wrote:

Hi Tim,

My statement from last night, for the record. Thanks for your help. Talk to you soon.

Thanks,  
Fran

I wanted to take a moment to talk about common sense. Both sides of this issue wish to preserve the land. Mr Shettek bought his acreage with the desire to keep it as open and undeveloped space. He also wishes to use it for several events that would amount to 2% of the days in a year. As a result of these proceedings, largely due to the opposition of the neighborhood association and it's attorney, it appears this matter will now be headed to the Zoning Board of Appeals.

The lack of common sense here is that both sides essentially want the same thing, to preserve the space. Compromising for a few days each year in order to hold a family friendly event seems like a good idea. If not allowed to use the land for the purpose he purchased it, the owner may now have to find other uses for this land. Approved uses are many, including single family or multi family housing developments, agricultural or livestock operations, etc. In the future, it may also be allowed to be a gravel operation pending legislation being considered.

It would seem that a compromise would be in order here. The current owner wants to keep it open as it exists now. The neighbors worry about how the community is changing and want to preserve the land around their homes. Both could be accomplished by allowing for these events, as limited by a special use permit. That's 2% of days in a year versus 100% of alternate uses. Instead, we've gotten the point of legal arguments and action. We may not be successful in our pursuit of a special use permit for a few limited events, but the alternative may be a lot worse.

Thanks to PC & Tim Cypher for working with us on this application. You have been fair and direct in the process.

EXHIBIT

tabbies®

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**YOUNG, GRAHAM & WENDLING, P.C.**

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Bryan E. Graham

Peter R. Wendling

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July 28, 2023

Tim Cypher, Zoning Administrator  
Kasson Township  
P.O. Box 62  
Maple City, MI 49664


**SUBJECT: Two Applications for Appeal to the Zoning Board of Appeals: Appeal of Planning Commission Decision on Enduro Special Use Permit and Appeal of Zoning Administrator's Decision to Deny Processing of Special Use Permit on July 7, 2023**

Dear Mr. Cypher:

Under separate cover, the Applicants have provided you with a check of \$625. I appreciate the Township's consideration of hearing this matter based upon a single application fee as both appeals are directly related to each other. I presume that both appeals can be heard by the ZBA at once. Please let me know at your earliest possible convenience whether any more fees such as an escrow are required and what the amounts are as discussed with you in a recent phone conversation. Enclosed are ten copies each of each application for processing. Please let me know if the Township needs any additional information in order to bring this matter properly before the ZBA.

I thank you for the assistance you have provided and in advance for any further assistance.

Sincerely,

  
Peter R. Wendling

PRW/aew

cc: F. Seymour

**KASSON TOWNSHIP  
PLANNING/ZONING APPLICATION  
ADDENDUM – ZBA PETITION**

Prior to completing this addendum to the ZBA Petition, the Applicant(s) should review the Kasson Township Zoning Ordinance, in particular Sections 11.3, 11.4, and 11.5, and any other section(s) of the Ordinance that applies to your petition. A copy of the Ordinance may be obtained from the Kasson Township Clerk.

Applicant Name(s) James Schettek - Applicant; Bill Kasben - Owner

Tax Parcel Number(s) 007-024-001-10; 007-024-005-00; 007-024-004-30;  
007-024-004-20; and 007-024-004-00

Type of Petition    Variance    Administrative Review    Interpretation and Classification

**NATURE OF PETITION:**

State specifically what you are requesting. Please summarize your question, problem or request and reference the specific section(s) of the Zoning Ordinance that are involved (such as a setback variance, Ordinance interpretation, etc.). Use additional sheet(s) if necessary.

Please see attached.

**EFFECT OF THE REQUEST ON THE APPLICANT(S):**

State specifically the problem(s) and/or hardship(s) that would be created for you, the petitioner, if your request were not granted. Use additional sheet(s) if necessary.

Please see attached.

**KASSON TOWNSHIP  
PLANNING/ZONING APPLICATION  
ADDENDUM – ZBA PETITION**

EFFECT OF THE REQUEST ON OTHER PROPERTIES:

If your request is granted, what effect will it have on the area? Does your request represent a change in the types of uses permitted? Will it hamper access by emergency services (vehicles or personnel)? Will it hamper or restrict light, air, or access to adjacent properties? Will it in any other way create any problems or concerns to other properties in the area? Use additional sheet(s) if necessary.

Please see attached.

DRAWINGS AND SITE MARKINGS:

Where applicable, a scale drawing(s) indicating the following information shall also be attached to the application:

A drawing of the subject site, lot, etc. with property line dimensions The size and location of existing buildings and specific uses on the site The size and location of any proposed buildings and/or uses on the site, including overhangs Existing buildings and/or uses on adjacent properties

Existing and proposed setbacks to buildings on the subject site and to buildings on adjacent parcels along any common property lines. Additionally:

Property lines and proposed structure dimensions, including overhangs, must be staked and flagged at the site

In the case of side and rear yard setback variance requests, the applicant may be asked to provide a current staked survey and survey drawings showing property boundaries and the location of structures relevant to the request

Please attach pictures that will help clarify your request, if applicable.

GENERAL REQUIREMENTS

The Zoning Board of Appeals (ZBA) has been created to offer reviews and decisions when:

an interpretation of the Zoning Ordinance is questioned a zoning district boundary is questioned  
an order or decision of an administrative official or body is questioned the Zoning Ordinance  
empowers the ZBA to hear specific land uses a variance from the strict interpretation of the  
ordinance is sought to avoid a specific hardship

## **Nature of Petition**

Applicants are seeking ZBA review under Section 11.4, Administrative Review of the Zoning Ordinance, with respect to the Planning Commission's denial and refusal to even hear applicant's request for a Special Use Permit originally submitted on February 18, 2023. With the guidance of Kasson Township staff and the Zoning Administrator, this original application was filed under Section 7.15 of the Zoning Ordinance entitled *Other Special Land Uses*. While the applicant's original application only looked toward a single Enduro Motorcycle event scheduled for the Sunday of the Memorial Day weekend, May 28, 2023, the applicant seeks to have more than one event during the spring/summer/fall seasons located on the property with the above Tax ID numbers. The current zoning on the property is Forested District (FR). Although the matter was taken up by the Planning Commission and a public hearing held at the April 17, 2023 Planning Commission regular meeting, the application was tabled and ultimately at the meeting on July 17, 2023, the Planning Commission passed a motion to discontinue consideration of the Special Use Permit application for Michigan Sprint Enduro Motorcycle Event under Section 7.15 of the Kasson Township Zoning Ordinance. Various correspondence was provided during public comment as well as comments from citizens represented by Attorney Kristin Houle. Material was also provided by the applicant's attorney as well as counsel for the Township all of which is part of the record of the proceedings before the Planning Commission. Applicants seek to appeal the Planning Commission's decision to discontinue consideration of the Special Use Permit under Section 7.15 of the Kasson Township Zoning Ordinance.

## **Effect of the Request on the Applicants**

Applicants enjoy the sport of Enduro Racing and wish to share their unique and large property with others who wish to engage in this sport on an occasional basis including Enduro Races during the season. The Applicants understand that reasonable restrictions may be placed on the property and believe that this use is commensurate with uses otherwise allowed in the Forested District (FR). While it is unknown ultimately what the Planning Commission decision would be regarding this matter, it is important that the matter proceed before the Planning Commission, whether under 7.15 as originally applied for based upon advice on the part of Township staff, or other provisions allowing for a Special Use within the Forest Zoning District. Applicants were told by the Zoning Administrator that there is no zoning district within the township which would allow for Enduro sport nor has the township considered other avenues for allowing Enduro Races under the Zoning Ordinance including the utilization of Sections 4.4 and Section 5.13 of the Kasson Township Zoning Ordinance. Applicants feel that the only way to seek redress regarding this blanket denial and refusal to consider this Special Use Permit is to appeal the matter to the Kasson Township ZBA.

### **Effect of the Request on Other Properties**

Because the Planning Commission did not even consider this application and unilaterally passed a motion on July 17, 2023 to refuse to consider the application, it is unknown what the effect of this request would be on other properties. The extent that the activities requested in the application would impact other properties would be something the Planning Commission would likely address when considering the application for a Special Use Permit under the standards contained in the Kasson Township Zoning Ordinance. The refusal to consider the application appears to be based upon a legal reasoning provided by the Township's legal counsel which applicants believe is not commensurate with the law or the facts which should allow this application to proceed and be determined by the Planning Commission under the standards contained in the Zoning Ordinance.

There is no evidence that any Enduro event would hamper access to public services. Any Enduro event is temporary and does not constitute use of the property unlike other special uses or uses by right under the Zoning Ordinance. Applicants are willing to work with the Township to ensure that the use has minimum effects on surrounding properties. Finally, an Enduro race will not hamper or restrict light, air or access to adjacent properties.

No additional sheets are attached to this application as the entire record of the proceedings up to the decision made by the Planning Commission not to consider this Special Use Permit on July 17, 2023 are all on file at the Township. Applicants are certainly willing to organize and assist the township with respect to exhibits of the record for the ZBA to review. Applicants will provide a memorandum well in advance of the ZBA meeting to address applicant's arguments on appeal before the ZBA.

**KASSON TOWNSHIP  
PLANNING/ZONING APPLICATION  
ADDENDUM – ZBA PETITION**

Prior to completing this addendum to the ZBA Petition, the Applicant(s) should review the Kasson Township Zoning Ordinance, in particular Sections 11.3, 11.4, and 11.5, and any other section(s) of the Ordinance that applies to your petition. A copy of the Ordinance may be obtained from the Kasson Township Clerk.

Applicant Name(s) James Schettek - Applicant; Bill Kasben - Owner

Tax Parcel Number(s) 007-024-001-10; 007-024-005-00; 007-024-004-30;  
007-024-004-20; and 007-024-004-00

Type of Petition    Variance    Administrative Review    Interpretation and Classification

**NATURE OF PETITION:**

State specifically what you are requesting. Please summarize your question, problem or request and reference the specific section(s) of the Zoning Ordinance that are involved (such as a setback variance, Ordinance interpretation, etc.). Use additional sheet(s) if necessary.

Please see attached.

**EFFECT OF THE REQUEST ON THE APPLICANT(S):**

State specifically the problem(s) and/or hardship(s) that would be created for you, the petitioner, if your request were not granted. Use additional sheet(s) if necessary.

Please see attached.

**KASSON TOWNSHIP  
PLANNING/ZONING APPLICATION  
ADDENDUM – ZBA PETITION**

EFFECT OF THE REQUEST ON OTHER PROPERTIES:

If your request is granted, what effect will it have on the area? Does your request represent a change in the types of uses permitted? Will it hamper access by emergency services (vehicles or personnel)? Will it hamper or restrict light, air, or access to adjacent properties? Will it in any other way create any problems or concerns to other properties in the area? Use additional sheet(s) if necessary.

Please see attached.

DRAWINGS AND SITE MARKINGS:

Where applicable, a scale drawing(s) indicating the following information shall also be attached to the application:

A drawing of the subject site, lot, etc. with property line dimensions The size and location of existing buildings and specific uses on the site The size and location of any proposed buildings and/or uses on the site, including overhangs Existing buildings and/or uses on adjacent properties Existing and proposed setbacks to buildings on the subject site and to buildings on adjacent parcels along any common property lines. Additionally:

Property lines and proposed structure dimensions, including overhangs, must be staked and flagged at the site

In the case of side and rear yard setback variance requests, the applicant may be asked to provide a current staked survey and survey drawings showing property boundaries and the location of structures relevant to the request

Please attach pictures that will help clarify your request, if applicable.

GENERAL REQUIREMENTS

The Zoning Board of Appeals (ZBA) has been created to offer reviews and decisions when:

an interpretation of the Zoning Ordinance is questioned a zoning district boundary is questioned an order or decision of an administrative official or body is questioned the Zoning Ordinance empowers the ZBA to hear specific land uses a variance from the strict interpretation of the ordinance is sought to avoid a specific hardship

### **Nature of Petition**

This is Applicant's appeal of the Kasson Township Zoning Administrator's decision on July 7, 2023 to deny the processing of a request for a Special Use Permit by Applicants within the Forest Zoning District of an Outdoor Recreation Facility. The facility would be the applicant's property used for periodic Enduro Motorcycle races. This appeal is pursuant to Section 11.4 Administrative Review of a decision and determination made by the Zoning Administrator although it arguable involves interpretation of Section 4.7.2 of the Zoning Ordinance as well. The application which the Township by and through the Zoning Administrator refused to process and submit to the Planning Commission was for a Special Use Permit under Section 4.7.2 Special Land Uses - Public or Private Outdoor Recreation or Park Facilities which would include as defined under the Ordinance an Outdoor Recreation Establishment. Various correspondence has been filed regarding this matter as part of the record by the applicants, the applicant's attorney and attorney Kristen Houle purportedly on behalf of township residents as well as the opinion provided by Tom Grier, legal counsel for the Township. All of these items are part of the record of appeal before the ZBA. Applicant's attorney will provide a written outline of the law and argument based upon the Zoning Ordinance provision as to why the Zoning Administrator's decision should be reversed and the matter processed for a Special Use Permit. This will be done in a timely manner well in advance of any hearing before the ZBA. It is expected that township's legal counsel will also provide information.

### **Effect of the Request Upon the Applicants**

In addition to the letter from Tim Cypher to one of the applicants, Fran Seymour, the Zoning Administrator stated that the proposed use of the property for periodic Enduro Motorcycle races is not a use listed in any Zoning District within Kasson Township. Therefore, the issue also involves the impact of exclusionary zoning. The Township has yet to consider applicant's alternative desire to allow for these races per Section 4.4 and 5.13 of the Kasson Township Zoning Ordinance. A refusal of the Township to process this Special Use Permit under clear provisions in the Zoning Ordinance which would allow for this use within the Forested District (FR) prohibits the applicants from being able to utilize their property in a manner either allowed under zoning or with this use being excluded under zoning in all districts throughout the entire Township. If the matter were processed by the Planning Commission, reasonable conditions based upon standards contained in the Zoning Ordinance would be applied to mitigate any real or perceived impacts on neighboring property owners for these temporary events which would only occur in the spring, summer and fall on an infrequent basis.



### **Effect of the Request on Other Properties**

It is unknown what the effect would be on other property owners other than speculation which occurred on a previous application by Applicants which the Planning Commission refused to process. That application is also on appeal to the Zoning Board of Appeals. If the Planning Commission were allowed to process this Special Use Permit as applicants believe it is obligated to do so under the Zoning Ordinance, those issues would be readily addressed and any impact, to the extent they exist, would be mitigated. Any Enduro event is temporary and does not constitute a continuing use of the property unlike other special uses or uses by right under the Zoning Ordinance. Applicants are willing to work with the Township to ensure the use has a minimum effect on surrounding properties and allow for a reasonable use of Applicant's property.

There is no evidence that any Enduro event would hamper public access to emergency services and there is no impact with respect to restricting light, air or access to adjacent properties based upon the original application for a Special Use Permit.

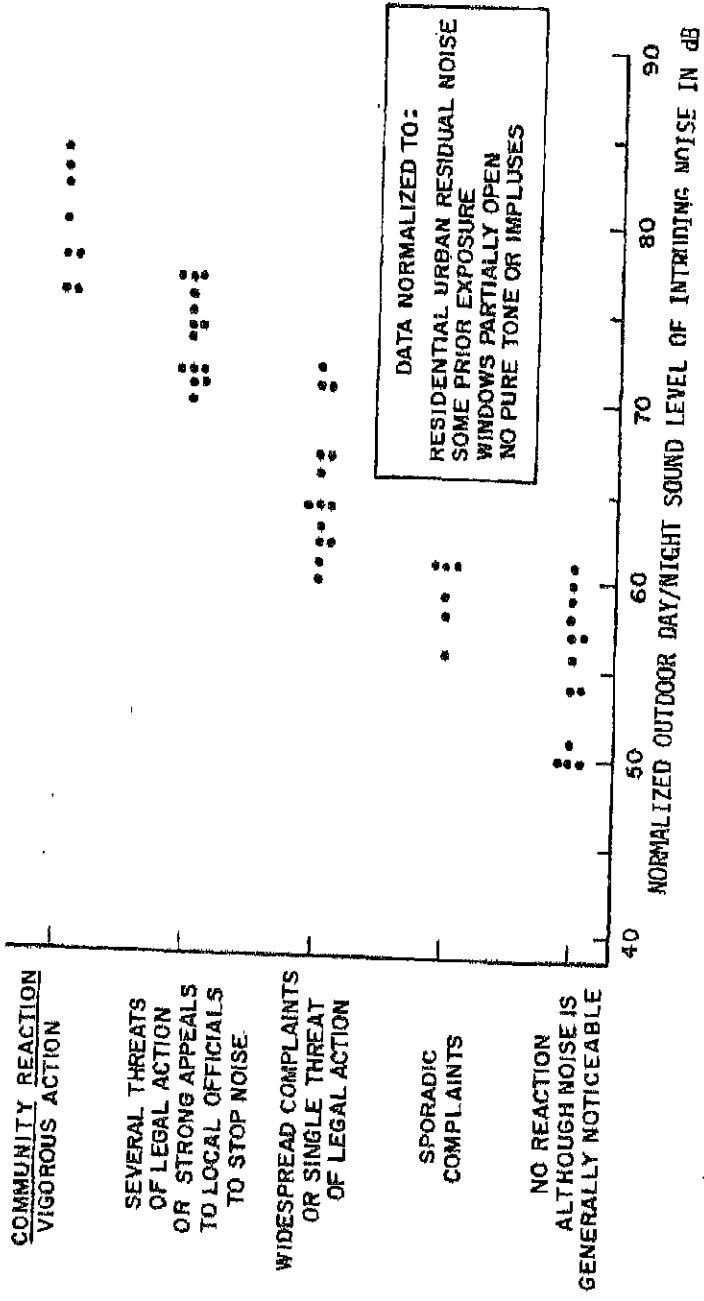


Figure D-7. Community Reaction to Intensive Noises of Many Types as a Function of the Normalized Outdoor Day Night Sound Level of the Intruding Noise D-3

TABLE D-5 (Continued)

House Vibra. YCS	Disturb. of Sleep		Nuisance Felt Subjectively	Admissibility from point of view of physical, mental and social well being, in regard to which the stress is laid on disturbance of sleep, disturbance of conversation and feeling afraid.
	P	S		
0	0	0	No nuisance	-----
21	3	7	Slight nuisance	Admissible
41	6	14	Slight to moderate nuisance	Admissible; the tolerance limit is reached for about one-fifth of the population.
56	12	21	Predominantly moderate nuisance	Limit of admissibility; the tolerance limit is reached for about one-third of the population.
72	20	20	Predominantly serious nuisance	Inadmissible; the tolerance limit is exceeded for about half of the population
83	31	33	Serious nuisance	Inadmissible; the tolerance limit is exceeded for about two-thirds of the population.
92	44	42	Intolerable	Absolutely inadmissible
100	72	28	Intolerable	Absolutely inadmissible

**YOUNG, GRAHAM & WENDLING, P.C.**

Attorneys at Law  
104 E. Forest Home, P.O. Box 398  
Bellaire, Michigan 49615  
(231) 533-8635  
Facsimile (231) 533-6225  
wendling@upnorthlaw.com

Bryan E. Graham

Peter R. Wendling

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May 25, 2023

**VIA EMAIL and USPS**

Tim Cypher, Zoning Administrator  
Kasson Township  
P.O. Box 62  
Maple City, MI 49664

Tom Grier, Attorney  
The Running Wise Law Firm  
1501 Cass Street Ste. D  
P.O. Box 686  
Traverse City, MI 49685

**SUBJECT:** Application for Special Use Permit Enduro Motocross Racing

Dear Mr. Cypher and Mr. Grier:

I have had an opportunity to review Mr. Grier's letter of May 5, 2023 to Mr. Cypher, Zoning Administrator for Kasson Township. While there are points in the letter which I disagree with, the most salient issue which I wish both of you to review directly relate to the Zoning Ordinance within the Forested Zoning District (FR). Section 4.7 of the Zoning Ordinance describes the purposes and intent of the Forested District which is to

“ . . . preserve the forest and wood lots, the dominant land cover of the township while allowing a wide range of uses in such ways that will not detract from this end. To the greatest degree of practical, the integrity and contiguity of forest lands shall be maintained.”

Section 4.7.2 outlines Special Land Uses within the FR district. One of the uses listed is “Public or private outdoor recreation or park facilities.” The Zoning Ordinance defines Outdoor Recreation Establishment as follows,

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

Clearly, motocross racing is a type of sport as well as a leisure time activity for trail riding. The operation of recreational motocross bikes or racing the same could easily be added as an example of an “Outdoor Recreation Establishment” given that the examples provided are not exclusive uses but examples of what can constitute an Outdoor Recreation Facility. When it comes to noise, one can only wonder how the Township would react to a proposed children's amusement park. In any event, it is a mystery as to why this special land use permit was attempted to be processed under Section 4.7.2's provision of “Other similar agricultural businesses or uses” and/or

Section 7.15. An Outdoor Recreation Facility matches exactly what the applicant wishes to obtain special use permit for. There is no reason to invoke Section 7.15 entitled "Other Special Land Uses" when the specific land use of outdoor recreation facility is clearly available for processing in the FR zoning district. While I do not agree with the legal analysis purportedly contained in Ms. Houle's letter to the Township as outlined on Mr. Grier's letter regarding Section 7.15 of the Zoning Ordinance, there is no reason to engage in further analysis of Section 7.15 or the Gallen Township case since they are clearly not applicable to this request for a special use permit.

My final concern with Mr. Grier's letter is contained on page 5 of 9. In the letter, Mr. Grier states:

"In conclusion, unless and until the sound study has been conducted, and the study shows that the Event can proceed without harming the neighboring properties, the standards in ZO Section 7.7 A., B. And E. have not been met and the SUP should not be granted."

While the law certainly allows a municipality to consult with its attorney, including the attorney's ability to draft sample findings of fact, the ultimate decision on whether or not to grant a Special Use Permit can only be made independently by the Planning Commission after hearing all of the evidence. It is up to the Planning Commission to decide whether it wishes to obtain escrow for any type of expertise that it determines is needed to assist in making a decision.

As such, we request that the Township allow for the processing of a Special Use Permit on behalf of the applicant James Schettek within the FR district as an Outdoor Recreation Facility pursuant to Sections 4.7.2 Special Land Uses and per the definition of "Outdoor Recreation Establishment" as such a facility includes motocross recreational use and racing.

Sincerely,

Peter R. Wendling

PRW/aew

EXHIBIT

tabbles

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## Tom Grier

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**From:** Peter Wendling <wendling@upnorthlaw.com>  
**Sent:** Wednesday, October 4, 2023 10:21 AM  
**To:** Tom Grier; Kristyn Houle  
**Cc:** Tim  
**Subject:** Re: Kasson Township Enduro ZBA Protocol

Tom,

Everything sounds good except the court reporter issue. I understand if the township wants a court reporter but the reporter needs to be physically at the meeting(s) as court reporting via a tape is not reliable and subject to attack. If the township decides to have a court reporter at the meeting I understand the costs but the reporter needs to be at the meeting(s).

Peter

On 10/3/2023 3:55 PM, Tom Grier wrote:

Peter and Kristyn,

I just want to summarize the protocol for the Enduro ZBA hearing next week that I discussed yesterday with each of you.

I am going to work on an umbrella memo for the ZBA asap. I will also begin assembling the record for the hearing that will include all of the correspondence, legal memos, emails, etc. to date. Each item will be given an exhibit number. I will share the memo to the ZBA, and the record to date, with each of you before the hearing. My memo will outline each issue before the ZBA, and list and summarize the letters and legal memos already submitted on the issues. I will be glad to share this memo with you in draft form before it is sent to the ZBA to make sure we are covering what we need.

We will conduct the hearing next week.

No deliberation will occur next week.

Each side will be given 15 days after the hearing to prepare proposed findings on each side. We can also extend the record date through that 15-day period as well. I can do another memo to the ZBA.

The ZBA hearing will be adjourned 30 days from next week. The ZBA will deliberate at the adjourned hearing date and make a decision then.

Each of you, and any member of the public for that matter, can submit your own legal memorandum prior to the hearing October 11. (Remember that your prior letters and memoranda will be submitted to the ZBA as part of my umbrella memo/record to the ZBA, so my suggestion would be to avoid too much duplication and extra work.)

We need to make sure that the ZBA hearing is tape recorded next week (for later transcription by a court reporter) or we can bring in a court reporter if one is available. We should discuss splitting the court reporter fee three ways.

My goal is to submit the material to the ZBA on my end by Friday. If Monday is more comfortable for you, I think that would be OK. Again, the ZBA will not deliberate next week.

We can set up a conference call to discuss all of this.

Thanks

Tom Grier

PLEASE NOTE THAT OUR OFFICE HAS MOVED! OUR NEW ADDRESS IS AS FOLLOWS: 1501 Cass Street, Suite D, Traverse City, MI 49684

Thomas A. Grier  
1501 Cass Street, Suite D  
P.O. Box 686  
Traverse City, MI 49685  
Ph. 231.922.1286  
Fax 231.946.0857

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Bryan E. Graham

Peter R. Wendling

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October 5, 2023

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

**SUBJECT: Definition of Outdoor Recreation Establishment**

Dear Zoning Board of Appeals members:

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully Submitted,



Peter R. Wendling

PRW/aew