

**MARION TOWNSHIP PLANNING COMMISSION
AGENDA**

REGULAR MEETING
September 24, 2019
7:30 p.m.

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

INTRODUCTION OF MEMBERS:

APPROVAL OF AGENDA FOR: September 24, 2019 Regular Meeting

APPROVAL OF MINUTES FROM: August 27, 2019 Regular Meeting

CALL TO THE PUBLIC:

PUBLIC HEARING:

New BUSINESS:

- 1) NONE

Old BUSINESS:

- 1) TXT#03-18 Section 6.14 and 17.32 Home Occupation/ Home-based Business.
- 2) TXT#04-17 Make changes requested by BOT and create Special Use for Nursery.
- 2) TXT#07-17 proposed changes Lots – move thru other issues.
- 3) Wellhead Protection Overlay District replacing 6.27 review comments for change requirements.

Correspondence and Updates:

CALL TO THE PUBLIC:

ADJOURNMENT:

*Approved by: _____

Larry Grunn, *Chairperson*

Date: _____

MARION TOWNSHIP PLANNING COMMISSION
REGULAR MEETING MINUTES
AUGUST 27, 2019 / 7:30PM

DRAFT

MEMBERS PRESENT: LARRY GRUNN – *CHAIRPERSON*
BOB HANVEY
CHERYL RANGE – *SECRETARY*
BRUCE POWELSON – *VICE CHAIR*
JAMES ANDERSON

OTHERS PRESENT: DAVE HAMANN – ZONING ADMINISTRATOR
PHIL WESTMORLAND – CARLISLE WORTMAN

MEMBERS ABSENT: JOHN ENOS – PLANNER WITH CARLISLE WORTMAN

CALL TO ORDER:
Larry Grunn called the meeting to order at 7:30 p.m.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA:
Regular Meeting Agenda for August 27, 2019
Bruce Powelson motioned to approve the agenda. Cheryl Range seconded. **Motion carried.**

APPROVAL OF MINUTES:
Approval of the Regular Meeting Minutes for July 23, 2019
Bruce Powelson motioned to approve the minutes from the July 23, 2019 meeting with the grammar and spelling changes. Cheryl Range seconded. **Motion carried.**

CALL TO THE PUBLIC:
Tim Ryan resides at 459 East Davis. Tim Ryan asked if this would be the time to discuss his concerns regarding The Home Occupation Language. Larry Grunn suggested waiting until they close "Call to the public" and start the Public Hearing.

PUBLIC HEARING 8-27-2019:

TXT #03-18 Home Occupation Section 6.14 and 17.32.

Tim Ryan resides at 459 East Davis. Tim Ryan said that he feels that we are currently living in an area that is under considerable assault. Home Occupations can easily become a nuisance to others living in the area. How does the Township plan on protecting the people being negatively affected by these situations? The new people living in Marion Township have just as much of a right to be here, as the people that have lived here for decades. All voices involved should be treated with equal consideration. Tim Ryan continued with saying that he took a look around the Township and noticed that there are several flag lots and "L" shaped lots throughout the community. Allowing a homeowners/business owners to have eight vehicles parked in their driveway is excessive, especially when you add in the UPS trips, the post office deliveries and other residents using that same road. That is a lot of traffic. Some of these business may start out small but what happens when they start growing? Tim Ryan then asked a list of questions that he previously prepared.

- *When does a Home Occupation become a home-based business?*
- *In residential districts, are accessory buildings allowed, housing a business, without a dwelling?*
- *What is meant by outside storage of materials? What is included?*
- *Does this mean trailers? What size? How many? Do they need screening?*
- *Are they to be located away from the road frontage?*
- *The home based business is defined as 'clearly incidental' to a dwelling.*
- *What exactly does that mean?*
- *Is there a set of standards that show what is 'incidental'?*
- *Traffic counts show 12 visitors, deliveries etc. per day. That's one every 20 minutes, 12 visits equals roughly one every 20 minutes, in 8 hours. Does the traffic count include employees arriving and departing?*
- *What happens when the traffic becomes too much?*
- *What are the property tax ramifications for home-based businesses?*

Wendy Busick resides at 4746 Hawthorne Drive. Wendy asked what the purpose of having a Public Hearing. Dave Hamann answered and said, anytime this body wants new verbiage, they have to get the residents input prior to approval. If the Planning Commission is then happy with the proposed language after the Public Hearing then it will go to the County Planning Commission for review. Then it will go to the Marion Township Board of Trustees. This is what the statute at the State requires.

Wendy said that according to the State Law, that used vehicle dealer in Marion Township cannot operate in its current location. The Township even informed the State that they were not currently in compliance. Wendy is also concerned about the maintenance costs on this private road, with dozens of trucks traveling on that road all day. Does this cost belong to the homeowners on this road or the Township? Wendy feels like all of the "teeth" were taken out of the previous language, which referred to a Class 1 and a Class 2. She does not agree with any of this new language. She believes that if someone wants to run a business in a residential area then they should have to actually be living on the property. Not just running their business on it.

Larry Grunn read a letter that was drafted by Jean Root; a Township resident.

Greg Busick resides at 4647 Hawthorne Drive. Greg Busick asked if the home based business verbiage was taken from the previous Class 2 language. Larry Grunn responded with "yes". Greg then stated that on Item #1 on page 1 and section K, on page 2 are contradicting to one another. Greg thought that a Public Hearing was going to be a detailed explanation of the new verbiage.

Closed Public Hearing.

NEW BUSINESS:

1) TXT #03-18 Home Occupation Section 6.14 and Home Based Business Section 17.32 finalization.

Dave Hamann said that Section 6.14 would replace the Class 1 Home Occupation verbiage. Dave made the language changes that were talked about at the last meeting such as on page 2 – letter M changing the verbiage to "Occupation related signage". Dave explained that we will need to consider having a non-conforming for any previous Home Occupations that currently have signage on their parcel. Tonight we also need to discuss the items that are outlined in red, which were left over from the previous meeting. We have now gotten input from the residents that attended tonight's Public Hearing, so you Commissioners need to decide, where we go from here.

Jim Anderson said that the verbiage discussing radioactive materials, was created to protect our community from radioactive chemicals of any kind that one could be disposing of, such as incinerators that burn medical waste, or a business that throws out old smoke detectors. Bruce Powelson asked what we do about someone that has a business that collects smoke detectors, so they can properly recycle them. Jim Anderson said that this language prevents and protects us from people that are actually dumping waste on their property within the Township.

Bruce also stated that on page 1 – item# 2, he believes that eight vehicles seems like a lot of vehicles to allow a business to have on their property in a residential area. Jim Anderson said that he personally has four vehicles on his property, meaning he is already half way there. Plus if someone has a few kids that are driving and have vehicles, which is going to add 1-3 more vehicles being parked in the driveway. Wendy Busick asked Jim if his parcel was at least two acres. Jim said no it is not, but he also is not running a business out of his home. Greg Busick said that having eight cars parked in the driveway (not a garage), causes it to look like a funeral procession.

Dave Hamann explained that the applicant will still have to go through the Special Use process and the amount of vehicles being parked and stored on site will be reviewed at that time.

Bruce said on page three, we should require the applicant to provide an overview/aerial map indicating lot lines and contour lines, which would be turned in with the plot plan.

Bob Hanvey said that both pieces of language specifically state that the occupant must live on the property. Wendy said that is not what is currently happening within the Township. There are three business on Brighton Road with odd buildings located on the parcel and no one currently living them. She thinks that this language should be more specific and black and white, so the applicant is very clear of what is expected of them.

Jim Anderson suggested that we answer Tim Ryan's questions from the Public Hearing.

- *When does a Home Occupation become a home-based business?*

Dave said, when they are no longer invisible to their neighbor and when they have more than one employee.

- *In residential districts, are accessory buildings allowed, housing a business, without a dwelling?*

Dave said, No, only those that are Right to Farm and are 100% Ag related. Bob Hanvey said that churches and pole barns for agricultural use, are the exceptions to this.

- *What is meant by outside storage of materials? What is included?*

Dave said that anything that is related to the business and that they must have proper screening.

- *Does this mean trailers? What size? How many? Do they need screening?*

Dave said, yes but this will be situational of course. Each applicant has to prove that it is done correctly, with proper screening and is not a nuisance to their neighbors.

- *Are they to be located away from the road frontage?*

Dave said yes, when an applicant requests a Special Use Permit, you make the employees park away from the driveway and provide adequate screening. The applicant must provide an adequate space for employees to park that is not in the driveway.

Cheryl Range asked about the landscaping company off of Coon Lake Road. Dave said that they are a pre-existing situation. Larry Grunn asked how they could possibly fall under pre-existing. Dave said that they are similar to the pre-existing situation off D19. The Board of Trustees instructed me to send the landscaping company off Coon Lake Road, a letter violating them. Then when this company came to the Board meeting, the Board allowed them to continue because they were able to convince the Board that they were not going to be a nuisance to the neighbors. We then realized that they don't even fall under a Class 2 anyways because they are in an ERS district. Dave said that the Board needs some more verbiage in place, which will then provide some direction on Home Occupations, in order for anyone to move forward on this.

- *The home based business is defined as 'clearly incidental' to a dwelling. What exactly does that mean? Is there a set of standards that show what is 'incidental'?*

Bob said if there is a specific word that was not defined in our language, then a dictionary would be used to determine the meaning of the specific word in questions.

Bob asked if a hair salon would be allowed and Dave said yes, they would technically be a class 1. Bob then asked about a dog grooming business.

- *Traffic counts show 12 visitors, deliveries etc. per day. That's one every 20 minutes, 12 visits equals roughly one every 20 minutes, in 8 hours. Does the traffic count include employees arriving and departing?*

Bob said that the Board and applicant would come up with a number that best fits the situation.

- *What happens when the traffic becomes too much?*

Dave said that this would be complaint driven.

- *What are the property tax ramifications for home-based businesses?*

Bob said in most cases, none. The Tax is based on the value of the home, considering the highest and best use of the property. All uses are considered to be a "single family home". However, the more investments made on the property, the higher the property value.

Cheryl Range thinks that we should spend more time digesting this information and the changes and discuss further next month. Jim Anderson said that he is happy with the current language and would like to send it on for review, along with the change that Bruce suggested about requiring an aerial view be submitted with the plot plan. Jim thinks that we have answered all of the questions and addressed all of the concerns and would like to send this to the County.

Dave Hamann thinks that no everyone is going to fit within these parameters and that each Special Use Permit is going to be unique.

Cheryl Range made a motion to digest this information and bring it back next month with the changes. Bruce Powelson seconded. Roll Call: Bruce YES, Jim NO, Bob YES, Larry YES, Cheryl YES. **Motion carried. 4-1**

OLD BUSINESS:

1) *Marion Township Engineering Standards*

Phil said that they created these standards so more detail is available to the applicant regarding when to submit their plans, to whom and what exactly is expected to be in the plans. Section 12 explains that there are no shared driveways allowed within the Township and that private roads are allowed to have 2-5 access points, with no more than five units that are pre-existing/non-conforming. Cheryl Range asked how this would affect the Markarian situation on Cedar Lake Road. Phil said that it is going to be a case by case situation but there are still standards that each applicant will have to follow. There will still be criteria that needs to be met and although it may not be as easy as one would hope, it is still possible.

Bruce Powelson asked if a cul-de-sac can be considered a circular driveway. Jim Anderson said that a driveway only has one access point. Dave said that the County Road Commission will still issue two driveways, even if our verbiage says they can only have one. Bob asked if we should mention TXT 6.18 ordinance in the Standards. Phil said that the Township has a lot of parcels with more than one driveway. He thinks we will have a very hard time trying to legislate the number of driveways a person can have.

Dave Hamann passed out the "proposed land division" language from Boss Engineering. Sometimes things don't match up in Zoning ordinances and General Law ordinances. We don't have good consistency with the Land Division act and General Law ordinances.

Bob Hanvey said that on page 11 of the Zoning ordinance handout, the General Ordinance says "or can be served by a proposed easement" but the Zoning Ordinance says the opposite. The Land division act says that you can split your parcel but that doesn't mean that you would be able to build on it. Bruce Powelson asked if they would be able to go to the ZBA for a variance. Dave Hamann said they could go to the ZBA but he is not sure what their practical difficulty would be. It is self-made because they are the ones that decided to split their parcel.

Bob Hanvey asked a questions regarding page 1 – section 2 – letter B. How is a review from the Zoning Administrator different from a review from John Enos and Phil Westmorland? Phil said until all the involved agencies have reviewed the same site plan, then it should stay on the hamster wheel. Once it is reviewed by everyone/all agencies, then nothing should get changed. That way everyone is reviewing the same exact site plan. No changes should be made until all input is given. Once everyone has reviewed and approved with/without changes then the applicant can then make the suggested changes and re-submit with corrections. Bob asked why it needs to come to the Planning Commission if John Enos and Phil Westmorland already approved it. Dave said that the Board is looking at different things above and beyond the typical things that John and Phil can review ahead of time.

Bruce Powelson said the verbiage on page two – letter C is very confusing. Phil said that have not proof-read this yet and have not made any grammar or punctuation corrections just yet. They first want to make sure that everyone is happy with the content and the flow of everything first.

Bob said on page two, he really likes the pre-application meeting but is not sure what to tell them to bring to the pre-application meeting. Should we tell them specifically what to bring or prepare. Dave said to give them a time limit and tell them to bring anything that will help explain their plan or bring an overview of their site

Dave Hamann

From: Larry Grunn <larrygrunn@yahoo.com>
Sent: Monday, September 16, 2019 11:37 AM
To: Cheryl Range; James Anderson
Cc: Dave Hamann; Bruce Powelson; Bob Hanvey; John Enos
Subject: Re: The Home Business Language

Fellow planners,
Nice work Cheryl and Jim, thank you for all your hard work.

I have gone through 6.14 Home Occupation many times with the concerns that were brought up from the Public hearing, Cheryl I think the concerns that folks were referring to increased traffic was on public roads not just private roads.

1. Do we have a clear description of a buffer to conceal vehicles (company/employee) from the neighbors or the street/public eye?
2. We state that there can be no signage of the business, but what about trucks and or large enclosed trailers with the company name plastered all over it?
3. I would like to see something about mobile homes being used as an office or living quarters.

One of my biggest concerns about writing and rewriting these regulations is that we have no one to enforce them! I spoke to a gentleman that lives on Countyfarm road the other day, and asked why the township has let Stammers excavating grow to such a large business?

I asked if he would sign a complaint, and he said probably not, but he still does not like what they are doing in a residential area. Unfortunately all of us drive by these places and do nothing about them.

That mess on the corner of Coon Lake rd and D 19 is getting way out of control...

My thoughts Respectfully,
Larry Grunn

On Tuesday, September 3, 2019, 12:57:51 PM EDT, James Anderson <mijanderson100@gmail.com> wrote:

Group,

I have reviewed Cheryl's note and I think the new proposed 6.14 Home Occupation already covers the issues raised by Cheryl. See below.

Transfer of Property

J.- Old 6.14

J. Home Occupation Class I approval is not transferable with the sale, rental or lease of the dwelling unit.

L. - New 6.14

L. Home Occupation approval is not transferable with the sale, rental or lease of the dwelling unit.

Traffic and Deliveries

K. - Old 6.14

K. Traffic and delivery or pickup of goods shall not create a nuisance.

A. - New 6.14

A. The Home Occupation shall be clearly secondary and incidental to the use of the dwelling as a place of residence, and shall not result in a change to the essential character or the premises including both the dwelling and yard areas. Home Occupation be conducted in such a manner that, except as otherwise allowed by the provisions of this section, there is not external evidence of the Home Occupation operation except for the occasional visits by customers or clients number no more than 10 visits every 7 days.

G. - New 6.14

G. Traffic generated by the combined home and Home Occupation shall be no greater in volumes than would normally be expected in a residential district, and such traffic shall be limited to passenger vehicles delivery vans and similarly

sized vehicles. Any need for parking used by such Home Occupation shall be met off the street and motor vehicles may be parked in an existing driveway if it is of sufficient size. No additional off-street parking demand shall be created.

Resident of the dwelling being involved in the business

D. - Old 6.14

D. A resident of the dwelling on the lot shall be actively and personally engaged in and responsible for all Home Occupation operations. No employees shall be permitted, other than members of the immediate family residing in the dwelling unit.

E. - New 6.14

E. A resident of the dwelling on the lot shall be actively and personally engaged in and responsible for all Home Occupation operations. No employees shall be permitted, other than members of the immediate family residing in the dwelling unit.

Thanks and regards,
Jim

On Tue, Sep 3, 2019 at 11:47 AM James Anderson <mijanderson100@gmail.com> wrote:
Group,

I have reviewed Cheryl's note and I think the new 6.14 already covers the issue raised by Cheryl;

J.- Old

J. Home Occupation Class I approval is not transferable with the sale, rental or lease of the dwelling unit.

L. - New

On Sat, Aug 31, 2019 at 5:16 PM Cheryl Range <momrange@yahoo.com> wrote:

Hi Everyone,

I again looked through the notes from our Public Hearing as well as the email sent from Jean Root. The overall concerns still stem from the # of cars/vehicles (kinds of trucks etc) per acre as well as the amounts of their trips on their private dirt roads and deterioration of them. These are addressed to a degree in the language of 17.32 ... now to just be in attentive, conforming action by the businesses ... that's the issue, in my opinion. I don't know how adding more language will regain "putting more teeth into the ordinance" as was repeated at our meeting ... and can be added to help us. As is ... is ok to send to the board for their input on my thinking.

6.14

Should we reinstate the non transferable (old language J.) with sale, rental or lease of the dwelling unit ... as added protection?

And ... is (K.) old language ... being understood as in contained now in the new (D.) ... so that we don't have to put it back in?

That's it for my review after the meeting notes were again looked into. Thanks, stay safe and enjoy the Holiday! Cheryl

LANDSCAPE OPERATIONS IN MARION TOWNSHIP

Step #1

Section 8.01.B.3 **Delete**

Section 8.01.E.22 **Add**

Amend RR Rural Residential District to allow "Landscape Nursery Operations" as interpreted by the Zoning Board of Appeals and as a Special Land Use within the Rural Residential District. See created definition below:

3.02 Definitions **Add**

Landscape Nursery Operations(AG Based): A parcel, area, space, building or structure, or combination thereof, used chiefly for the storage, wholesale sale, or retail sale, of live trees, shrubs and plants primarily but not exclusively grown onsite. Incidental or secondary items directly related to a nursery or greenhouse may also be sold, including but not limited to pots, decorations, mulch, stone, rocks, pavers, edging materials, etc. The area and amount of such structures, equipment, vehicle storage and other areas dedicated to the use shall be consistent with the residential character of the area and shall not adversely impact neighboring properties.

Step #2

Section 10.01.B.16 **Add**

Amend LI Light Industrial District to allow landscape contractors buildings, offices and yards as a use permitted by right. See definitions as suggested by the Township Attorney below:

3.02 Definitions **Add**

Landscape Contractor's Buildings, Offices and Yards: A space, building or structure, or combination thereof, used primarily for the storage of equipment, tools, vehicles, and materials used in or associated with a landscape contracting business.

Landscape Contractor/Contracting. The sale, storage or transportation of fertilizers, mulch, groundcovers, boulders, and similar products used for landscaping or gardening and could include the sale of live trees, shrubs or plants grown or not grown on the property.

Section 17.44 Landscape Nursery Special Use

A. Location Requirements: Landscape Nursery uses are permitted by Special Use Permit in the Rural Residential and Suburban Residential in line with the Right To Farm.

B. Site Requirements

1. The minimum lot area shall be ten (10) acres.
2. Site Design and layout shall meet all applicable requirements and standards of Article VI: GENERAL PROVISIONS, and Article XVIII: SITE PLAN REQUIREMENTS

C. Performance Standards

1. At least 50 percent of the product must be grown on the property.
2. No vehicles or products shall be stored in the front yard.
3. All lighting shall be shielded from adjacent residentially used or zoned districts.
4. All landscape products shall be store in areas screened from adjacent residentially used or zoned districts.
5. All vehicles being stored on site must be operable and licensed to operate on the highways of the State of Michigan

D. Buffering Requirements:

1. The front yard shall be planted with trees, grass, and shrubs. The spacing and type of plant materials shall be consistent with the provisions of Section 6.13.
2. Dependent on provided screening and buffering, required setbacks may be reduced or modified.

ZONING ORDINANCE TEXT AMENDMENTS

CASE #	ARTICLE	SECTION	STATUS	PROPOSED CHANGE	PH	ADOPTED
					Public Hear	Adopted
TXT # TBD	XVII	17.33	Ag/Tour	On hold but needs rework		
TXT #04-17	X	10.01B16 8.01B3 Definitions	Landscape Contractor's Operation contract C/W	LI district rqst Board chg Plant Nursery	2/27/18	Pending
TXT #05-17	XVII	17.34 9.01D.11 Definitions	Outside Vehicle Storage contract C/W	SU 17.34 rqst (Board) HS district	2/27/18	Pending
TXT # 06-17	VI	6.07 6.22	Accessory Structures LCBD	roof pitch for AG engineered structures +calculation no bldg code, zoning issue	4/18/18 4/18/18	6/30/18 6/30/18
GO #01-17	GO	G11-97	Land Div GO	revise with 6.19B,6.15A	N/R	
GO #02-17	GO	tbd	Nuisance	rqst(Board)	BOT	Pending
GO #03-17	GO	tbd	Noise	rqst(Board)	BOT	Pending
GO #04-17	GO	tbd	Motor Braking GO	rqst(Board) send to Board(10/24/17)	BOT	?
GO #	GO	tbd	combine Lake & Boat GO Cemetery GO Park & Rec	cover all lakes add fines for vandalism still needed? Add moral conduct	N/R N/R N/R	
TXT #07-17	III	Definitions 6.11 18.02 Splits	Lots per Parent Parcel Land Balancing/clearing nonconforming Acc Structure	in 10/24/17 packet in 10/24/17 packet in 10/24/17 packet in 10/24/17 packet	discuss	
TXT #	VI	6.14	Home Occupation Class I	add application in first paragraph	dropped	

ZONING ORDINANCE TEXT AMENDMENTS

CASE #	ARTICLE	SECTION	STATUS	PROPOSED CHANGE		ADOPTED
				PH	Public Hear	
TXT #01-18	VI	6.19/6.20	Private Roads	Length, # of ingress/egress, # driveways, shared driveways, move to Eng Stds	BOT in STD	
TXT #02-18	XVII	17.04A & B	Automobile Repair Garage	Item #8 remove	LCPD	2/8/19
TXT #03-18	XVII	17.32 & 6.14	Home Occupation II & I	proposed to BOT 7-11-2019	8/27/19	
TXT #04-18	XVIII	18	Site Plan Requirements	move to Eng Stds and make all other changes	BOT	
TXT #	VI	6.32	Solar Ordinance	Zoning Ordinance/GO/both or accessory structure?	discuss	
TXT #	VI	6.07	Accessory Structures	Shipping Containers	discuss	
TXT #	VI	6.02	Keeping of Animals	RTFA, what is enforceable? Setbacks only?	discuss	

ISSUES WITH MARION TOWNSHIP ZONING ORDINANCE "LOTS"

This began as an attempt to reconcile the usage of the terms "lot" and "parcel" but as I looked for places that needed attention it has grown into more of an overall (but incomplete) review of things that may be candidates for change throughout the ordinance.

I'm not sure that everything referenced needs to be changed but I would like the Planning Commission and Zoning Administrator to review my comments. I don't think all these comments can be addressed quickly and I prefer that we take some time to think about the implications and applications in the day-to-day use of the zoning ordinance.

The attached document contains excerpts from our ordinances, state statutes, and The Michigan Community Association Law Blog. It has page numbers for reference. Some of these things seem trivial but I prefer not to rely on "you know what I meant" for interpretations.

The Zoning Ordinance on the township website:

mariontownship.com

Links

Planning & Zoning

Zoning Ordinance

Has the entire zoning ordinance and is searchable to help finding things.

ATTACHMENT PAGE 1

3.01 B Maybe we should include multiple individuals. See the definition of "Single Ownership" on page 3 that specifically includes "one or more persons."

3.01 C It says "building" includes "structure" which implies that "structure" is a subset of "building." The definition of "building" is any structure. The definition of "structure" includes "all buildings." That seems inconsistent or maybe circular. Throughout the ordinance the terms are used in a variety of ways. In 35 places the phrase "building or structure" is used. Sometimes it is "building and/or structure" sometimes it is "building, structure." There are many more places where building is used by itself. There are some places where it is "building or premises" or "building or use." We need to determine if there is value in standardizing the text.

3.01 D These are the words that started this project. We say the word "lot" includes "plot" and "tract" but they are not included in our definitions.

Plot plan is referenced in Site Plan and 4.03 D but in 5.06 A there is the implication that a "plot plan" is different from a "site plan" but we don't say what a "plot plan" is.

"Tract" is referenced in lot of record and Lot, Zoning, mobile home park, subdivision, and PUD.

"lot," "parcel," and "tract" are defined in the Michigan Land Division Act on page 10 of the attachment.

Not included in 3.01 D is the word "unit" which is usually associated with condominiums. "Units" in "site condos" are very similar to "lots" in a subdivision with the exception of attached condos (Meadows, Woodberry, etc.). See attachment page 2 (condominium unit) and page 14. I can't find anywhere in our ordinance where there is a distinction made between "site condos" (detached single family homes) and "condos" (attached multi-family homes) other than talking about building envelopes. I can't find the term "site condo" in the state condominium act even though it is a frequently used term in planning.

The definitions that include the word "condominium" are not consistent with the definitions in the Condominium Act but for now let's concentrate on "lots" and "units."

On page 2 is our definition of "lot" which seems to include our definition of "parcel" on page 3.

In this definition we have the requirement for frontage on an approved road which is also a requirement in section 6.19 B, page 9 of the attachment, but conflicts with our Land Division Ordinance, Item 2 on page 11 of the attachment. The Land Division Ordinance allows access over an easement.
These two need to be reconciled.

Item 4 under Lot describes "through lots" which we do not allow. We should say so in the definition or leave it out.

Also on page 2, lot area gross, lot area net, and lot coverage are defined. Lot area net specifies "public street right(s)-of-way" but gross only says "street right-of-way." Lot coverage does not specify whether to use gross or net to calculate coverage. In Marlon most lots in subs or site condos do not include any ownership of the road. Attached condos don't include any ownership outside the building walls. This should be cleaned up.

Also on page 2, Lot Depth should probably use the word "measured" same as lot frontage.

Page 3, Front Lot Line (1.) refers to "access easement" which is not allowed in the zoning ordinance. In Marion we have many lots that have the legal description going to the center line of the road, so there is no line separating the lot from the street right-of-way.

Figure 3 - 7 (page 7) shows a front lot line for a flag lot that does not front on a road in conflict with the definition of "Front Lot Line."

Also on page 3, "Rear Lot Line" will not work for many of our lots but Item 4 allows the ZA to make the choices but does not specify who decides "not sufficient."

"Side Lot Line" specifies right angles to the road, we have many lots that are not at right angle to the road.

"Lot of Record" does not include Condo Units. The last phrase "prior to the adoption or amendment" should probably have a date certain, like "Parent Parcel" otherwise every lot could become a lot of record.

"Lot, Zoning" implies that a single parcel can have several tracts within it which is contrary to the definition in the Land Division Act. This is where things get confused with assessing. We have many tax parcels that are made up of multiple, often fractional, platted subdivision lots. The tax code is what we use to identify property on the land use application and other planning documents.

"Lot Width" uses the word "horizontal" but "Lot Depth" does not.

"Parcel" we don't include condo units.

"Parent Parcel" this definition is similar to the Plat Act "Tract." We allow only one flag lot per parent parcel. I'm not sure we enforce that properly.

This is most likely not an exhaustive list of issues.

ATTACHMENT TO "ISSUES WITH MARION TOWNSHIP ZONING ORDINANCE"

From: Marion Township Zoning Ordinance

ARTICLE III: DEFINITIONS

Section 3.01 Construction of Language

For the purpose of this Ordinance, certain rules of construction apply to the text as follows:

- A. Words used in the present tense include the future tense; and the singular includes the plural, unless the context clearly indicates the contrary.
- B. The word "person" includes a corporation, association, partnership, trust, firm, or similar activity as well as an individual.
- C. The word "building" includes the word "structure" and each term applies to any part thereof.
- D. The word "lot" includes the word "plot", "tract", or "parcel".
- E. The term "shall" is always mandatory and not discretionary; the word "may" is permissive.
- F. The word "used" or "occupied" as applied to any land or building shall be construed to include the words intended, arranged, maintained for or designed to be used or occupied.
- G. The words "this Ordinance" means the text of this Ordinance as well as all maps, tables, graphics, schedules as included or attached as enacted or subsequently amended.
- H. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and," "or," "either...or," the conjunction shall be interpreted as follows:
 1. "And" indicates that all the connected items, conditions, provisions, or events shall apply.
 2. "Or" indicates the connected items, conditions, provisions or events may apply singly or in any combination.
 3. "Either...or" indicates that the connected items, conditions, provisions, or events shall apply singly, but not in combination.
- I. Any word or term not interpreted or defined by this Ordinance shall be used with a meaning of common or standard utilization. A dictionary may be consulted.
- J. In computing a period of days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday.

Building: Any structure, either temporary or permanent, having a roof supported by columns, walls, or any other supports, which is used for the purpose of housing, sheltering, storing, or enclosing persons, animals, or personal property, or carrying on business activities. This definition includes, but is not limited to: mobile homes, tents, sheds, garages, greenhouses, lean to and other principal or accessory structures.

Condominium Project: A plan or project consisting of not less than two condominium units established and approved in conformance with the provisions of the Condominium Act, PA 59 of 1978, MCL 559.101 et seq.

ATTACHMENT TO "ISSUES WITH MARION TOWNSHIP ZONING ORDINANCE"

Condominium Subdivision: A division of land on the basis of condominium ownership, which is not subject to the provisions of the Subdivision Control Act of 1967, Public Act 288 of 1967, as amended, MGL 50B.101 et seq.

Condominium Plan: The drawings and information attached to the master deed including, but not limited to, a survey plan, floodplain plan, site plan, utility plan, floor plans, description of the size, location, area, and horizontal boundaries of each unit, number assigned to each unit, vertical boundaries and volume of each unit, building sections, and description of the nature, location, and size of common elements. For the purpose of this Ordinance, a condominium plan shall be equivalent to the term "condominium subdivision plan" as defined by MGL 559.104.

Condominium Unit: That portion of a condominium project which is designed and intended for separate ownership and use, as described in the master deed, regardless of whether it is intended for residential, office, industrial, business, recreational, use as a time-share unit, or any other type of use. In condominium projects where a condominium unit(s) will consist of a building envelope, the term "condominium unit" shall be equivalent to the term "lot", for purposes of determining compliance with the provisions of this Ordinance pertaining to minimum lot size, minimum lot width, maximum lot coverage, and the like.

Lot: Land described in a recorded plat or by metes and bounds description, occupied, or to be occupied by, a building, group of buildings, or use, having sufficient size to comply with the frontage, area, width-to-depth ratio, setbacks, yards, coverage and buildable area requirements of this Ordinance, and having its principal frontage on a public street or a private road approved by the Township. (See also Condominium Unit.)

1. **Corner Lot:** A lot that has at least two contiguous sides abutting upon a public street and/or private road for their full length.
2. **Flag Lot:** A lot whose access to a public street or private road is by a narrow, private right-of-way that is part of the lot. (See also Figure 3-7.)
3. **Interior Lot:** A lot other than a corner lot.
4. **Through Lot:** An interior lot having frontage on two, more or less, parallel public streets and/or private roads.

Lot Area, Gross: The area contained within the lot lines or property boundary including street right-of-way. (See Figure 3-6.)

Lot Area, Net: The area within the lot lines of a lot, exclusive of any public street rights-of-way abutting any side of the lot. (See Figure 3-6.)

Lot Coverage: The amount of a lot, stated in terms of percentage, which is covered by all buildings, located thereon, including roofed porches, arbors, breezeways, patio roofs, whether open box types and/or lathe roofs, or fully roofed, but not including fences, walls, or hedges used as fences, unroofed decks or patios or swimming pools. Lot coverage shall be measured from the drip line of the roof or from the wall or foundation if there is no projecting portion of the roof.

Lot Depth: The average distance measure from the front lot line to the rear lot line.

Lot Frontage: The length of the front lot line measured at the road right-of-way line, except as provided for flag lots. (See Section 6.11.)

Lot Line: The line(s) bounding a lot or parcel. (See Figure 3-7.)

ATTACHMENT TO "ISSUES WITH MARION TOWNSHIP ZONING ORDINANCE"

1. **Front Lot Line:** The line separating the lot from any street right-of-way, private road or other access easement.
2. **Rear Lot Line:** The lot line opposite and most distant from the front lot line. In the case of a triangular or otherwise irregularly shaped lot or parcel, an imaginary line at least ten feet in length entirely within the lot or parcel, parallel to and at a maximum distance from the front lot line.
3. **Side Lot Line:** Any lot line other than a front or rear lot line, which shall be at right angles to straight streets and radial to curved streets and cul-de-sacs on either public or private roads, except where such lot lines would create unusual, inconvenient, or irregular lot shapes.
4. In the case where the above definitions are not sufficient to designate lot lines, the Zoning Administrator shall designate the front, rear and side lot lines in consideration of the orientation of the building(s) on the lot, the address of the lot, the orientation of other building(s) along the road frontage, and natural features affecting site design.

Lot of Record: A lot which is part of a subdivision, the plat of which has been recorded in the Office of the County Register of Deeds, or a tract, parcel or lot described by metes and bounds, the deed to which has been recorded by the County Register of Deeds, or a Tax Code Number has been issued, prior to the adoption or amendment of this Ordinance.

Lot Width: The horizontal distance between side lot lines measured parallel to the front lot line at the minimum required front setback line. (See Figure 3-7.)

Lot, Zoning: A single tract of land, located within a single parcel, which, at the time of filing for a building permit, is designated by its owner or developer as a tract to be used, developed, or built upon as a unit, under single ownership or control. A zoning lot shall satisfy this Ordinance with respect to area, size, dimensions, and frontage as required in the district in which the zoning lot is located. A zoning lot therefore, may not coincide with a lot of record as filed with the County Register of Deeds, but may include one or more lots of record. (Amended 6-03)

Parcel: A lot described by metes and bounds or described in a recorded plat.

Parent Parcel: An existing parcel or contiguous parcels of land under the same ownership at the time this Ordinance became effective (March 14, 1996.)

Plat: A map of a subdivision of land recorded with the Register of Deeds pursuant to the Subdivision Control Act, PA 288 of 1967, MCL 501.101 et seq., or a prior statute.

Single Ownership: One or more parcels of land held entirely in the same ownership, which may include one or more persons and may be in any form.

Structure: Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having such location on the ground including, but not limited to, all buildings, independently supported decks, satellite dishes and free-standing signs; excepting anything lawfully in a public right-of-way including, but not limited to, utility poles, sewage pumping stations, utility manholes, fire hydrants, electric transformers, telephone boxes, and related public facilities and utilities defined as essential public services.

Subdivision: The division of a lot, tract, or parcel of land into five or more lots, tracts, or parcels of land for the purpose, whether immediate or future, of sale or of building development. The meaning of the term

ATTACHMENT TO "ISSUES WITH MARION TOWNSHIP ZONING ORDINANCE"

subdivision shall not, however, apply to the partitioning or dividing of land into tracts or parcels of land of more than ten acres.

FIGURE 3-4
LOT TYPES

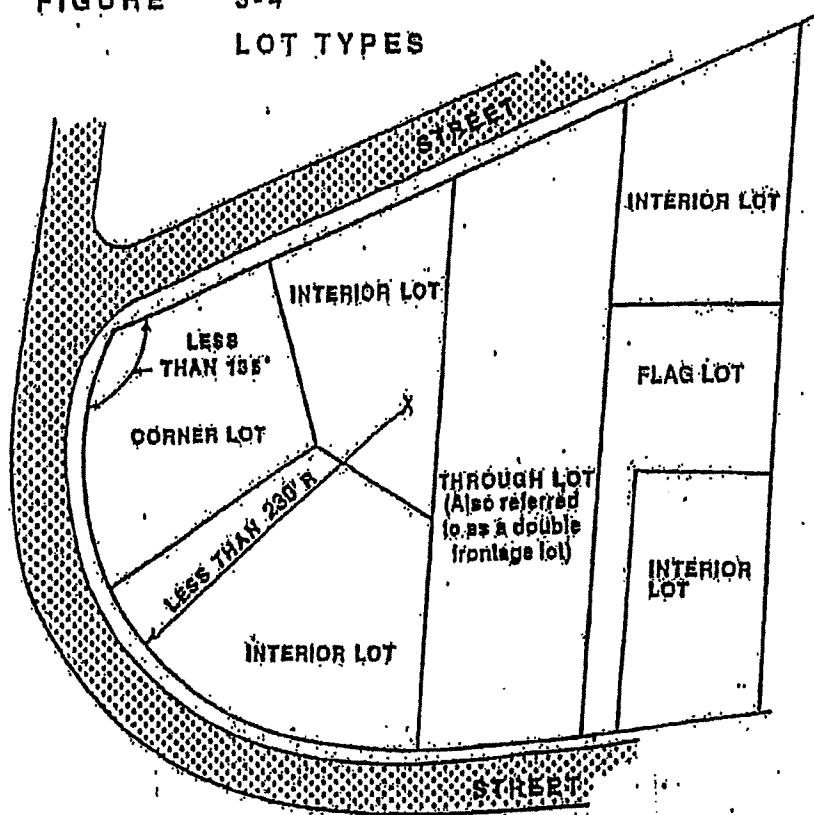


FIGURE 3-5
LOT DEPTH

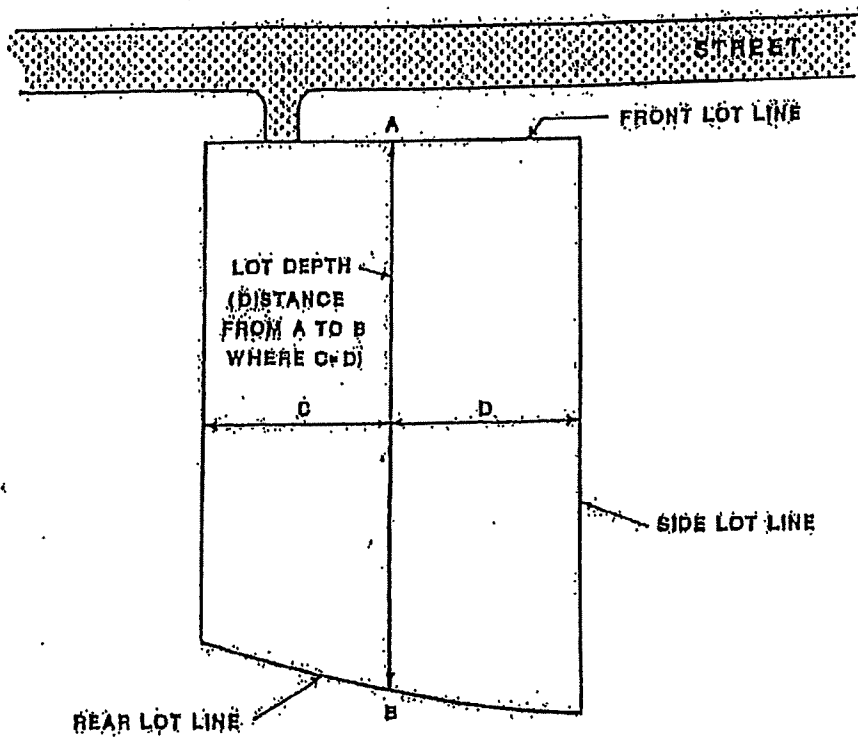


FIGURE 3-6
NET AND GROSS LOT AREA

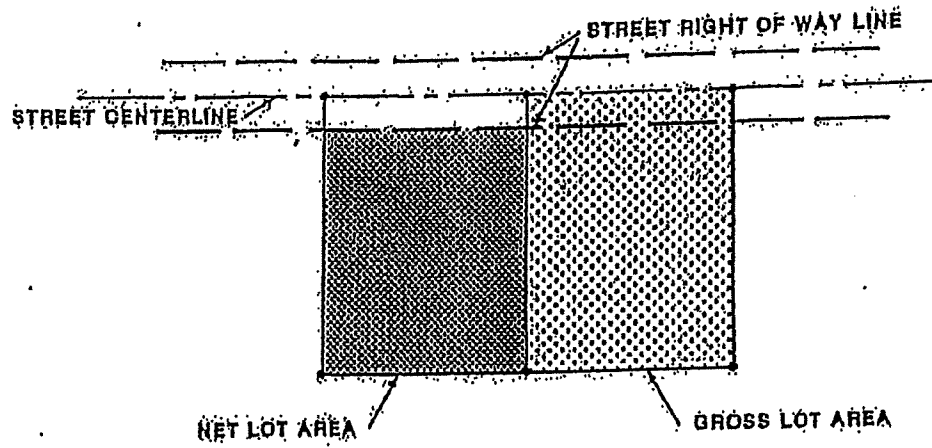
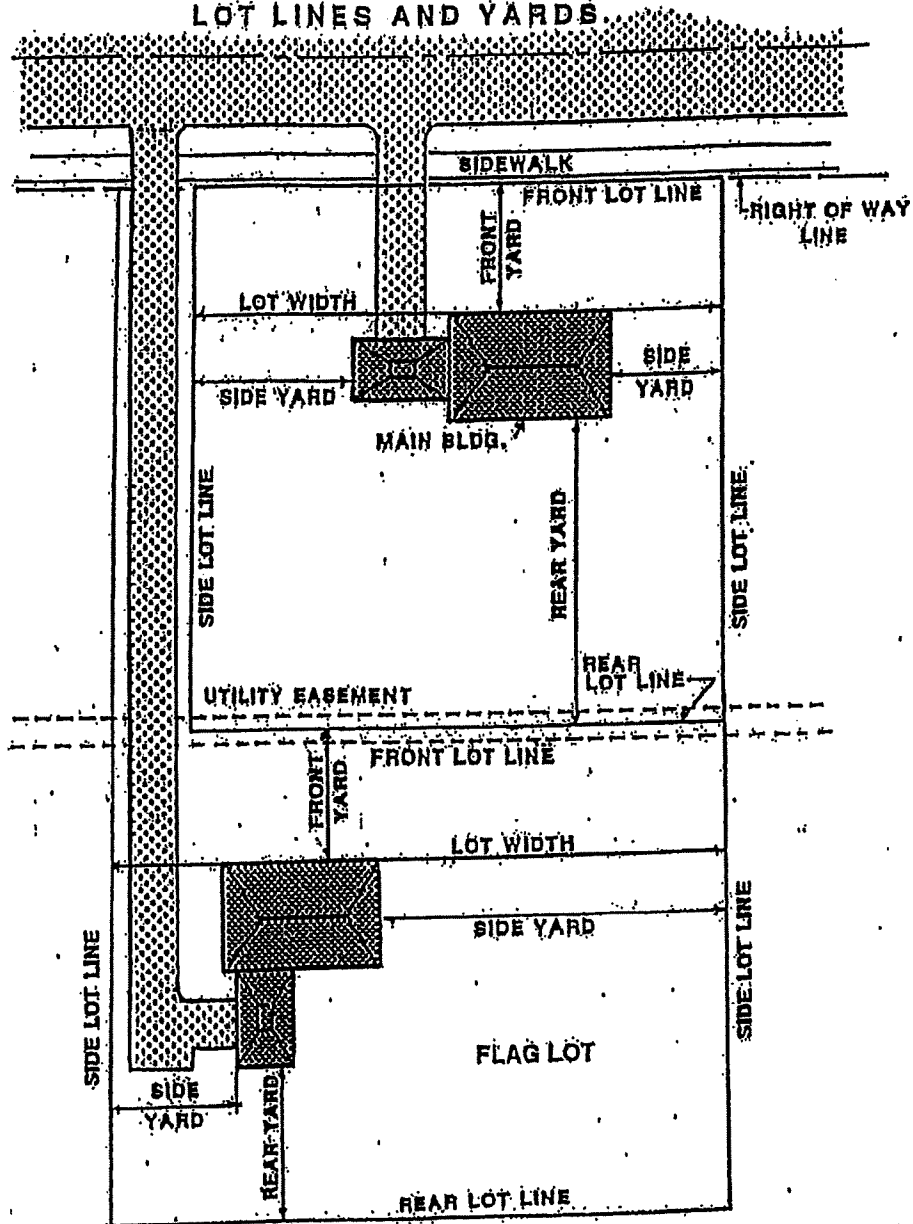


FIGURE 3-7
LOT LINES AND YARDS



ATTACHMENT TO "ISSUES WITH MARION TOWNSHIP ZONING ORDINANCE"

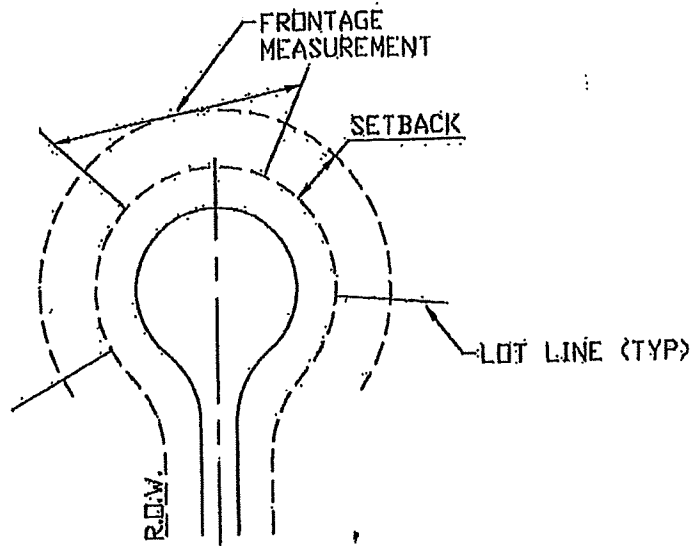


FIGURE 3-8

ATTACHMENT TO "ISSUES WITH MARION TOWNSHIP ZONING ORDINANCE"

Section 6.19

Access Controls

2. No more than one (1) driveway shall be allowed per parcel.
5. No driveway shall serve more than one (1) dwelling.

B. **Lots to Have Access:** All parcels or lots hereinafter created in the Township shall have frontage on a public street, or an approved private road, and take their lot access from such frontage so as to provide safe, convenient access for fire protection, other emergency vehicles, and any required off-street parking. Except that corner lots shall take their access from an approved private road or approved public street in a platted subdivision or condominium project. Wherever a corner lot exists at the intersection of two (2) major thoroughfares, then access shall be taken from the thoroughfare presenting the least hazard in the opinion of the Livingston County Road Commission.

Prior to obtaining a land use permit for a new parcel or lot created on a private road that was in existence prior to the effective date of this ordinance, the Township may initiate an inspection of the private road in accordance with General Ordinance No. 07-03, Pre-existing, Non-conforming Private Roads.

ATTACHMENT TO "ISSUES WITH MARION TOWNSHIP ZONING ORDINANCE"

Definitions from Michigan Land Division Act, Act 288 of 1967 as amended

"Accessible", in reference to a parcel, means that the parcel meets 1 or both of the following requirements:

- (i) Has an area where a driveway provides vehicular access to an existing road or street and meets all applicable location standards of the state transportation department or county road commission under 1969 PA 200, MCL 247.321 to 247.329, and of the city or village, or has an area where a driveway can provide vehicular access to an existing road or street and meet all such applicable location standards.
- (ii) Is served by an existing easement that provides vehicular access to an existing road or street and that meets all applicable location standards of the state transportation department or county road commission under 1969 PA 200, MCL 247.321 to 247.329, and of the city or village, or can be served by a proposed easement that will provide vehicular access to an existing road or street and that will meet all such applicable location standards.

"Lot" means a measured portion of a parcel or tract of land, which is described and fixed in a recorded plat.

"Parcel" means a continuous area or acreage of land which can be described as provided for in this act.

"Parent parcel" or "parent tract" means a parcel or tract, respectively, lawfully in existence on the effective date of the amendatory act that added this subdivision.

"Plat" means a map or chart of a subdivision of land.

"Tract" means 2 or more parcels that share a common property line and are under the same ownership.

ATTACHMENT TO "ISSUES WITH MARION TOWNSHIP ZONING ORDINANCE"

From: STATE OF MICHIGAN, COUNTY OF LIVINGSTON, TOWNSHIP OF MARION
LAND DIVISION ORDINANCE NO. G-11-97

Section III: Definitions. For the purpose of this ordinance, certain terms and words shall have the following meaning:

Accessibility: In reference to a parcel, means the parcel meets one or both of the following requirements:

1. Has an area where a driveway provides vehicular access to an existing road or street and meets all applicable location standards of the state transportation department or county road commission under Act No. 200 of the Public Acts of 1969, being sections 247.321 to 247.329 of the Michigan Compiled Laws, or has an area where a driveway can provide vehicular access to an existing road or street and meet all such applicable location standards.
2. Is served by an existing easement that provides vehicular access to an existing road or street and that meets all applicable location standards of the state transportation department or county road commission under Act No. 200 of the Public Acts of 1969 or can be served by a proposed easement that will provide vehicular access to an existing road or street and that will meet all such applicable location standards.

ATTACHMENT TO "ISSUES WITH MARION TOWNSHIP ZONING ORDINANCE"

TOWNSHIP OF MARION
LIVINGSTON COUNTY, MICHIGAN
PRIVATE ROAD ORDINANCE NO. 07-03

SECTION I: INTENT AND PURPOSE

There are many private roads in the township that are not maintained by any government agency. Some of these roads are covered by an agreement of the owners that is part of their condominium documents, Planned Unit Development Agreement or a township approved Private Road Maintenance Agreement. This ordinance is intended for private roads that are not covered by any provision for maintenance approved by the township and these roads are referred to as unapproved roads.

A list of private roads is maintained by the township for reference. An approved private road maintenance agreement contains provisions for township intervention in the event that repairs and maintenance are not performed.

The Township realizes that at the time the private road was constructed, the developer voluntarily chose not to dedicate the road to the public and therefore maintenance became the responsibility of the owners.

This ordinance is enacted because of the Township's concern for the health, safety and welfare of township residents and others who may use private roads in the township. There are two situations that will trigger the township's involvement with private road maintenance on unapproved private roads:

1. A request for a land division that will create parcels with frontage on the road.
2. A written complaint about the road condition signed by the record owners of land constituting more than 50% of the total frontage upon the road.

It is the Marion Township Board of Trustees' goal to try to help owners of property on unapproved private roads that do not have a private road maintenance agreement approved by the Township, to establish a township approved road maintenance agreement and encourage the future care and maintenance of each private road.

SECTION II: PROCEDURE

Under this General Ordinance, the Board of Trustees can initiate an inspection of an unapproved private road when there is an application for a land division that results in a new parcel with frontage on an unapproved private road or the township receives a written complaint about the condition of the unapproved private road as described in Section I of this ordinance.

The zoning administrator, along with the township engineer, will perform an inspection and evaluate the condition of the unapproved private road to determine if the private road is acceptable. The guidelines for acceptability will be the specifications for new private roads taking into consideration the characteristics of the existing conditions. Items to be evaluated include but are not limited to; subbase, base, surface, drainage, length, width, shape, and traffic. Following the inspection, a written report of the road's condition will be provided to the Township Board. The report will include a cost estimate, if required, to address any perceived unacceptable condition of the road.

The Board of Trustees will review the engineer's report and estimates, if applicable, and decide if it is in the best interest of the property owners to facilitate the establishment of a road maintenance agreement to help provide for improvement and maintenance of the road. If the Township Board determines a road maintenance agreement would be in the best interest of the property owners, or upon request by a property owner, the township zoning administrator will provide a sample private road maintenance agreement to the property owners. An acceptable road maintenance agreement shall contain a provision that indemnifies and holds harmless the township from any liability. The sample maintenance agreement may be modified if necessary. All property owners on the road must sign the maintenance agreement.

After the signature of every property owner is obtained, the maintenance agreement is then submitted to the Township Board for its review to determine thoroughness and to allow the Township Board to decide if the agreement adequately addresses road improvement and maintenance needs of the road and the property owners on the road. After this review and approval by the township board, the maintenance agreement shall then be filed with the Livingston County Register of Deeds for

ATTACHMENT TO "ISSUES WITH MARION TOWNSHIP ZONING ORDINANCE"

recording to insure future participation by new owners. A copy of the recorded maintenance agreement shall be provided to the Township. A non-profit corporation of property owners can be formed under PA 162 of 1982 for the funding of maintenance for the private road under the specifications of the road maintenance agreement.

If all property owners do not wish to participate in the private road maintenance agreement and the Board of Trustees feels there is a serious concern for health, safety and welfare of residents and others that use the road, a Special Assessment District can be created to fund the maintenance of the road. The Board of Trustees will then follow PA 188 of 1954 and if the residents vote down the Special Assessment then the road will be reclassified as an Unapproved Private Road and no further land divisions will be allowed until some means of maintaining the road has been provided by the owners of the road that is approved by the Township.

SECTION III: SEVERABILITY

Should any provision or part of this ordinance be declared by any court of competent jurisdiction to be invalid or unenforceable, such finding shall not affect the validity or enforceability of the remainder of this ordinance.

SECTION IV: EFFECTIVE DATE

This ordinance shall take effect thirty days after publication.

This ordinance was adopted by the Marlon Township Board on October 11, 2007, and shall have an effective date thirty days after publication.

The Marlon Township Private Road General Ordinance No. 07-03 can be purchased, examined or inspected at the Marlon Township Hall, 2877 W. Coon Lake Road, Howell, MI 48843, between the hours of 9 am to 5 pm, Monday through Thursday.

Tammy L. Beal, Township Clerk

Date

Moved by:

Supported by:

Yeas: Hanvey, Lowe, Andersen, Beal, Wyckoff, Hodge

Nays: Hamajin

Abstentions: None

Absent: None

I hereby affirm and certify that this is a true and correct copy of the Marlon Township Private Road General Ordinance No. 07-03, duly adopted by the Marlon Township Board at its regular meeting held on the 11th day of October 2007, to which I add my signature this 15th day of October 2007.

Tammy L. Beal, Township Clerk

Date

ATTACHMENT TO "ISSUES WITH MARION TOWNSHIP ZONING ORDINANCE"

From:

The Michigan Community Association Law Blog

Nature and Extent of Property Ownership – An individual homesite building in a platted subdivision is called a "lot". In a site condominium, each separate building site or homesite is referred to by the Condominium Act as a "unit". Each unit is surrounded by "limited common area", which is defined as common elements reserved in the master deed for the exclusive use of less than all of the co-owners". The remaining area in the site condominium is "general common area", defined as the common elements reserved in the master deed for the use of all of the co-owners. The nature and extent of ownership of a platted lot and a condominium unit, with the associated limited common area, are essentially equivalent from both a practical and legal standpoint.

ARTICLE XXXX

WELLHEAD PROTECTION OVERLAY DISTRICT

Marion Township Zoning Ordinance

Livingston County, Michigan

Insert Date Here

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ARTICLE XXXX

WELLHEAD PROTECTION OVERLAY DISTRICT

Section 1 – STATEMENT OF PURPOSE

The purpose of the Wellhead Protection Overlay District is to provide supplemental developmental regulations in the designated wellhead protection zone so as to protect and preserve the surface and groundwater resources of Marion Township and the region from any use of land or buildings that may reduce the quality and/or quantity of water resources. This Wellhead Protection Overlay District has been created in accordance with both the City of Howell's and Marion, Howell, Oceola & Genoa Sewer and Water Authority's (MHOG) Wellhead Protection Plans drafted by Wood Environment & Infrastructure Solutions, Inc. (Wood). This Wellhead Protection Overlay District was also created in conjunction with the City of Howell and Howell Township.

Section 2 – DEFINITIONS

As used in this Article, the following words and terms shall have the meaning specified, unless the context clearly indicates otherwise.

Aquifer. A geologic formation composed of rock or sand and gravel that contain significant amounts of potentially recoverable potable water.

Discharge. Discharge includes, but is not limited to, any spilling, leaking, seeping, pouring, misapplying, emitting, emptying or dumping of any pollutants prohibited by law or regulation, which affects surface water and/or groundwater.

Impervious Surface. Materials or structures on or above the ground that do not allow precipitation to infiltrate the underlying soil.

Overlay District. That area of the Township in which special requirements and restrictions are applied to land uses and activities to eliminate or minimize contamination of the aquifers supplying the City of Howell's and MHOG's municipal water wells.

Regulated Substances shall include: 1. Substances for which there is a material safety data sheet (MSDS), as established by the United States Occupational Safety and Health Administration, and the MSDS cites possible health hazards for said substance; 2. Hazardous Waste, as defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended; 3. Hazardous Substance, as defined by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) when the hazardous substance is the focus of remedial or removal action being conducted under CERCLA in accordance with the U.S. EPA regulations; 4. Radiological materials; and 5. Biohazards.

Wellhead Protection Area. The surface and subsurface area surrounding a public water supply well or well field through which contaminants, if discharged, are reasonably likely to move toward and reach the well or the well field. This area is also known as the zone of contribution (ZOC) which contributes groundwater to the well or well field. Wellhead Protection Areas for both the City of Howell and MHOG are present in areas of the Township.

Section 3 – SCOPE OF AUTHORITY

The Wellhead Protection Overlay District is a mapped zoning district that imposes a set of requirements in addition to those of the underlying zoning district. In an area where an overlay district is established, the property is placed simultaneously in the two districts, and the property may be developed only under the applicable conditions and requirements of both districts. In the event there is a conflict between the requirements of the two districts, the requirements of the Wellhead Protection Overlay District shall prevail.

Section 4 – CREATION OF OVERLAY DISTRICT BOUNDARIES

The Wellhead Protection Overlay District boundaries shall be established on the official Township Zoning Map. The Overlay District boundaries may be amended according to the Zoning Ordinance procedures in Article YYY. 2

Section 5 – DISTRICT DELINEATION

- A. The Wellhead Protection Overlay District is hereby established to include all lands within the Marion Township, lying within the City of Howell's of MHOG's Wellhead Protection Areas, including recharge areas of groundwater aquifers and watershed areas that lie within the wellhead protection area which now or may in the future provide public water supply. If the wellhead protection area includes a portion of the parcel, the entire parcel shall be considered to be within the wellhead protection area.
- B. Where the boundaries delineated are in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in question to show whether the property should be located in the District. At the request of the owner(s), the Township may engage the services of a qualified professional to determine more accurately the location and extent of an aquifer within the wellhead protection area. The Township shall charge the owner(s) for all or a part of the investigation. The Owner shall place the funds necessary into an escrow account at the Township to cover the necessary fees of the qualified professional.

Section 6 – SITE PLAN REVIEW REQUIREMENTS

- 18 A. **New or Expanded Uses and Structures.** All proposed new or expanded structures or uses within in the Wellhead Protection Overlay District, except single family uses, shall be subject to site plan review, pursuant to Article WWWW.
- B. **Existing Uses and Structures.** All land uses and activities existing prior to approval the Wellhead Protection Overlay District must conform to the site plan review standards in this Article within 365 days after adoption of the Wellhead Protection Overlay Ordinance.

Section 7 – DATA REQUIREMENTS

The following data are required for site plan review in the Wellhead Protection Overlay District, in addition to the information required by Article WWWW, Section WWWW of the Zoning Ordinance.

- 18 A. **List of Regulated Substances.** A complete list of chemicals, pesticides, fuels and other Regulated Substances to be used or stored on the premises. Businesses that use or store such Regulated Substances shall file a management plan with the Fire Chief. The management plan shall include the following, at minimum:

1. Provisions to protect against the discharge of Regulated Substances or wastes to the environment due to spillage, accidental damage, corrosion, leakage or vandalism, including spill containment and clean-up procedures.
 2. Provisions for indoor, secured storage of Regulated Substances and wastes with impervious floor surfaces.
 3. Evidence of compliance with the rules and regulations of the Michigan Department of Environmental Quality.
 4. Drainage recharge features and provisions to prevent loss of recharge.
 5. Provisions to control soil erosion and sedimentation, soil compaction, and to prevent seepage from sewer pipes.
- B. Service Facilities and Structures.** Location of existing and proposed service facilities and structures, above and below ground, including:
1. General location of the site within the Wellhead Protection Overlay District.
 2. Areas to be used for the storage, loading/unloading, recycling, or disposal of Regulated Substances, including interior and exterior areas.
 3. Underground storage tank locations.
 4. Location of exterior drains, dry wells, catch basins, retention/detention areas, sumps and other facilities designed to collect, store or transport storm water or wastewater. The point of discharge for all drains and pipes shall be specified on the site plan.
- C. Water Resources.** Location of existing wetlands and watercourses, including ponds and streams on or within a quarter mile of the site.
- D. Soils.** Soil characteristics of the site, at least to the detail provided by the Natural Resources Conservation Service.
- E. Topography.** Existing topography of the site, with a maximum contour interval of two (2) feet.
- F. Existing Contamination.** Delineation of areas on the site that are known or suspected to be contaminated, together with a report on the status of site clean-up.
- G. MDEQ Checklist.** Completion of a Michigan Department of Environmental Quality (MDEQ) checklist, indicating the types of environmental permits and approvals that may be needed for the project.

Section 8 – PERMITTED PRINCIPAL USES

The following uses shall be permitted in the Wellhead Protection Overlay District, provided they comply with all applicable restrictions and standards specified in this Article:

- A. Single family residential uses.
- B. Residential accessory uses, including garages, driveways, private roads, utility rights-of-way, and on-site wastewater disposal systems (i.e., septic systems).
- C. Agricultural uses such as farming, grazing, and horticulture.
- D. Forestry and nursery uses.
- E. Outdoor recreation uses, including fishing, boating, and play areas.
- F. Conservation of water, plants, and wildlife, including wildlife management areas.

Section 9 – CONDITIONAL USES

The following uses may be permitted subject to conditions specified for each use, review and recommendation by the Planning Commission and approval by the Township Board, and subject further to any special conditions that are necessary to fulfill the purposes of this Ordinance, and the provisions set forth in Article UUUU:

- A. Commercial, industrial, governmental or education uses which are allowed in the underlying district, and which are not prohibited in Section 11.
- B. Any enlargement, intensification, alteration, or change of use of an existing commercial, industrial, governmental or education use.
- C. The rendering impervious of more than fifteen percent (15%) or 2,500 sq. ft. of any parcel, whichever is less, provided that a system for artificial recharge of precipitation to groundwater is developed, which shall not result in degradation of the groundwater.
- D. The mining or excavation for removal of earth, loam, sand, gravel and other soils or mineral resources, provided that such excavation shall not extend closer than five (5) feet above the historical high groundwater table (as determined from on-site monitoring wells and historical water fluctuation data compiled by the United States Geological Survey). One (1) or more monitoring wells shall be installed by the property owner to verify groundwater elevations. This sub-section shall not apply to excavations incidental to permitted uses, including but not limited to installation or maintenance of structural foundations, freshwater ponds, utility conduits or on-site sewage disposal.
 - 1. Upon completion of earth removal operations, all altered areas shall be restored with topsoil and vegetative plantings suitable to control erosion on the site.
 - 2. All fine materials, such as clays and silts, removed as part of the earth removal operation and leftover as by-products, shall be disposed of off-site to prevent damage to aquifer recharge characteristics.

- E. The storage of sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for removal of ice and snow on roads, provided such chemicals are covered and located on a paved surface with berms, or within a structure designed to prevent the generation and escape of contaminated run-off.
- F. Fertilizers, pesticides, herbicides, lawn care chemicals, or other leachable materials provide that such materials are stored in accordance with the manufacturer's label instructions approved by the United States Environmental Protection Agency or the Michigan Department of Agriculture and that they are used in routine agricultural operations and applied under the "Generally Accepted Agricultural Management Practices" and all other necessary precautions are taken to minimize adverse impact on surface and groundwater.
- G. The storage of commercial fertilizers and soil conditioners provided such storage shall be within structures designed to prevent the generation and escape of contaminated run-off or leachate.
- H. All liquid Regulated Substances, provided such materials must be stored either in a freestanding container within a building, or in a freestanding container above ground level with protection to contain a spill the size of the container's total storage capacity.

Section 10 – CONDITIONS

In addition to Section 9, Conditional Uses shall comply with the following:

- A. The Township Board may grant Conditional-Use approval only upon finding that the proposed use meets to the following standards:
 - 1. In no way, during construction or thereafter, shall a project adversely affect the quality or quantity of water that is available in the Wellhead Protection Overlay District.
 - 2. The project shall be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation and water-related natural characteristics of the site to be developed.
- B. The Township Board shall not approve a Conditional Use under this section unless the petitioner's application materials include, in the Board's opinion, sufficiently detailed, definite and credible information to support positive findings in relation to the standards of this section.

Section 11 – PROHIBITED USES

The following uses are prohibited in the Wellhead Protection Overlay District:

- A. Business and industrial uses that generate, use, treat, process, store, or dispose of Regulated Substances, including but not limited to metal plating, chemical manufacturing, wood preserving, and dry cleaning factory, except for the following:
 - 1. Generators of a very small quantity of Regulated Substances (less than 20 kilograms or six (6) gallons per month), subject to Special Land Use review.
 - 2. Municipally-operated or sanctioned household waste collection stations.
 - 3. Waste oil retention facilities.

4. Treatment works designed for the treatment of contaminated ground or surface waters, provided the facilities have been approved by the Michigan Department of Environmental Quality.
- B. Business and industrial uses that dispose of process wastewater on-site.
- C. Solid waste landfills, dumps, landfilling, spreading or storage of sludge or septage, with the exception of disposal of brush or stumps.
- D. Storage of liquid petroleum products of any kind, except for the following:
 1. Storage that is incidental to:
 - a. Normal household use and outdoor maintenance or the heating of a structure.
 - b. Use of emergency generators.
 - c. Treatment works designed for the treatment of contaminated ground or surface waters, provided the facilities has been approved by the Michigan Department of Environmental Quality.
 2. Replacement of storage tanks and systems for the keeping, dispensing or storing of gasoline, which existed at the time of adoption of this Article, provided that:
 - a. All such replacement storage tanks or systems shall be located underground as required by the Michigan Department of Environmental Quality.
 - b. All such storage systems shall be protected by a secondary containment system as specified by the Michigan Department of Environmental Quality.
 - c. The Fire Chief may deny an application for tank replacement, or approve it subject to conditions if he/she determines that it would constitute a danger to public or private water supplies.
- E. Outdoor storage of salt, de-icing materials, pesticides or herbicides.
- F. Dumping or disposal on the ground, in water bodies, or in residential septic systems of any toxic chemical, including but not limited to septic systems cleaners which contain toxic chemicals such as methylene chloride and 1-1-1 trichlorethane, or other household Regulated Substances.
- G. Stockpiling and disposal of snow or ice removed from highways and streets located outside of the Wellhead Protection Overlay District that contains sodium chloride, calcium chloride, chemically treated abrasives, or other chemicals used for snow and ice removal.
- H. Sewage disposal systems that are designed to receive more than 110 gallons of sewage per quarter acre per day or 440 gallons of sewage per acre per day, whichever is greater, provided that:
 1. The replacement or repair of an existing system shall be exempted if it does not result in an increase in design capacity above the original design.

2. In calculating the maximum sewage disposal system density, it shall be assumed that each single-family-residential home will generate 280 gallons of sewage per day.
3. The maximum sewage disposal system density may computed using the following method:
 - a. On an individual per lot basis (i.e., a single-family home typically generates 280 gallons of sewage per day, creating the need for a minimum lot area of $\frac{3}{4}$ acre.

In addition to meeting the above standards, all lots shall conform to any applicable minimum lot size requirements specified in Article VVVV of the Zoning Ordinance.

- I. Wastewater treatment works, except the following:
 1. The replacement or repair of an existing system that will not result in a design capacity greater than the design capacity of the existing system.
 2. The replacement of an existing subsurface sewage disposal system with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system.
 3. Treatment works designed for the treatment of contaminated ground or surface waters.

Section 12 – MISCELLANEOUS REQUIREMENTS

The following requirements shall apply to all uses in the Wellhead Protection Overlay District:

- A. **Drainage.** For commercial and industrial uses, run-off from impervious surfaces shall not be discharged directly to drains, streams, ponds, or other surface water bodies. Oil, grease and sediment traps shall be used to facilitate removal of contamination. Forebays/sediment basins and other requirements shall be adhered to per the Township Engineering Design Standards.
- B. **Discharge of Regulated Substances.** The property owner shall prevent the discharge of regulated substances.
 1. Upon discovery of a discharge within the Wellhead Protection Area, the owner of the property on which a discharge occurred, as well as the person responsible for the discharge if they are not the same, shall take appropriate reasonable actions to mitigate the potential impact of the discharge on the groundwater and remediate the discharge. Remediation shall be conducted in a timely manner and in accordance with applicable law. Wastes generated during remediation of a Regulated Substance discharge must be handled in accordance with all applicable legal requirements. Storage of these materials for a period of greater than ninety (90) days must be reported to, and approved obtained from, the Township Supervisor or his/her designee.
 2. All discharges shall be documented in writing and mailed to the Township Supervisor or his/her designee within ten (10) business days of said incident. Initial discharge notification shall include, at a minimum, the following:
 - i. Location of the discharge (name, address, and phone);
 - ii. Reporting party's name, address and phone (if different from above);
 - iii. Emergency contact and phone;

- iv. Description of the nature of the incident, including date, time, location, and cause of the incident; type, concentration, and volume of substance(s) discharged;
- v. Map showing exact discharge location, and relevant site features (i.e. paved area, storm sewer catch basins/inlets, water features, etc.), scale, and north arrow;
- vi. All measures taken to clean up the discharge; and
- vii. All measures proposed to be taken to reduce and prevent any future discharge.

- 3. The Township Supervisor or his/her designee shall determine if and where any additional investigative work needs to be completed to assess the potential impact of the discharge. The owner or operator shall retain a copy of the written notice for at least three years.

Section 13 – ENFORCEMENT

- A. Whenever the Township Supervisor or his/her designee determines that a person has violated a provision of this Ordinance, the Township Supervisor or his/her designee may order compliance by issuing a written Notice of Violation to the responsible person/facility.
- B. If the Township Supervisor or his/her designee requires abatement of a violation and/or restoration of affected property, the notice shall set forth a deadline by which such action must be completed. Said notice may further advise that, should the violator fail to remediate or restore within the established deadline, the work could be performed by the Township, with the resulting expense thereof charged to the violator and the expenses may be assessed onto the property if the property owner is also the violator.

Section 14 – VARIANCE/APPEAL RIGHTS

- A. If an owner of property within a Wellhead Protection Area believes the requirements of this ordinance impose an unreasonable burden on the use of the owner's property, the owner may seek a variance from the Marion Township Zoning Board of Appeals ("ZBA") in any appeal to the ZBA, the Township Consulting Engineer shall assist the ZBA for purposes of a variance request or of appeal rights. Such a request must be in writing with enough detail to allow the Township Consulting Engineer shall assist the ZBA for purposes of a variance request or of appeal rights, to understand the situation and proposed variance. If the Township Consulting Engineer determines that additional information is needed, the request for additional information shall be made within 15 days of the owner's request. Within 30 days of the receipt of such additional information, or, if no such request is made, within 30 days of the owner's request a hearing in front of the ZBA. The ZBA shall grant, deny, or partially grant the request. A grant, partial or complete, may relieve the property owner from strict compliance of this Ordinance. Reasonable conditions may be imposed by the ZBA as part of such a grant. The ZBA shall be guided by the primary goal of protecting the Township's Wellhead Protection Area without creating undue hardship upon the property owners affected.
- B. Any person receiving a notice of violation may appeal the determination by submitting a written notice of appeal to the Marion Township Zoning Board of Appeals. The notice of appeal must be received by the Zoning Board of Appeals within 30 days from the date of the notice of violation, with enough detail to allow the Township's Consulting Engineer, as a staff representative to the ZBA to understand the situation. Within 30 days of the receipt of such an appeal, the Township Consulting Engineer shall issue a written response to the appeal to the applicant and to the ZBA unless the Township Consulting Engineer has requested additional information, in which case the Township Consulting Engineer's response shall be issued within 30 days of receipt of the information. The Zoning Board of Appeals shall affirm, reverse or modify the notice of violation being appealed.

- C. If the person who has made a variance request or an appeal of a notice of violation does not agree with the decision of the ZBA, said person may appeal the matter by filing an action in the Livingston County Circuit Court, which may affirm, reverse or modify the decision being appealed. Such an appeal must be filed within 30 days of the decision of the ZBA or within the time period required by Michigan General Court Rules, whichever has the shortest appeal period.

Section 15 – ABATEMENT/REMEDIAL ACTIVITIES BY THE TOWNSHIP

- A. The Township is authorized to take or contract with others to take reasonable and necessary abatement or remedial activities whenever the Township determines a violation of this Ordinance has occurred and that the responsible party cannot or will not timely correct the violation, or when no known responsible party exists. The responsible party shall reimburse the Township for all expenses thus incurred by the Township.
- B. If the Township desires the responsible party to reimburse it for the abatement activity expenses, the Township shall within 90 days of the completion of such activities mail to that person a notice of claim outlining the expenses incurred, including reasonable administrative costs, and the amounts thereof. The person billed shall pay said sum in full within 30 days of receipt of the claim. If the person billed desires to object to all or some of the amount sought by the Township, said person may file, within the same 30-day period, a written objection so stating. The Township shall, within 30 days of its receipt of the objection, provide an opportunity for the objecting party to present facts or arguments supporting said objection. If the Township determines that some or the entire amount originally billed is appropriate, the person shall pay said sum within 30 days of receipt of that determination. If the amount due is not timely paid, the Township may cause the charges to become a special assessment against the property and shall constitute a lien on the property. In the alternative, the Township may attempt collection of the sum due by filing a civil lawsuit.

Section 16 – INJUNCTIVE RELIEF

- A. If a person has violated or continues to violate the provisions of this Ordinance, the Township may petition the appropriate court for injunctive relief restraining the person from activities abatement or remediation.

Section 17 – VIOLATIONS DEEMED A PUBLIC NUISANCE

- A. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil infraction to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the Township.

Section 18 – CRIMINAL PROSECUTION

- A. Any violation of this Ordinance shall be considered a misdemeanor, punishable by a fine of not more than \$500.00 or imprisonment of not more than 90 days. Each day a violation exists shall be deemed a separate violation. A citation charging such a misdemeanor may be issued by the Township Supervisor, his or her designee, the Township's Ordinance Enforcement Officer or the Sheriff's Department.

Section 19 – REMEDIES NOT EXCLUSIVE

- A. The remedies listed in this Ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Department to seek cumulative remedies.

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