

# **EMPIRE TOWNSHIP**

# **ZONING ORDINANCE**

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October 26, 2012, and March 29, 2013



# EMPIRE TOWNSHIP ZONING ORDINANCE

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## GENERAL ENACTING CLAUSE

An Ordinance to provide for the establishment of Zoning Districts to encourage and regulate the use of land and proper location of buildings and structures for residence, trade, industry, or other purposes; to regulate dimensions of yards, and other spaces; to provide for the administration, enforcement, penalties for violation, and amendment of this ordinance. Nothing herein shall relieve any property owner or applicant from complying with all applicable local ordinances, and state and federal regulations.

**The Township of Empire ordains:**

## ARTICLE 1 GENERAL PROVISIONS

### **SECTION 1.1 SHORT TITLE**

The title of this Ordinance is the "Empire Township Zoning Ordinance," and it will be referred to herein as "this Ordinance."

### **SECTION 1.2 REPEAL OF ORDINANCE**

The Empire Township Zoning Ordinance Adopted on June 8, 1999, as amended, is hereby repealed effective contemporaneously with the effective date of this Ordinance.

### **SECTION 1.3 PURPOSE**

The primary purpose of this Ordinance shall be:

To promote the use and conservation of the lands and resources of the Township in conformity with their character and adaptability;

To ensure that use of the land shall be situated in appropriate locations and relationships;

To promote the orderly development of the residential, commercial, recreational, agricultural, and other legitimate interests for the inhabitants;

To create safe and desirable conditions for living, economic progress, recreation, and other activities in the Township;

To limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities;

To facilitate the provision of adequate systems of transportation, fire protection, energy,

waste disposal, water supplies, education, recreation, and other public service and facility requirements; and

To promote public health, safety, and welfare.

#### **SECTION 1.4 PROHIBITED USES**

No structure, or part thereof, shall hereafter be erected, constructed, renovated, or altered and maintained, and no new use or change of use shall be made or maintained of any structure or land, or part thereof, except in conformity with the provisions of this Ordinance.

No use or activity shall be permitted in any zoning district which use or activity is in violation of federal, state or local law. *(As amended by Ordinance #01-2012, effective March 2, 2012)*

#### **SECTION 1.5 INTERPRETATION**

The interpretation and application of the provisions of this Ordinance shall be held to be minimum requirements necessary for the promotion of the public health, safety, and welfare. This Ordinance is not intended to repeal, abrogate, annul, or in any way impair or interfere with any existing provision of law or ordinance or with any rules, regulations, or permits previously adopted or issued or which shall be adopted or issued pursuant to the law relating to the use of structures or premises except as specifically provided by Section 1.2; provided, however, that where this Ordinance imposes a greater restriction than is required by other Township ordinances, rules, regulations or permits, the provisions of this Ordinance shall control.

#### **SECTION 1.6 VESTED RIGHT**

Nothing in this Ordinance shall be interpreted or construed to give rise to any permanent vested rights in the continuation of any particular use, district, zoning classification or any permissible activities therein; and, such are hereby declared to be subject to subsequent amendment, change or modification as may be necessary to the preservation or protection of public health, safety, and welfare.

#### **SECTION 1.7 SEVERANCE CLAUSE**

Sections of this Ordinance shall be deemed to be severable. Should any section, paragraph, or provision of this Ordinance be declared by a court of competent jurisdiction to be unconstitutional or invalid, such holding shall not affect the validity of

this Ordinance as a whole or in part, other than the part so declared to be unconstitutional or invalid.

### **SECTION 1.8 SAVINGS CLAUSE**

Nothing in this Ordinance shall be construed to affect any suit or proceedings pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or Ordinance hereby repealed pursuant to Section 1.2 of this Ordinance, nor shall any just or legal right or remedy of any character be lost, impaired, or affected by this Ordinance.

### **SECTION 1.9 ORDINANCE CONFLICT**

In the instance where a provision of this Ordinance is in conflict with any other provision, the provision that is the most stringent shall apply.

### **SECTION 1.10 PRIOR PERMITS**

Any building and/or land use permit issued prior to the adoption of this Ordinance shall be valid, provided that it complies fully with the regulations in effect at the time when the building and/or land use permit was issued and further provided that construction is meaningfully commenced and continued within six (6) months of the date of issuance of the building or land use permit. If construction is not so commenced within the six (6) months time period, the building, structure, or use for which the permit was issued shall be required to conform to all of the provisions of this Ordinance.

### **SECTION 1.11 ENABLING AUTHORITY**

This Ordinance is adopted pursuant to the Michigan Zoning Enabling Act, Public Act 110 of 2006 [MCL 125.3101 et seq], as amended.

## ARTICLE 2 DEFINITIONS

### **SECTION 2.1 RULES APPLYING TO THE TEXT**

For the purpose of this Ordinance, certain terms or words shall be interpreted as follows:

1. The word "person" includes an individual, partnership, corporation, association, governmental entity, or other legal entity.
2. The present tense includes the future tense; the singular number includes the plural and the plural number includes the singular.
3. The word "shall" is mandatory; the word "may" is permissive.
4. The words "used" or "occupied" include the words "intended, designed, or arranged to be used or occupied."
5. Any word or term not defined herein shall have the meaning of common or standard use that is reasonable for the context in which used herein.
6. Questions of interpretation arising hereunder shall be decided by the Zoning Administrator whose decision may be appealed to the Zoning Board of Appeals.

### **SECTION 2.2 DEFINITIONS**

**Access:** Any driveway, road, easement, right-of-way, or other means of providing for the movement of vehicles and/or pedestrians to, from or across property.

**Access Management:** A mechanism to limit the number of multiple points of ingress and egress on a roadway to improve traffic flow and safety. Service drives, shared driveways or distances required between access points on a rural highway are methods of access management.

**Accessory Building:** See "Building, Accessory".

**Accessory Use:** A use of a building, lot or portion thereof, which is customarily incidental and subordinate to the use of the principal building or lot, such as an office for an industrial use.

**Adult Foster Care Home:** A state licensed residential facility as that term is defined by the MZEA and as also defined in the Adult Foster Care Facility Licensing Act, Public Act 218 of 1979, as amended [MCL 400.701 et seq], and that is used for the care and supervision of six (6) or fewer persons under 24 hour supervision.

**Agri-business:** A commercial operation involving the processing of farm crops or animals raised or grown on site for sale at wholesale or retail to the general public. Such uses include, without limitation, wineries, distilleries, cideries, cheese and other dairy processing operations and similar uses. Agri-businesses also include agricultural operations designed to educate and/or entertain the public in an agricultural environment and include, without limitation, such uses as corn mazes, animal shows, and similar uses. *(As amended by Ordinance #01-2013, effective March 29, 2013)*

**Agricultural Operations:** See “Farm Operations.”

**Airport:** An airport licensed by the Michigan department of transportation, bureau of aeronautics under section 86 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.86, or as may be otherwise defined in the Michigan Zoning Enabling Act.

**Alcohol:** The product of distillation of fermented liquid, whether or not rectified or diluted with water, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes. *(As amended by Ordinance #01-2013, effective March 29, 2013)*

**Alcoholic beverage or Alcoholic liquor:** Any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing 1/2 of 1% or more of alcohol by volume which are fit for use for beverage purposes as defined and classified by the Michigan Liquor Control Commission according to alcoholic content as belonging to 1 of the varieties defined in the Michigan Liquor Control Code. *(As amended by Ordinance #01-2013, effective March 29, 2013)*

**Alternative Access:** A means of access not directly connected to a public road. Included are marginal access drives, backage roads or any other access to existing or proposed roads.

**Antenna:** An exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communications signals.

**Apartment Building:** See “Building, Apartment”.

**Architectural Features:** Those designed and constructed features of a building or a

structure which make it like or distinguish it from another building or structure. Architectural features shall include, but are not limited to, cornices, eaves, gutters, belt courses, sills, lintels, bay windows, chimneys, and decorative ornaments.

**Automobile or Vehicle Dealership:** A building or premises used primarily for the sale of new and/or used automobiles and other motor vehicles, including outside storage of vehicles held for sale. An automobile or vehicle dealership may also include servicing automobiles and/or vehicles as an accessory use to the principal use of automobile or vehicle sales.

**Automobile Repair:** The general repair of a motor vehicle and its component parts. Automobile repair includes the repair, rebuilding or reconditioning of any operating part or system of a motor vehicle, engine repair, engine rebuilding, and the rebuilding or reconditioning of the exterior or interior of a motor vehicle, including collision service, such as body, frame, or fender straightening and repair; painting and undercoating of automobiles.

**Automobile Repair Garage:** Any building, land area, or other premises, or portion thereof, used primarily for furnishing automobile repair services to the general public.

**Automobile Service Station:** Any building, land area, or other premises, or portion thereof, used for the retail sales of motor fuels, and including as an accessory use the sale and installation of lubricants, tires, batteries, and similar automobile accessories.

**Backage Road:** See “Road, Backage”.

**Bed and Breakfast:** A private home that is occupied by a resident family which provides short term lodging for tourists and guests for compensation.

**Beer:** Any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops, or other cereal in potable water. *(As amended by Ordinance #01-2013, effective March 29, 2013)*

**Brandy:** An alcoholic liquor as defined in 27 CFR 5.22(d) (1980). *(As amended by Ordinance #01-2013, effective March 29, 2013)*

**Breezeway:** A structure for the principal purpose of connecting the main building or buildings on a property with other main buildings or accessory buildings.

**Buffer Yard:** A required setback area from a road or property line that is designed for the exclusive purpose of buffering nonresidential uses from residential uses and public roads by means of landscaping and the use of other buffering materials.

**Buildable Area:** That area of a lot exclusive of areas designated for roads, road rights-of-way, utility easements, setbacks, areas having significant natural features



such as flowing streams or designated wetlands, approved conservation areas, or areas with slopes exceeding 40% (except with planning commission approval).

**Building:** A structure having one or more stories and a roof, designed primarily for the shelter, support or enclosure of persons, animals or property of any kind.

**Building, Accessory:** A building subordinate to and on the same lot as a principal building and occupied by, or devoted exclusively to an accessory use, including, but not limited to, a garage or shed.

**Building, Apartment:** A building used and/or arranged for rental occupancy, or cooperatively owned by its occupants, having two or more family units, and with a yard, compound, service, or utilities in common.

**Building, Principal:** The main building on a lot or parcel which is devoted to the principal use to which the lot or parcel is dedicated.

**Child Care Center/Day Care Center:** A facility, other than a private residence, receiving 1 or more preschool or school-age children for care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child, and as otherwise defined in Public Act 116 of 1973 [MCL 722.111 et seq].

**Cider:** Juice pressed from fruits, especially apples, and used for making vinegar or as a fermented or unfermented beverage. *(As amended by Ordinance #01-2013, effective March 29, 2013)*

**Cidery:** The structures and equipment used by a cider processor to produce cider whether fermented or not. *(As amended by Ordinance #01-2013, effective March 29, 2013)*

**Clerk:** The elected clerk of Empire Township.

**Clinic:** An establishment where human or animal patients are admitted for examinations and treatment by a physician(s), dentist(s), veterinarian(s), or similar professional(s).

**Club (Lodge):** A structure for use as a meeting place for members of public, semi-private, private or other non-profit, social, fraternal or religious organizations.

**Cluster Development:** A development design technique that concentrates buildings onto a part of the site to allow the remaining land to be used for recreation, common open space, and preservation of environmentally sensitive features.

**Co-locate/Co-location:** The location by two or more wireless telecommunication providers of wireless telecommunication facilities on a common structure, tower or building with the intent of reducing the overall number of structures required in the community.

**Commercial:** When used to describe any use, activity, purpose, or other thing, “commercial” means that such use, activity, purpose or thing is carried out for the purpose of purchase, sale, barter, display, or exchange of goods, wares, merchandise, or personal services, usually for a profit motive.

**Common Open Area:** Unoccupied land within a development, not individually owned or publicly dedicated, that is designed and intended for the common use or enjoyment of the residents and their guests and may include such improvements as are necessary and appropriate, such as common drain field(s), playground equipment, and recreation amenities, but excluding buildings.

**Communications Tower:** A radio, telephone, cellular telephone or television relay structure of skeleton framework, or monopole attached directly to the ground or to another structure, used for the commercial/governmental transmission or reception of radio, telephone, cellular telephone, television, microwave or any other form of telecommunication signals.

**Condominium Subdivision:** Any development undertaken under the provisions of the Michigan Condominium Act, Public Act 59 of 1978, as amended [MCL 559.101 et seq], or any other act of the state law providing for the development of property under joint or concurrent ownership.

**Congregate Care Facility:** Apartments and dwellings with communal dining facilities and services, such as housekeeping, organized social and recreational activities, transportation services, and other support services appropriate for the residents.

**Conservation Area:** An area on or a portion of a site which will remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land, and designated as such as part of the site plan approval process and which consists of wetlands, lands that are generally inundated under ponds, lakes, creeks, etc., land within the 100-year flood plain, slopes exceeding 25%, and soils subject to erosion or slumping. Conservation areas may also consist of upland forest, meadows, pastures, and farm fields, and part of the ecologically connected matrix of natural areas significant for wildlife habitat or water quality protection.

**Convalescent Home:** A facility that provides, on a regular basis, personal care, including dressing and eating and health related care and services to individuals who require such assistance but who do not require the degree of care and treatment that a hospital or skilled nursing center provides.

**Cottage Industry:** a commercial activity that is conducted on residential premises in a separate accessory structure. The commercial activity is conducted by individuals who live in the residential structure on the lot.

**Cross Access:** A method whereby access to property crosses one or more contiguous or adjacent properties. These may include driveway or parking lot connections with reciprocal easements.

**Density:** A measurement of the minimum and/or maximum number of dwelling units per acre per lot required/allowed for residential uses, or the minimum and/or maximum square feet per acre per lot required/allowed for non-residential uses in each District.

**Distillery:** The structures and equipment used by a distiller to produce spirits. *(As amended by Ordinance #01-2013, effective March 29, 2013)*

**District:** A section or sections of the Township of Empire for which the zoning regulations governing the use of building and premises, the height and size of buildings, size of yards, and the intensity of use are uniform.

**Driveway:** An access allowing ingress and egress from a lot to a road or alley.

**Dwelling; Dwelling Unit:** A building (including a mobile home as defined in Public Act 96 of 1987), or portion thereof, designed and used exclusively by one (1) family for residential purposes and having single cooking and bath facilities. In no case shall a travel trailer, motor home, automobile, tent or other portable building defined as a recreational vehicle be considered a dwelling. In the case of mixed occupancy, where a building is occupied in part as a dwelling unit, the part so occupied shall be deemed a dwelling unit for the purposes of these zoning regulations.

**Dwelling, Attached:** A one-family dwelling attached to one (1) or more one-family dwellings by common vertical walls.

**Dwelling, Detached:** A dwelling unit that is not attached to any other dwelling units by any means.

**Dwelling, Multiple-Family:** A building containing two (2) or more dwelling units designed for residential use and conforming in all other respects to the standards set forth for multiple-family dwellings.

**Dwelling, Single-Family:** A building designed exclusively for one (1) family for residential use.

**Dwelling, Site Built:** A dwelling unit which is substantially built, constructed, assembled, and finished on the premises which are intended to serve as its final

location. Site-built dwelling units shall include dwelling units constructed of precut materials and panelized wall, roof and floor sections when such sections require substantial assembly and finishing on the premises intended to serve as its final location.

**Easement:** A right or privilege entitling a person or persons to use another's land for a specific purpose.

**Essential Services:** The erection, construction, alteration, or maintenance by public utilities or by any governmental agency of underground or overhead gas, electrical, steam, or water transmission, supply or disposal system, including mains, poles, wires, drains, sewers, pipes, conduits, cables, towers, fire alarm boxes, police call boxes, traffic signals and hydrants and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of service by the public utility or governmental agency for the public health, safety or general welfare, but not including, buildings. For purposes of this Ordinance, essential services shall also be defined to include cable television facilities.

**Family:** A family shall be deemed to be one of the following when living in a single dwelling unit:

- A. A single individual.
- B. A group of two (2) or more persons related by blood, marriage or adoption.
- C. A group of five (5) or fewer unrelated individuals operating as a single nonprofit housekeeping unit with single culinary facilities, as distinguished from a group occupying a boarding house, lodging house, hotel, club, fraternity, or similar group use of a dwelling.

**Family Day Care Home:** A private home, as defined in the MZEA and as also defined in Public Act 116 of 1973, as amended [MCL 722.111 et seq] in which 1 but fewer than 7 minor children are received for care and supervision for periods of less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Family day care home includes a home in which care is given to an unrelated minor child for more than 4 weeks during a calendar year.

**Farm:** The land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products, and as otherwise defined in the Michigan Right to Farm Act, Public Act 93 of 1981 [MCL 286.471 et seq].

**Farm Market:** A building or structure used for the retail sales of fresh fruits, vegetables, flowers, herbs, or plants. A farm market may also involve the accessory

sales of other processed or unprocessed food stuffs and food products such as jams, jellies, fruits, vegetables, sauces, or baked goods, and home-made handicrafts.

**Farm Operations:** As defined in the Michigan Right to Farm Act, Public Act 93 of 1981 [MCL 286.471 et seq], the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products, and includes, but is not limited to:

- A. Marketing produce at roadside stands or farm markets.
- B. The generation of noise, odors, dust, fumes, and other associated conditions.
- C. The operation of machinery and equipment necessary for a farm including, but not limited to, irrigation and drainage systems and pumps and on-farm grain dryers, and the movement of vehicles, machinery, equipment, and farm products and associated inputs necessary for farm operations on the roadway as authorized by the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.
- D. Field preparation and ground and aerial seeding and spraying.
- E. The application of chemical fertilizers or organic materials, conditioners, liming materials, or pesticides.
- F. Use of alternative pest management techniques.
- G. The fencing, feeding, watering, sheltering, transportation, treatment, use, handling and care of farm animals.
- H. The management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes.
- I. The conversion from a farm operation activity to other farm operation activities.
- J. The employment and use of labor.

**Farm Product:** Those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish, and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses,

nursery stock, trees and tree products, mushrooms, and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur, as determined by the Michigan commission of agriculture, and as otherwise defined in the Michigan Right to Farm Act, Public Act 93 of 1981 [MCL 286.471 et seq].

**Farm Structure:** Any structure used in connection with or in support of farm operations. (Sometimes referred to as an “agricultural structure”)

**Fence:** A barrier composed of posts, carrying boards, rails, pickets, or wire, or of iron structures consisting of vertical and/or horizontal members.

**Foster Family Home:** A private home in which 1 but not more than 4 minor children, who are not related to an adult member of the household by blood or marriage, and as otherwise defined in MCL 722.111, and who are given care and supervision for 24 hours a day, for 4 or more days a week, for 2 or more consecutive weeks, unattended by a parent or legal guardian.

**Foster Family Group Home:** A private home in which more than 4 but fewer than 7 minor children, who are not related to an adult member of the household by blood or marriage, and as otherwise defined in Public Act 116 of 1973, as amended [MCL 722.111 et seq], and who are given care and supervision for 24 hours a day, for 4 or more days a week, for 2 or more consecutive weeks, unattended by a parent

**Frontage:** the length of a property fronting on one (1) side of a public or private road measured at the front property line.

**Greenbelt:** A strip of land of definite width and location reserved for the planting and/or maintenance of shrubs and/or trees to serve as an obscuring screen or buffer strip in carrying out the requirements of this Ordinance.

**Group day care home:** A private home, as defined in the MZEA and as also defined in Public Act 116 of 1973, as amended [MCL 722.111 et seq], in which more than 6 but not more than 12 minor children are given care and supervision for periods of less than 24 hours a day unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Group day care home includes a home in which care is given to an unrelated minor child for more than 4 weeks during a calendar year.

**Guest house:** A single family accessory building having a minimum of 700 square feet and a maximum of 900 square feet intended for the use of non-paying guests of the residents of the main building.

**Height:** The height of a structure is measured from its mean elevation. The mean elevation is the average of the four elevations measured from virgin soil, at four points

twenty (20) feet outward from the center of the north, east, south and west lines of the proposed building site.

**Home Based Business:** Includes Home Occupation and Cottage Industry.

**Home Occupation:** Any activity carried out for profit by a resident of the dwelling and conducted as a customary, incidental, and accessory use within the resident's dwelling unit.

**Hotel (Motel):** A building or groups of buildings where sleeping accommodations, with or without cooking facilities, are provided for transient or resident guests for compensation.

**Impervious Surface:** Any surface which prevents absorption of stormwater into the ground. Impervious surfaces are mainly constructed surfaces - rooftops, sidewalks, roads, and parking lots - covered by impenetrable materials such as asphalt, concrete, brick, and gravel or other surfaces which require accumulated water to be directed to a pervious surface. Impervious surfaces repel water and prevent precipitation and meltwater from infiltrating soils.

**Junk:** “Junk “ is defined as:

- A. any machinery, appliance, scrap materials, building materials, product or merchandise, scrap metal, or other materials, which are old, rusty, wrecked, damaged, deteriorated or discarded machinery, appliances, scrap metals, or which are not suited for use upon the premises, or the condition of which prevents its use for the purpose for which it was intended; or
- B. any motor vehicle which is not in operating condition, properly licensed, and capable of performing the transportation function for which it was manufactured. The purpose of this subsection is to prevent the accumulation of junk motor vehicles, and, therefore, it shall not apply to any motor vehicle ordinarily used, but temporarily out of running condition; or
- C. household trash.

**Junk Yard:** The storage or keeping of junk, including scrap metals or other scrap materials or items commonly known as junk, or the dismantling, demolition, or abandonment of more than one automobile or other vehicle, or machinery or parts thereof.

**Kenel:** A commercial establishment in which dogs and domesticated animals are housed, groomed, bred, boarded, trained, or sold for compensation.

**Lodge:** See “Club”.

**Lot:** A parcel of land, including a parcel comprising a site condominium project, occupied or intended to be occupied by a main building or a group of such buildings and accessory buildings, or utilized for the principal use and uses accessory thereto, together with such yards and open spaces as are required under the provisions of this Ordinance. A lot may or may not be specifically designated as such on public records.

**Lot, Corner:** A lot located at the intersection of two roads or a lot bounded on two sides by a curving road. Property owners of a lot located on two or more roads will elect which road shall serve as the front of the property, will notify the Zoning Administrator of the election in the Permit process, and will comply with the appropriate setbacks for the land use district.

**Lot, Interior:** A lot other than a corner lot.

**Lot, Non-Conforming:** An existing lot which was of legal size prior to the effective date of this Ordinance or any amendment thereto and which does not conform to the minimum lot size requirement of the district in which it is located.

**Lot Line, Front:** That side of the lot abutting upon a public or private road right-of-way. In the case of a corner lot, either road right-of-way line may be considered the front line of the lot if it contains the minimum required frontage. In the case of a waterfront property, the front lot line is the property line opposite the line on the water.

**Lot Line, Rear:** Ordinarily that lot line which is opposite and most distant from the front lot line as hereinbefore defined. In the case of an irregular-shaped lot, a line 10 feet in length entirely within the lot and parallel to and at the maximum distance from the front lot line shall be considered the rear lot line for the purpose of determining required rear yard spacing. In the case of a waterfront property, the rear lot line is the ordinary high water mark.

**Lot Line, Side:** Any lot line not qualifying as a front or rear lot line. A side lot line separating a lot from a road right-of-way shall be known as a Side Road Lot Line. A side lot line separating a lot from another lot or lots shall be known as an Interior Side Lot Line.

**Lot of Record:** A platted lot or any parcel of land, including units in a site condominium, the legal description of which is recorded in the Register of Deeds Office.

**Main Building:** A building in which is conducted the principal use of the lot upon which it is situated.

**Manufactured Home:** Factory-built, single-family structures that meet the National



Manufactured Home Construction and Safety Standards Act (42 U.S. C. Sec. 5401), commonly known as the HUD (U.S. Department of Housing and Urban Development) code or the BOCA code.

**Manufactured Home Park:** A parcel of land that has been planned and improved for the placement of 3 or more manufactured and/or mobile homes for continual residential, non-recreational use, or as may otherwise be defined in the Mobile Home Commission Act, Public Act 96 of 1987.

**Marginal Access Drive:** A road that is parallel or adjacent to an arterial road and that is designed to provide access to abutting properties so that these properties are somewhat sheltered from the effects of the through traffic on the arterial road and so that the flow of traffic on the arterial road is not impeded by direct driveway access from a large number of abutting properties.

**Marina:** A facility that is owned or operated by a person, extends into or over an inland lake or stream, and offers service to the public or members of the marina for docking, loading, or other servicing of recreational watercraft.

**Micro Brewer:** - a brewer that produces in total less than 30,000 barrels of beer per year and that may sell the beer produced to consumers at the licensed brewery premises for consumption on or off the licensed brewery premises. In determining the 30,000-barrel threshold, all brands and labels of a brewer, whether brewed in this state or outside this state, shall be combined and all facilities for the production of beer that are owned or controlled by the same person shall be treated as a single facility. *(As amended by Ordinance #01-2013, effective March 29, 2013)*

**Micro Brewery:** – the structures and equipment used by a micro brewer to produce beer. *(As amended by Ordinance #01-2013, effective March 29, 2013)*

**Mineral extraction:** Commercial mining for the sale of sand, gravel, topsoil or other natural resources.

**Motel:** See “Hotel”.

**MZEA:** The Michigan Zoning and Enabling Act; Public Act 110 of 2006, as amended [MCL 125.3101 et seq].

**Nuisance:** Any offensive, annoying, or disturbing emission, practice or object which prevents the free use or comfortable enjoyment of one’s property or renders its ordinary use or physical occupation uncomfortable. Nuisance commonly involves continuous or recurrent acts which give offense to the senses, violates the laws of decency, obstructs reasonable and comfortable use of property or endangers life and health.

**Nursery:** A space, building or structure, or combination thereof, for the storage of live trees, shrubs or plants offered for sale on the premises including products used for gardening or landscaping. The definition of nursery within the meaning of this Ordinance does not include any space, building or structure used for the sale of fruits, vegetables or Christmas trees.

**Office:** A room, suite of rooms, or building in which are located desks, chairs, tables, couches, bookcases, and equipment for current use in the office business, including personnel engaged in executive, administrative, professional, political, informative, research or clerical duties, and other similar related or incidental furniture, equipment or personnel connected or concerned with the performance of a service.

**Open Space:** Any unoccupied area of land or water which will remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land, and set aside, dedicated, designated, or reserved for public or private use. Previous facilities such as trails, pathways and farm fields are considered open space.

**Ordinary High-Water Mark:** The line between upland and bottomland that persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation. On an inland lake that has a level established by law, it means the high established level. Where water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural ordinary high-water mark.

**Park:** A piece of ground, public or private, laid out and kept for the sole purpose of recreation and pleasure.

**Parking Space:** An area of definite length and width, exclusive of drives, aisles or entrances giving access thereto, and which is fully accessible for the parking of permitted vehicles.

**Pathway:** A cleared, improved area (paved or unpaved) for pedestrians, bicyclists or other non-motorized use.

**Person:** See Section 2.1.1

**Place of Worship:** A building used primarily for religious assembly and conducting religious services on a regular basis by a religious congregation.

**Planned Development:** An area of minimum contiguous size, as specified by this Ordinance, developed according to a plan as a single entity and containing one or more structures with appurtenant common areas and dedicated open space.

**Planning Commission:** The planning commission established by the township board under the authority of, and subject to and exercising the powers, duties, and limitations provided in, the Township Planning Act, Public Act 168 of 1959, as amended (MCL 125.321, et seq.).

**Principal Use (Main Use):** The principal use to which the premises are devoted and the principal purpose for which the premises exist.

**Public Utility:** Any person, firm corporation, municipal department, or board, duly authorized to furnish under government regulation to the public; transportation, water, gas, electricity, telephone, steam, telegraph, or sewage disposal, or other similar service.

**Recreational Vehicle Park:** A licensed park designed specifically to accommodate recreational vehicles and recreational activities.

**Register of Deeds:** The Register of Deeds of Leelanau County.

**Restaurant:** A business located in a building where meals are prepared, sold, and served to persons for consumption on or off the premises, having suitable kitchen facilities connected therewith containing conveniences for cooking an assortment of foods which may be required for ordinary meals, and deriving a portion of the receipts from the sale of food.

**Retail store:** A store, market or shop in which commodities are sold, or offered for sale, in small or large quantities to the retail trade.

**Right-of-way:** A road, highway, alley, or other thoroughfare or easement, public or private, established for passage of persons or vehicles.

**Road:** A dedicated, accepted public thoroughfare, or a permanent, unobstructed private easement of access where the over and across, ingress and egress bounds are geographically and legally described and recorded with the Register of Deeds, which affords the principal means of vehicular access to abutting property.

**Road, Backage:** An alternative roadway, which generally runs parallel to, or behind, a development that fronts on a road.

**Road, Private:** Any road which is privately constructed and has not been accepted for maintenance by the County Road Commission, State of Michigan or the Federal government but meets the requirements of the Empire Township Fire Department.

**Road, Public:** Any road which has been accepted for maintenance by the County Road Commission, State of Michigan or the Federal government.

**Roadside Stand:** A non-enclosed structure under 100 SF used for the sale of fresh fruits, vegetables, flowers, herbs, or plants grown on site, and used solely for the sale of farm products and for sale of the byproducts of agricultural products produced on site.

**School – Elementary, Middle or Secondary:**

- A. A non-boarding public or private school meeting all requirements of the compulsory education laws of the state and providing a traditional academic curriculum to students in kindergarten through grade twelve.
- B. Instructions are provided at least five (5) days a week, except holidays, for a normal school year of not less than seven (7) months.
- C. Elementary and secondary schools do not include:
  - 1. a day care center, family day care home, or group day care home as defined herein; or
  - 2. public or private colleges or universities; or
  - 3. other school operated as a commercial enterprise.

**School – Residential:** A school primarily devoted to giving instruction in vocations, professional, musical, dramatic, artistic, dance, linguistic, scientific, religious, or other special subjects provided that no more than two (2) students are on the premises at the same time.

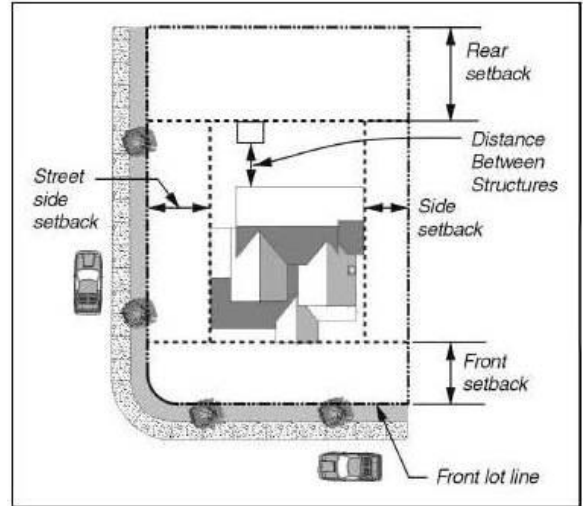
**School – General:** Any other educational institution (other than elementary, middle, secondary or residential schools as defined above) which provides educational instruction in any vocation, profession, science, the arts, religion or any specialized subject. Included are colleges and universities and branches thereof as well as any school which provides boarding for its students.

**Setback:** The minimum required distance between a lot line and structure. Further defined as:

- A. **Setback, Front:** The minimum required distance, extending the full lot width, between the front lot line and structures located on that parcel. No buildings are permitted in the setback area.

B. **Setback, Rear:** The minimum required distance, extending the full lot width, between the principal and accessory buildings and the lot line opposite the front lot line. No buildings are permitted in the setback area.

C. **Setback, Side:** The minimum required distance, extending from the front setback to the rear setback, between the principal and accessory buildings and the side lot line. No buildings are permitted in the setback area.



**Sidewalk:** A paved, surfaced, or leveled area, paralleling and usually separated from the road, used as a pedestrian walkway.

**Site Condominium Unit:** A portion of land (i.e. envelope, footprint) with or without a common element, designed for construction of a principal structure plus accessory buildings. All Site Condominium building sites shall have access to public or private roads.

**Slope:** The ratio of vertical rise or fall to horizontal distance of terrain measured perpendicular to the contour lines at horizontal intervals of ten (10) feet.

**Special Land Use:** Any use of land which, due to its potential effect on adjacent lands, in particular, and the overall community in general, requires approval by the Planning Commission according to standards provided for in this Ordinance.

**Spirits:** A beverage that contains alcohol obtained by distillation, mixed with potable water or other substances, or both, in solution, and includes wine containing an alcoholic content of more than 21% by volume, except sacramental wine and mixed spirit drink. *(As amended by Ordinance #01-2013, effective March 29, 2013)*

**State Licensed Residential Facility:** A structure, constructed for residential purposes, that is licensed by the state under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, or 1973 PA 116, MCL 722.111 to 722.128, and provides residential services for six (6) or fewer persons under twenty-four (24) hour supervision or care.

**Street:** See "Road".

**Structure:** Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

Structures include, but are not limited to, principal and accessory buildings, towers, decks, fences, privacy screens, walls, antennae, swimming pools, signs, and gas or liquid storage facilities. Driveway access drives, sidewalks, road directional or road name signs, and landscape improvements are not considered structures in regard to restrictions on placement within setback areas.

**Township:** The Township of Empire, Leelanau County, Michigan.

**Use:** The purpose for which land or a building thereon is designed, arranged, or intended to be occupied or used, or which is occupied or used.

**Variance:** A modification of the literal provisions relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of this Ordinance or to any other nonuse-related standard in this Ordinance granted by the Zoning Board of Appeals upon a finding that there are practical difficulties in the way of carrying out the strict letter of the zoning ordinance.

**Warehouse Facility:** A structure, and all necessary appurtenances, for the storage of merchandise or commodities.

**Watercraft:** A boat, canoe, kayak, pedal boat, jet ski or any other similar craft, whether motorized or not, designed for use by persons to navigate a lake, stream or other body of water.

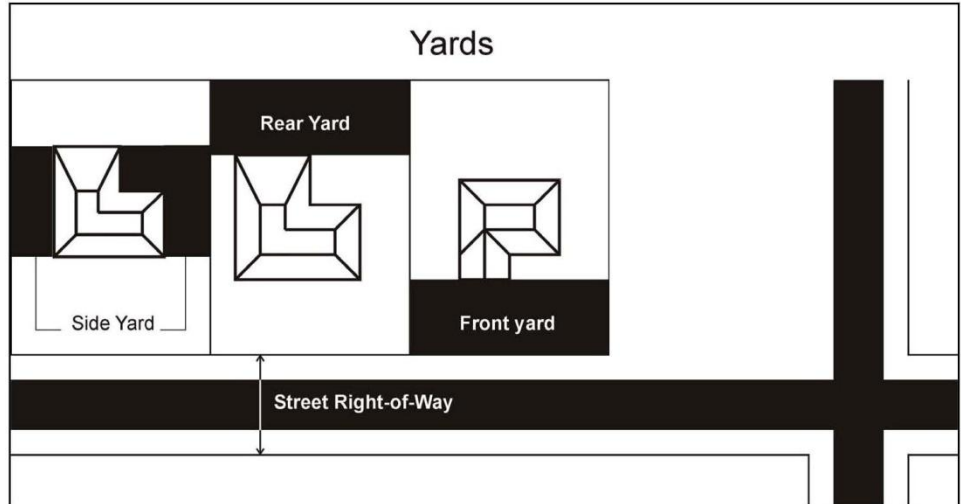
**Wine:** The product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not more than 21% of alcohol by volume, including fermented fruit juices other than grapes and mixed wine drinks. *(As amended by Ordinance #01-2013, effective March 29, 2013)*

**Winery:** The structures and equipment used by a wine maker to produce wine. *(As amended by Ordinance #01-2013, effective March 29, 2013)*

**Yard:** That area of a lot or parcel which is unoccupied by the principal building thereon. Further defined as:

- A. **Front Yard:** An open space extending the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and the nearest point of the main building.

- B. **Rear Yard:** An open space extending the full width of the lot the depth of which is the minimum horizontal distance between the rear lot line and the nearest point of the main building.



- C. **Side Yard:** An open space between a main building and the side lot line, extending from the front yard to the rear yard the width of which is the horizontal distance from the nearest point on the side lot line to the nearest point of the main building.

**ZBA:** The Zoning Board of Appeals for the Township of Empire.

**Zoning Administrator:** The administrative official designated by the Township Board with the responsibilities of administering and enforcing this Ordinance.

## ARTICLE 3 LAND USE DISTRICTS

### **SECTION 3.1 DISTRICTS**

For the purposes of this Ordinance, the Township of Empire is divided into five (5) land use districts as follows:

- A. Residential
- B. Public Recreation
- C. Gateway Mixed Use
- D. Agricultural Conservation
- E. Commercial Development

### **SECTION 3.2 MAPS**

The land use district into which each parcel of land in the Township is placed is shown on the map entitled "Empire Township Zoning Map" which accompanies and is hereby made a part of this Ordinance. This map, or an exact copy thereof, shall be available for examination at the Office of the Township Clerk at all reasonable times, and shall be kept with the records of the Clerk. Unless otherwise stated, all land use district boundaries shown on the map are intended to follow lot lines, or the center lines of roads, or alleys as they existed on the date of enactment of this Ordinance, or section or sub-section lines

### **SECTION 3.3 EXACT LOCATION**

The Zoning Board of Appeals shall determine, when required, the exact location of land use district boundaries that otherwise may be in question or when there are two land use districts on a property.



# ARTICLE 4 GENERAL PROVISIONS

## SECTION 4.1 SCHEDULE OF REGULATIONS

Zoning District	Mini. Lot Area	Mini. Lot Width (feet)	Front Setback (feet)	Rear Setback (feet)	Side Setback (feet)	Mini. Size Dwelling (sq ft)	Maximum Lot Impervious Coverage	Maximum Height Structure (feet)*	Minimum Area for PUD (acres)
Residential	30,000 sq ft	100	40	10	10	700	25%	40	8
Public Recreation	5 acres, unless clustered	235	40	10	10	700	15% (unless clustered)	40	8
Gateway Mixed Use	5 acres per parcel	300	See district	See district	See district	700	25%	40	10
Agricultural Conservation	5 acres, unless clustered	150	40	10	10	700	15% (unless clustered)	40	20
Commercial Development	30,000 sq. ft.	100	50	50	50	NA	75%	40	20

- Front setback is measured from the edge of the road right-of-way.
- To calculate theoretical maximum number of units: Multiply by total project acreage. Calculations to the lowest whole number.
- \*See Section 4.12 for additional height and setback requirements.

## SECTION 4.2 ACCESSORY BUILDING

Accessory buildings shall be subject to the following regulations:

- A. Where an accessory building is structurally attached to a main building, it shall be deemed part of the principal building and shall be subject to, and must conform to, all regulations of this Ordinance applicable to the principal building.
- B. Accessory buildings shall not be erected in any required front or road side

setback area as defined in this Ordinance. No detached accessory building shall be located closer than twenty (20) feet to any principal building. In no instance shall an accessory building be located within a dedicated easement i.e.: access, utility, or right-of-way.

- C. An accessory building shall not occupy more than twenty-five (25) percent of a required rear yard. Except for agricultural structures, no accessory building shall exceed the ground floor area of the principal building.
- D. A detached accessory building in a residential district shall not exceed the maximum permitted height for the district; however, the vertical exterior surface of the building, not forming a part of the roof, shall not exceed a height of fourteen (14) feet, measured from grade to the top plate of the wall.
- E. Accessory buildings in any non-residential district may be constructed to equal the maximum permitted height of structures in the district.
- F. No accessory building shall be constructed prior to the construction of its principal building.

### **SECTION 4.3 ACCESS MANAGEMENT**

- A. Access Spacing. The minimum horizontal distance between the centerline of any two accesses on the same side of a road, whether a road or driveway, as measured from their centerlines, shall be 660 feet. This spacing requirement shall apply to all uses along M-72 and M-22 and may be accomplished by any of the following means:
  - 1. By owning sufficient frontage on the highway to meet the spacing requirement; or
  - 2. By assembling sufficient frontage to meet the spacing requirement; or
  - 3. By sharing access via shared driveways, easements, marginal access drives, and/or cross access agreements.
  - 4. By permission of the Zoning Administrator when none of the above options are available.
- B. Flexibility Allowed. As part of the site plan review process, the actual location of an access may be varied by the Planning Commission if it can be demonstrated that the intent of this Section to minimize the number of individual driveways and coordinate accesses is fulfilled in the interests of maintaining highway capacity, reducing congestion, and improving traffic safety.

#### **SECTION 4.4 DRIVEWAY**

For the safety, protection and welfare of the residents of the Township, driveways shall be constructed so as to permit free and easy access by fire and rescue apparatus and other emergency equipment needed for such purposes. A driveway shall have a minimum width of twelve (12) feet maintained open and unobstructed.

#### **SECTION 4.5 DUMPSTER ENCLOSURE**

Except when utilized on a temporary basis, any dumpster in excess of three (3) cubic yards capacity shall be enclosed on three (3) sides of the trash storage area by a wall, at least six (6) feet in height. The interior area of the enclosure shall have a minimum width and length of thirteen (13) feet and a maximum width and length of twenty (20) feet, and shall have a minimum air space of one (1) foot between the dumpster and any wall or the opening of the enclosure. The walls of the enclosure shall be constructed of materials approved by the Zoning Administrator to be durable and weather resistant. The surface under any such storage area shall be constructed of concrete that complies with local building requirements.

Any such storage area shall be located in a rear yard and/or be so located and arranged as to minimize its visibility from adjacent roads and uses. When site plan approval is required under this ordinance, the Planning Commission may require an obscuring gate when the visibility of such a storage area, from a public road or adjacent use, is deemed to render an adverse influence. In no instance shall any such area be located in a front yard.

#### **SECTION 4.6 ESSENTIAL SERVICES**

Essential services shall be permitted as authorized or regulated by law and other ordinances of the Township of Empire in any use district, it being the intention hereof to exempt the construction, alteration, and maintenance of essential services from the applications of this Ordinance. Neither Communication towers nor wind energy systems are considered essential services.

#### **SECTION 4.7 LAKE ACCESS/KEYHOLING**

- A. The Township finds that the use and enjoyment of the Township's water resources, including the inland lakes, rivers and other watercourses, as well as the lands abutting those water resources is of the highest importance to

the quality of living and the economic well-being of all residents and visitors to the Township. The Township also finds that it is desirable to retain and maintain the physical, cultural and aesthetic characteristics of those water resources in the Township and the lands abutting them. The Township further finds that, as lands abutting those water resources become further developed and subjected to human and mechanical influence, it is necessary to regulate the usage of those water resources and the lands abutting them in order to preserve and protect the health, safety and welfare of the residents of, and visitors to, the Township.

- B. No lot abutting Lake Michigan, South Bar Lake, Big Glen or Little Glen Lake shall be used to provide lake access for any water related activity, including, without limitation, swimming (including placement of a raft), fishing, docking or mooring of any watercraft, to or for any person except as follows:
1. On a lot zoned for single family residential use, the owner(s) of the lot or the residents of the dwelling on the lot may use said lot for lake access for any water related activity, including, without limitation, swimming (including placement of a raft), fishing, docking or mooring of any watercraft.
  2. Where the lot contains more than one dwelling lawfully existing under the terms of this Ordinance, the owners or residents of each such lawful dwelling may use said lot for lake access for any water related activity, including, without limitation, swimming (including placement of a raft), fishing, docking or mooring of any watercraft.
  3. Where the lot is used as a common area in a condominium project approved under this Ordinance, the owners or residents of each condominium unit may use said lot for lake access for any water related activity, including, without limitation, swimming (including placement of a raft), fishing, docking or mooring of any watercraft; provided, however, that the number of condominium units permitted to have such access shall be limited to 1 for every 25 feet of water frontage.
  4. Where the lot is dedicated in a subdivision plat to the use of lot owners in the subdivision and the subdivision plat and the dedication is approved by the township, the owners or residents of each subdivision lot may use said lot for lake access for any water related activity, including, without limitation, swimming (including placement of a raft), fishing, docking or mooring of any watercraft; provided, however, that the number of lots permitted to have such access shall be limited to 1 for every 25 feet of water frontage.

5. Where this Ordinance otherwise specifically permits use of a waterfront lot for lake access for any water related activity, including, without limitation, swimming, fishing, docking or mooring of any watercraft by persons other than or in addition to the owner or resident thereof.
- C. In all cases where lake access is permitted as provided in B, above, docks and moorings for watercraft shall be restricted as follows:
1. Docks shall be limited to a minimum of one (1) dock per lot and a maximum of one (1) dock per every one hundred (100) feet of lot width at the waters edge. By way of example, this means that 200 or more feet of water frontage is required for 2 docks.
  2. Dock lengths are not to extend from shore to a depth of more than three (3) feet when the lake level as measured at the Narrows bridge is at its legal, low watermark of 596.50 feet above sea level.
  3. Docks shall have only one point of connection to the waterfront lot.
  4. Except as provided in subsection 5, below, docks shall not exceed five (5) feet in width.
  5. Notwithstanding subsection 4, above, a dock may have one or more recreation platform(s) the total combined area of which will not exceed one hundred sixty (160) square feet.
  6. Docks shall not extend beyond the side property line of the waterfront lot as such side property line is extended to the center of the lake.
  7. Moorings for watercraft shall be located so that the watercraft attached to the mooring shall not extend beyond the side property line of the waterfront lot as such side property line is extended to the center of the lake.
  8. Only boats belonging to the owners or occupants of the lot abutting the waters edge may be docked or moored in the water at said lot.
  9. Shore stations are not to be placed farther from shore than a depth of three (3) feet when the lake level as measured at the Narrows bridge is at its legal, low watermark of 596.50 feet above sea level.

## **SECTION 4.8 LANDSCAPING**

Empire Township is known for its beauty and natural features. People visit Empire Township and the Leelanau County area to see and enjoy the natural beauty along the roadsides. These components are important in preserving Empire Township's economic base. The intent of this landscaping regulation is to minimize the visual impact of development from adjacent properties and road rights-of-way. The following regulations apply to all site plans requiring Planning Commission or Zoning Administrator review:

### **A. Vegetative Screening along the Road Right-of-Way (Greenbelt Buffer)**

1. A strip of land at a minimum of thirty (30) feet in width shall be reserved along the road right-of-way and shall be landscaped as follows:
  - a. A minimum of one (1) tree shall be planted for each thirty (30) lineal feet, or fraction thereof, of road right-of-way frontage. Required trees may be planted at uniform intervals, at random, or in clusters.
  - b. The remainder of the greenbelt area shall be landscaped in grass, ground cover, shrub, and/or other natural, living plant materials. Plantings in this greenbelt buffer area shall be maintained in a healthy condition, free from refuse or debris. All unhealthy or dead plant materials shall be replaced within one (1) year or in the next appropriate planting season. All plant materials shall be installed in such a manner so as not to alter drainage patterns, obstruct vision for safe ingress and egress, and not cause damage to utility lines or public roads.
  - c. Access drives from road rights-of-way are permitted to interrupt a greenbelt buffer. However, such access drives shall not be subtracted when calculating the lineal dimension used to determine the minimum number of trees required.

### **B. Screening Between Land Uses**

1. There shall be, at a minimum, a thirty (30) foot wide strip of land reserved for landscaping between lands that are zoned for residential use or are currently being used for residential use and for lands containing non-residential structures. Agricultural uses are considered a residential use for the purpose of this provision. The landscaping strip shall be planted on the site of the second use when the second use

(either residential or non-residential) is built. This strip of land shall be landscaped as follows:

- a. The equivalent of one (1) tree for each twenty-five (25) lineal feet along the property line between the two uses, or fraction thereof, shall be planted in the landscaping strip between the lot with the residential use and the conflicting land use. Required trees may be planted at uniform intervals, at random, or in clusters.
- b. The owner of the lot on which the landscaping is placed shall maintain all landscape materials in a healthy condition, free from refuse or debris. All unhealthy or dead plant materials shall be replaced within one (1) year or in the next appropriate planting season. All plant materials shall be installed in such a manner so as not to alter drainage patterns, obstruct vision for safe ingress and egress, and not cause damage to utility lines or public roads.

#### C. Parking Lot Landscaping

Separate landscaped areas shall be required either within or at the perimeter of parking lots. Parking lot landscaping shall be so designed to provide directional guidance to access drives and interior circulation.

1. In off-road parking areas containing more than twenty (20) spaces, at least five (5) percent of the total parking lot area shall be used for interior landscaping.
  - a. There shall be a minimum of one (1) tree for every ten (10) spaces.
  - b. A minimum distance of three (3) feet shall be established between the proposed tree or shrub trunk and the backside of any curb or edge of pavement.
  - c. Individual landscape areas shall be at least fifteen (15) feet wide.
  - d. Where a parking area with a capacity of four (4) or more vehicles adjoins a residential district, a buffer, at least twenty (20) feet wide, shall be provided between the parking area and the adjoining property and a vertical screen shall be erected consisting of structural or plant materials no less than four (4) feet in height.

D. Landscape Material Standards

Landscape materials shall meet the following minimum standards:

1. Minimum plant sizes and spacing at the time of installation:

<b>Plant Material</b>	<b>Size</b>	<b>Minimum Spacing</b>
Deciduous Canopy Tree	2 ½ inch caliper	25 feet
Deciduous Ornamental Tree	2 inch caliper	20 feet
Evergreen Tree	6 foot height	20 feet
Deciduous Shrub	2 foot height	6 feet
Upright Evergreen Shrub	2 foot height	6 feet
Spreading Evergreen Shrub	18-24 inch height	6 feet

Caliper measure is taken at five (5) feet above ground level.

2. Where healthy trees exist on a site prior to its development, the Planning Commission may reduce the minimum tree planting requirement if existing trees are maintained on site and they meet or exceed the requirements of D.1. Minimum plant sizes and spacing.

If existing trees are maintained, such trees must be designated "to be saved" on the site plan and protective techniques shall be installed during the construction period. Such techniques may include, but shall not be limited to, the installation of fencing around the drip-line of designated plant materials and the prohibition of parking vehicles or construction equipment within the drip-line of such plant materials.

If a tree designated "to be saved" on the approved site plan is destroyed or damaged, a replacement tree, that meets the standards listed in subsection D, above, shall be planted.



## **SECTION 4.9 LIGHTING, OUTDOOR**

All outdoor lighting fixtures (including, but not limited to, pole mounted or building mounted yard lights) other than decorative residential lighting shall meet the following requirements:

- A. Lighting shall be designed and constructed in such a manner to insure that direct or directly reflected light is confined and directed downward to an area needing it and that it is not directed off the property.
- B. Lighting for security purposes is allowed only by motion detectors or equivalent means.

## **SECTION 4.10 LOT ACCESSIBILITY**

No dwelling unit shall be built on a lot unless the lot abuts upon a road or an access road meeting the requirements of Section 5.1

## **SECTION 4.11 MAXIMUM HEIGHT**

In order to reduce fire hazards, to promote fire safety, and to preserve the aesthetic character of the area, no building shall be constructed having a height (as defined in Section 2.2) greater than forty (40) feet. Except as may otherwise be provided, herein, this does not include antenna systems, church steeples, chimneys, smoke stacks, silos, barns and water towers. The allowable maximum height of other structures not listed above shall be determined by the Zoning Board of Appeals.

To maintain compatibility of scale and character in a residential district and to reduce the visual impact of houses between side yard neighbors, the height of a building or a structure shall be reduced as follows:

- A. On level lots the maximum height of a building, excluding antennas and chimneys, shall be the lesser of forty (40) feet or a height determined by a line drawn forty-five (45) degrees upward from a horizontal plane through a point eighteen (18) feet high at either side lot line.
- B. On sloped lots, side to side, the maximum height of a building, excluding antennas and chimneys, shall be the lesser of forty (40) feet or a height determined by a line drawn forty-five (45) degrees upward from a horizontal plane which is midway between the two horizontal planes through the points 18 feet high at each side lot line. At the request of the Zoning Administrator, the property

owner shall provide lot topographic data to document the building or structure compliance with this requirement.

- C. The height restrictions in “A” and “B”, above, apply to all buildings and structures on a residential lot.

#### **SECTION 4.12 PARKING**

- A. Intent: Provide adequate space for parking, standing, loading and unloading of motor vehicles; to avoid undo interference with public use of roads or exits there from; and to lesson any conflict with neighboring uses of land.
- B. Parking to be on property: Required parking shall be provided off the public road right-of-way and on the lot to which it pertains, or on a contiguous lot unbroken by easement, right-of-way or unimproved road.

#### **SECTION 4.13 LAND USE PERMIT REQUIREMENTS**

Subject to all other terms and conditions of this Ordinance, a land use permit shall include the legal description, the length and width of the lot, the dimensional size and location of all structures to be erected, including the location of water supply and septic systems. Any Driveway permit required by the county or the state shall be supplied with a completed Land Use Permit Application form.

#### **SECTION 4.14 SANITATION PERMIT REQUIREMENT**

No sewage disposal system shall be located on any lot in a manner which would endanger the domestic water supply of any neighboring property owners or otherwise be the cause of any contamination or pollution, and, therefore, where a sewage disposal system is to be a part of the construction project, the Zoning Administrator may not issue a land use permit until a permit for the construction of the sewage disposal system has been issued by the District Department of Health.

#### **SECTION 4.15 SCENIC ROADWAY PROTECTION AREA**

The Master Plan describes the roadways within the Township as one of the most important visual characteristics in the Township. The majority of these areas are undeveloped, highly vegetated, and provide spectacular views of the landscape. The following requirements are to implement the provisions of the Future Land Use Plan and to preserve the integrity of this area. Therefore they are allocated to the roads

which are heavily traveled by tourists; these roads include M-72, M-22, County Road 616, and County Road 677.

This section does not apply to normal tree maintenance or to the removal of dead or unhealthy trees.

Prior to the issuance of a land use permit, in those cases where site plan approval is required by this Ordinance, for all parcels that have land area within 100 feet of the edge of the road right-of-way for M-72, M-22, County Road 616 and County Road 677, the following shall be met:

- A. The site plan shall contain a landscape plan that has a tree survey showing all trees greater than six inches in diameter within the 100-foot Scenic Roadway Protection Area. The tree inventory shall identify all the trees greater than twelve inches in diameter by size, species, and locations.
- B. The landscape plan shall show which trees including their size and species will be removed, the limits of land disturbance, clearing, grading, and trenching, and areas of revegetation.
  - 1. If the area of disturbance, clearing, grading, and trenching is less than 800 square feet or less than 10% of the portion of the lot that is within the Scenic Roadway Protection Area, then the landscape plan shall show the methods (such as fencing) used to protect the designated trees for survival.

The landscape plan shall show where replacement trees will be planted. A minimum of 75% of the trees designated for removal shall be replaced. If more than the designated number of trees is removed, then there shall be a one to one ratio replacement in terms of size, type, and quantity (one 12 inch diameter would equal two six inch diameter trees in this example) for the trees that were cut down but not shown to be cut down. The tree plantings shall occur in locations that will visually minimize the view of the development from the roadside.

- 2. If the area of disturbance, clearing, grading, and trenching is 800 square feet or greater or is 10% or more of the portion of the lot that is within the Scenic Roadway protection area, then the landscape plan shall include detailed drawings showing tree protection measures and their location, species and size of existing trees, erosion control fences, tree protection signs, aeration and irrigation systems, tree wells, transplanting specifications, staking specifications, and all existing and potential utility lines.

The landscape plan shall show where replacement trees will be planted. A minimum of 75% of the healthy trees designated for removal shall be replaced. If more than the designated number of trees is removed, then there

shall be a one to one ratio replacement in terms of size, type, and quantity (one 12 inch diameter would equal two six inch diameter trees in this example) for the trees that were cut down but not shown to be cut down. The tree plantings shall occur in locations that will visually minimize the development from the roadside.

- C. Shared driveways or combined access points are strongly encouraged to minimize the impact of development within this Scenic Roadway Protection Area.
- D. All structures shall be a minimum of 50 feet from the edge of the road right-of-way.
- E. At a minimum, 60% of the front yard area (between the structure and road right-of-way) that is within the Scenic Roadway Protection Area shall remain treed or naturally landscaped.

#### **SECTION 4.16 SETBACKS**

- A. From road or thoroughfare: All buildings or structures, in any land use district must be not less than forty (40) feet from the nearest right-of-way line of any public road or thoroughfare, except driveways, gates, fences and mailboxes.
- B. The following structures are exempt from all setback requirements:
  - 1. Fences
  - 2. Mail boxes
  - 3. Gates
  - 4. Signs smaller than eight (8) square feet
- C. From Lake Michigan: No building nor structure nor any part thereof may be erected closer to the water's edge of Lake Michigan than permitted by applicable Federal Directive pertaining to "High Risk Erosion" area.

#### **SECTION 4.17 SHORELINE PROTECTION AREA**

The Empire Township Master Plan discusses the importance of protecting the water quality of Glen Lake and Lake Michigan. Although much of the private land has been developed, it is anticipated that this area will face redevelopment pressures. The following requirements are for all new structures and additions to existing structures.

- A. No structures, including but not limited to, driveways, septic fields, or parking areas shall be permitted within 40 feet (measured at the nearest point of the structure) of the ordinary high water elevation mark of Lake Michigan or any inland lake, creek, stream or waterway.
- B. No more than one-third (1/3) of the trees and shrubs shall be removed in a strip twenty-five feet landward from the ordinary high water elevation mark of Lake Michigan or any inland lake, creek, stream or waterway. Stumps shall be cut flush to the ground, but no fill material or soil disturbed.
- C. Driveways and roadways shall be designed and engineered so that water will not drain into Lake Michigan or into inland lakes or waterways.

#### **SECTION 4.18 SPACING OF SEPARATE BUILDINGS**

To prevent overcrowding of buildings and structures and to reduce fire hazards, no separate buildings or structures shall be built closer than twenty (20) feet to each other.

#### **SECTION 4.19 SPECIAL EVENTS OR ACTIVITIES NOT SPECIFIED BY ORDINANCE**

Short term special events/activities not specified by this Ordinance shall be approved by the Township Board. Before approving a special event or activity, the Township Board shall determine that such event or activity will not be detrimental to the intent of the land use district in which it is permitted and may establish conditions for conducting such special event or activity so as to protect the intent of said land use district. The approval shall be in writing and shall specify the conditions established by the Township Board as well as the number of days and the times of day the special event or activity may be carried on.

#### **SECTION 4.20 STEEP SLOPES**

The purpose of this section is to provide heightened regulation of the erection of buildings in areas susceptible to erosion; to minimize danger to public health by protecting watersheds; to discourage erosion of soils by maintaining adequate foliage cover on hills; and to promote the perpetuation of open space on hillsides. Slope areas may be located within the confines of any land use district.

The steep slope areas shall include all areas within the Township where the slope is thirty (30) degrees or greater. The development requirements for a steep slope area are as follows:

- A. There shall be no construction on portions of lots where the natural topography contains a steep slope of thirty (30) degrees or greater without approval of a plan for such construction approved by the Planning Commission.
- B. To be approved by the planning Commission, the plan must meet the following criteria:
  - 1. The plan shall demonstrate reasonable and acceptable steps to be taken to prevent erosion.
  - 2. The maximum height of the principal structure shall be twenty-five (25) feet.
  - 3. The landscape plan for the area of disturbance shall be prepared by a registered landscape architect or professional engineer.
  - 4. Driveways and/or access drives shall be designed so their appearance is visually minimized.
  - 5. Structures shall not be sited on top of high points, outcroppings or prominent knolls within the site.
  - 6. Slopes of any grading shall not exceed a slope of thirty (30) degrees.

#### **SECTION 4.21 OFF-ROAD PARKING**

Off-road parking facilities shall be provided for occupants, employees, and patrons of buildings in Empire Township.

- A. For the purpose of determining the required off-road parking and loading facilities, definitions and standards are established as follows:
  - 1. Off-Road Parking Area. An open or enclosed area directly accessible from a public or private road for parking of automobiles. Each space shall be directly accessible from a drive or aisle.
  - 2. Usable Floor Area (UFA). As used in determining parking requirements, usable floor area shall mean the total area of all the floors of the building used by the principal activity as specified in the Parking Schedule, measured from the interior faces of the building. The areas used for storage, mechanical equipment, and stairwells or otherwise not occupied by people shall be excluded from the floor area calculation.

3. Gross Floor Area (GFA). As used in determining loading requirements, gross floor area means the total floor area used for the main and accessory activities and storage areas of the building served.
4. Seating Capacity. As used in determining parking requirements, seating capacity is the number of seating units installed or indicated on plans for places of assembly; where not indicated on plans, it shall be assumed that a seating unit will occupy six (6) square feet of floor area exclusive of all aisles; where benches, pews or other similar seating is provided, each twenty (20) inches of such seating shall be counted as one seat.
5. Employees. Wherever the parking requirement is based on employees, it shall mean the maximum number of employees on duty on the premises at one (1) time or on any two (2) successive shifts, whichever is the greater.
6. Off-Road Loading Space. An off-road loading space is an open space or enclosed area as part of a building directly accessible to a public road and available whenever needed for the loading or unloading of goods and products to the main use.

B. Application and Determination.

1. Application for Parking Facilities. Any application for a Land Use Permit to construct a parking area shall include a site plan drawn to scale and fully dimensioned, showing the proposed design of the parking area and loading facilities to be provided in compliance with the provisions of this Article.
2. Determination of Required Parking Facilities. The Zoning Administrator shall determine the minimum number of spaces required for accessory off-road parking by applying the Parking Area Design Standards, the Schedule of Parking Requirements for the various uses, and any other applicable provisions of this Ordinance. Where the computation results in a fractional space, it shall be counted as one additional space required.

The Planning Commission may vary the parking requirements of this Article where it finds that due to the nature of the particular use, the requirements will not be adequate to provide sufficient parking or where the strict application of the requirements will result in an excess amount of parking related to the particular use. The Zoning Board of Appeals shall have the authority to determine the off-road parking requirements of any use not specifically listed in the Schedule of Parking Requirements.

C. Schedule of Parking Requirements. The amount of off-road parking space required by type of use shall be determined in accordance with the following schedule:

<b>Use</b>	<b>Required Spaces</b>	<b>Unit of Measure</b>
<b>Residential</b>		
1. One and two family dwelling	2	Per dwelling unit
2. Multiple Family, townhouses	2	Per dwelling unit
3. Bed and Breakfast	1	Per rented room, plus
	2	for resident family
4. Senior Citizen Housing	0.5	Per one bedroom unit
	1	Per two bedroom unit
<b>Institutional</b>		
1. Family Day Care Center	1	Per 400 sq. ft. of UFA plus
	1	per each three employees
2. Churches	1	Per five seats
3. Schools	1	Per teacher plus
	1	Per each three employees and per three high school students
4. Hospitals	2	Per three beds plus
	1	Per each three employees
5. Libraries, museums, public office buildings, post offices	1	Per 400 sq. ft. UFA plus
	1	per each three employees
6. Private clubs or lodges	1	Per three members allowed by law
7. Public golf courses	3	Per hole plus
	1	Per each three employees
8. Private golf, tennis, swim clubs	1	Per two member, families, or individual
9. Theaters, auditoriums, assembly halls with fixed seats	1	Per four seats plus
	1	per each three employees
10. Public outdoor recreation facilities	1	Per each five seats or ten feet of benches plus
	5	per each one acre of undesignated area



<b>Businesses</b>		
1. Animal hospitals and kennels	1	Per each 400 sq. ft. UFA, plus
	1	per each three employees
2. Auto salesroom, wholesale stores, machinery sales, and other similar uses	1	Per each 1,000 sq. ft. UFA, plus
	1	per each three employees
3. Automobile service stations, filling stations	2	Per each service stall, plus
	1	per each three employees plus
	1	per each two gasoline pumps
4. Automobile wash establishments	4	Per each unit (computed dividing the line dimension of the operation by 20 feet), plus
	1	per each three (3) employees
5. Beauty or Barber shops	2	Per each three beauty or barber chairs, plus
	1	per each three employees
6. Bowling alleys	3	Per bowling lane
7. Dance halls, exhibition halls, pool halls, and assembly halls without fixed seats	1	Per each 100 square feet UFA
8. Drive-in restaurants or similar drive-in uses for the sale of food, beverages or refreshments	1	Per each 50 sq. ft. UFA, plus
	1	per each three employees with a minimum total of 20 parking spaces
9. Furniture, appliances, and household equipment, repair shops, hardware stores and other similar uses	1	Per each 800 sq. ft. of UFA, plus
	1	Per each three employees
10. Miniature or "Par 3" golf course	3	Per each hole, plus
	1	per each three employees
11. Mortuary establishment	1	Per each fifty sq. ft. of parlor area

12. Motels and hotels	1	Per each guest bedroom, plus
	1	per each three employees, plus amount required for accessory uses
13. Personal service establishments (not otherwise provided for herein)	1	Per each 800 sq. ft. of UFA, plus
	1	per each three employees
14. Restaurants and other establishments (other than drive-in restaurants) in which is conducted the sale and consumption on the premises of food beverages or refreshments	1	Per each 100 sq. ft. UFA, plus
	1	per each three employees
15. Retail stores, except as otherwise specified herein	1	Per each 800 sq. ft. of UFA, plus
	1	per each three employees
<b>Offices</b>		
1. Banks, businesses, and professional offices	1	Per each 300 sq. ft. UFA
2. Medical clinic and dental clinic	3	Per each staff or visiting doctor plus
	1	Per each three employees
<b>Industry</b>		
1. Industrial or manufacturing establishments, research establishments	1	Per each two employees
2. Warehouses and storage buildings	1	Per each employee OR
	1	Per each 1,700 sq. ft. GFA (whichever is greater)
<b>Recreational</b>		
General Minimum Standards	1	Per four persons for whom the development is designed to accommodate

- D. Design Standards. The off-road parking required by this article shall be provided in accordance with the following requirements:
1. Each parking space shall be at least ten (10) feet in width and twenty (20) feet in length.
  2. Except for one (1) and two (2) family dwellings, each off-road parking area shall be connected to a driveway at least twenty (20) feet in width.
  3. Driveways to a parking area opening onto a road shall not be closer than eighty (80) feet to an intersection.
  4. No parking or loading space shall be accessible to a road except by a driveway.

## **SECTION 4.22 WIND ENERGY SYSTEMS**

Sections 4.22.1 through 4.22.6 provide the regulations and requirements for the location and construction of wind energy systems (WES) in Empire Township.  
*(As amended by Ordinance #2010-02, effective December 3, 2010)*

### **SECTION 4.22.1 (WIND ENERGY SYSTEMS) DEFINITIONS**

**ANEMOMETER TOWER** means a freestanding tower containing anemometer instrumentation designed to provide present moment wind data for use by a supervisory control and data acquisition (SCADA) system.

**AMBIENT SOUND LEVEL** is the amount of background noise normally existing (due to customary and regularly occurring lawful activities) at a given location prior to the installation of a wind energy system. The ambient sound level is measured on the dB(A) weighted scale as defined by the American National Standards Institute.

**ANSI** means the American National Standards Institute.

**BLADE CLEARANCE** means the minimum distance between the lowest point of the blade or air foils and the ground.

**BLADE GLINT** means the intermittent reflection of the sun off the surface of the blades of a wind energy system.

dB(A) means the sound pressure level in decibels. It refers to the “A” weighted scale defined by ANSI. This is a method for weighting the frequency spectrum to mimic the human ear.

DECIBEL means the unit of measure used to express the magnitude of sound pressure and sound intensity.

IEC means the International Electrotechnical Commission. (The IEC is the leading global organization that prepares and publishes international standards for all electrical, electronic and related technologies.)

ISO means the International Organization for Standardization. (ISO is a network of the national standards institutes of 156 countries.)

LEASE UNIT BOUNDARY means boundary around property leased for purposes of a Wind Energy System, including parcels adjacent to the parcel on which the Wind Energy System tower or equipment is located.

NET METERING means a utility billing method that applies the full retail rate to the net of the bidirectional flow of kilowatt hours across the customer interconnection with the utility distribution system, during a billing period or time-of-use pricing period. A negative net metered quantity during the billing period or during each time-of-use pricing period within the billing period reflects net excess generation for which the customer is entitled to receive credit under Section 177(4) of the Clean, Renewable, and Efficient Energy Act (Act 295 of 2008, M.C.L. 460.1001 et seq.).

ON SITE WIND ENERGY SYSTEM means a land use for generating electric power from wind and is an accessory use that is intended to primarily serve the needs of the consumer at that site.

ON SITE WIND ENERGY SYSTEM, MAJOR means an on site WES with a tower height greater than forty (40) feet but not exceeding one hundred fifty (150) feet, or a system consisting of more than one (1) tower of any height not exceeding one hundred fifty (150) feet.

ON SITE WIND ENERGY SYSTEM, MINOR means an on site WES with a tower height of forty (40) feet or less.

ROTOR means an element of a wind energy system that acts as a multi-bladed airfoil assembly, thereby extracting through rotation, kinetic energy directly from the wind.

SCADA means supervisory control and data acquisition system. (This is a means of remote operation control and observation of the wind energy system or systems.)

SHADOW FLICKER means the moving shadow created by the sun shining through the

rotating blades of the wind energy system. The amount of shadow flicker created by a wind energy system is calculated by a computer model that takes into consideration tower location, elevation, tree cover, location of all structures, wind activity and sunlight.

**SOUND PRESSURE** means an average rate at which sound energy is transmitted through a unit area in a specified direction. The pressure of the sound measured at a receiver.

**SOUND PRESSURE LEVEL** means the sound pressure mapped to a logarithmic scale and reported in decibels (dB).

**SURVIVAL SPEED** means the maximum wind speed a turbine and tower is designed to withstand before sustaining damage.

**TOWER HEIGHT MEASURING LINE** means the line on a lot used in calculating the maximum permissible tower height, and includes all of the following:

- a. side yard setback line;
- b. rear yard setback line;
- c. a line 10 feet on the lot side of a right-of-way line; and
- d. a line 10 feet on the lot side of a front property line.

Tower Height Measuring Lines

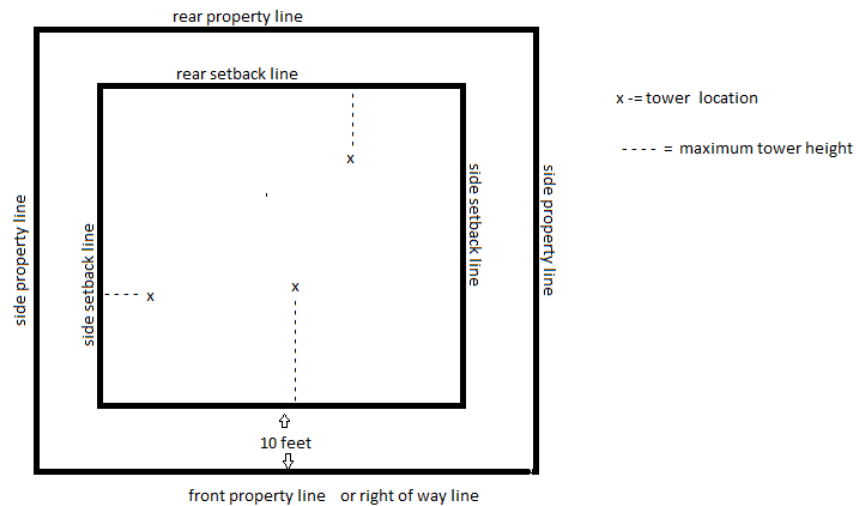


Figure 4.22.1 Tower Height Measuring Lines

**UTILITY GRID WIND ENERGY SYSTEM** means a land use for generating power by use of wind at multiple tower locations in a community and includes accessory uses such as but not limited to a SCADA TOWER, electric substation. A UTILITY GRID WIND ENERGY SYSTEM is designed and built to provide electricity to the electric

utility grid.

WIND ENERGY SYSTEM (WES) means a land use for generating power by use of wind; utilizing use of a wind turbine generator and includes the turbine, blades, and tower as well as related electrical equipment. A WES may include one or more wind towers. This does not include wiring to connect the wind energy system to the grid. Please refer to ON- SITE WIND ENERGY SYSTEM and UTILITY GRID WIND ENERGY SYSTEM.

WIND SITE ASSESSMENT means an assessment to determine the wind speeds at a specific site and the feasibility of using that site for construction of a UTILITY GRID wind energy system.

### **SECTION 4.22.2 (WIND ENERGY SYSTEMS) GENERAL PROVISIONS**

1. For purposes of regulation, wind energy systems are separated into three (3) categories as follows: minor on-site use wind energy systems; major on-site use wind energy systems; and utility grid wind energy systems.
2. The following regulations apply to all wind energy systems:
  - A. Access. All ground mounted electrical and control equipment or structures shall be labeled and secured to prevent unauthorized access. All anemometer and wind energy towers shall be designed and installed so that there are no step bolts or ladder readily accessible to the public for a minimum height of 12 feet above the ground. The Planning Commission may waive such requirements if it determines that other actions are taken which provide equal or better safety.
  - B. Blade Clearance. Blade Clearance shall be that recommended by the tower manufacturer but shall not be less than twenty (20) feet.
  - C. Braking System. All wind energy systems shall be equipped with an automatic braking, governing or feathering system to prevent uncontrolled rotation, over-speeding, and excessive pressure on the tower structure, rotor blades and other wind energy components.
  - D. Construction Codes, Towers, & Interconnection Standards. All wind energy systems shall comply with all applicable construction and electrical codes and building permit requirements. All wind energy systems expected or intended to engage in net-metering or some version of a feed-in tariff shall comply with Michigan Public Service Commission and Federal Energy Regulatory Commission standards.

E. All wind energy systems shall comply with Federal Aviation Administration requirements, the Michigan Airport Zoning Act (Public Act 23 of 1950, MCL 259.431 et seq.), the Michigan Tall Structures Act (Public Act 259 of 1959, MCL 259.481 et seq.), and local jurisdiction airport overlay zone regulations, as amended or succeeded.

F. Discontinuation. A wind energy system shall be considered a discontinued use after 1 year without energy production, unless a plan is developed and submitted to the Empire Township Planning Commission outlining the steps and schedule for returning the system to service. All wind energy systems and accessory facilities shall be removed to a depth of three feet below ground level within 90 days of the discontinuation of use.

G. Disposal Of Hazardous Materials. All spent lubricants, cooling fluids, and any other hazardous materials shall be properly and safely removed in a timely manner.

H. Environment: All wind energy systems shall comply with the applicable parts of the Michigan Natural Resources and Environmental Protection Act (Act 451 of 1994, M.C.L. 324.101 et seq.) including, but not limited to:

- i. Part 31 Water Resources Protection (M.C.L. 324.3101 et seq);
- ii. Part 91 Soil Erosion and Sedimentation Control (M.C.L. 324.9101 et seq);
- iii. Part 301 Inland Lakes and Streams (M.C.L. 324.30101 et seq);
- iv. Part 303 Wetlands (M.C.L. 324.30301 et seq);
- v. Part 323 Shoreland Protection and Management (M.C.L. 324.32301 et seq);
- vi. Part 325 Great Lakes Submerged Lands (M.C.L. 324.32501 et seq); and
- vii. Part 353 Sand Dunes Protection and Management (M.C.L. 324.35301 et seq).

The applicant shall provide a copy of each respective permit with requirements, mitigation and limitations of those permits reflected on the site plan.

- I. Guy Wires. For all guyed towers, visible and reflective objects, such as plastic sleeves, reflectors or tape, shall be placed on the guy wire anchor points and along the outer and innermost guy wires up to a height of 8 feet above the ground.
- J. Engineering Safety. The structural integrity of the wind energy system shall conform to the design standards of the International Electrotechnical Commission; specifically IEC 61400-1 "Wind Turbine Safety and Design," IEC 61400-2 "Small Wind Turbine Safety," IEC 61400-22 "Wind Turbine Certification," and IEC 61400-23 "Blade Structural Testing," as amended or succeeded.
- K Lighting: No portion of any wind energy system shall be lighted except to be in compliance with Federal Aviation Administration requirements, the Michigan Airport Zoning Act (Public Act 23 of 1950, MCL 259.431 et seq.), the Michigan Tall Structures Act (Public Act 259 of 1959, MCL 259.481 et seq.), and any local airport overlay zone regulations. The minimum FAA lighting standards shall not be exceeded. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to surrounding views.
- L. Other Design Requirements. No wind energy system shall be used for displaying any advertising except for identification of the turbine manufacturer.
- M. Shadow Flicker and Blade Glint. A utility grid wind energy system shall be designed and operated so that shadow flicker from moving blades or reflected blade glint will not occur off the site on which the facility is located. Shadow flicker or blade glint expected to fall on a roadway or a portion of an off-site property may be acceptable under the following conditions:
- 1) The flicker or glint will not exceed thirty (30) hours per year; and
  - 2) The flicker or glint will fall more than one hundred (100) feet from an existing or future residence; or
  - 3) The traffic volumes are less than one hundred (100) vehicles per day on the roadway.
- N. Signal Interference. Operation of a wind energy system shall not interfere with communication systems such as, but not limited to, radio, telephone, television, satellite, or emergency communication systems.



- O. Survival Speed. Neither the turbine nor tower shall be erected unless the survival speed as certified by the manufacturer is more than 90 mph.
  - P. Utilities. All utility lines required by or serving a wind energy system shall be placed underground unless the placement of lines underground would result in an environmental impairment or the site location and placement is governed by another governmental authority, such as the Michigan Public Services Commission.
  - Q. Utility Notification. No wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. If a WES is connected to a public utility for net-metering or feed-in tariff purposes, the owner/operator will need an interconnection agreement with the local utility prior to operation. Off-grid systems shall be exempt from this requirement.
3. Anemometer Towers. The construction, installation, or modification of an anemometer tower shall require a land use permit and shall conform to all applicable local, state and federal safety, construction, environmental, electrical, communications, and FAA requirements. An anemometer tower shall be permitted for no more than twelve (12) months in preparation for locating an On-site Use Wind Energy System and for no more than two (2) years for Utility Grid Wind Energy Systems. These time limitations can be waived by the Planning Commission if the anemometer tower also serves as a SCADA for the on-going operation of the WES.
- A. Only one anemometer tower shall be allowed on any site for which a minor on site WES or a major on site WES is planned, but such tower must be removed before the minor on site WES or the major on site WES is constructed.
  - B. One or more anemometer towers may be constructed on a site in conjunction with a planned or existing utility grid WES.
  - C. All anemometer towers shall conform to all of the height, locational and other restrictions provided in this ordinance for all other WES towers.

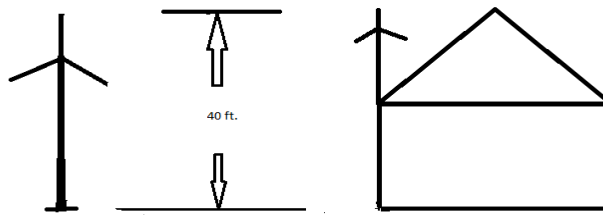
**SECTION 4.22.3 (WIND ENERGY SYSTEMS) Minor On Site Use Wind Energy Systems**

- 1. A minor on site WES which meets the following standards is an accessory use which must be located on the same lot as the existing principal use and is permitted outright in any zoning district.

2. A minor on site WES shall not be allowed:
  - A. in any lake, river or stream or on any structure permitted in a lake, river or stream;
  - B. in a yard on the lake side of a residence or other occupied structure on the shores of any lake, river or stream;
  - C. in a yard on the road side of a residence or other occupied structure on M-72, M-22, County Road 616 and County Road 677, or such other road as may be determined to be a scenic roadway under this zoning ordinance, except for one of the following situations:
    - 1) A minor on site WES is allowed in a yard on the road side of a residence or other occupied structure on a scenic roadway if that same lot also has frontage on a lake, river or stream, provided further that all other requirements of this ordinance have been met;
    - 2) A minor on site WES may be allowed by variance granted by the zoning board of appeals if a property owner can establish that the yard on the road side of a residence or other occupied structure on a lot on a scenic roadway is the only possible location where the wind energy system can be located on that lot, provided further that all other requirements of this ordinance, including the standard conditions necessary for the granting of a variance, have been met.
3. Conditions. A minor on site WES shall require the issuance of a land use permit by the Zoning Administrator, which permit shall be issued if the following conditions, in addition to the general conditions, are met.
  - A. The on-site use wind energy system shall:
    1. consist of no more than one tower;
    2. be designed to primarily serve the needs of a home, farm, or small business on the same lot, and shall have a rated capacity of 25 kilowatts or less;
    3. be a freestanding tubular monopole structure with a non-reflective matte finish.

- B. Tower height. A minor on site use WES shall not exceed a height, measured to the top of the tower with the top of the blade in its vertical position, which is the lesser of:
1. forty (40) feet; or
  2. the distance from the WES to the nearest tower height measuring line.

Figure 4.22.3 Measuring 40 foot height



- C. Setbacks. A minor on site use wind energy system shall not be placed within the setbacks for the zoning district in which it is located. For the purpose of determining setbacks, a Lease Unit Boundary shall not be considered if the distance to such boundary extends across a road right-of-way.
- D. Sound Pressure Level: The sound pressure level for a minor on-site WES located in the residential zoning district or on a lot of one acre in size or less shall not exceed 40 dB(A) measured at the property lines or the lease unit boundary, whichever is farther from the WES. For all other properties, the sound pressure level for a minor on-site wind energy system shall not exceed 55 dB(A) measured at the property lines or the lease unit boundary, whichever is farther from the WES. For the purpose of determining sound pressure levels, a Lease Unit Boundary shall not be considered if the distance to such boundary extends across a road right-of-way.

If an applicant can establish that the ambient sound level measured at the property lines or the lease unit boundary, whichever is farther from the WES exceeds the maximum sound level established herein, the planning commission, in its discretion, may permit a

higher sound level for the installation, but such sound level may not exceed the ambient dB(A) plus 5 dB(A).

The required sound pressure level shall not be exceeded for more than three minutes in any hour of the day.

E. Net Metering: A minor on site use wind energy system shall be subject to any law and administrative rules governing net metering as established by the State of Michigan.

#### **SECTION 4.22.4 (WIND ENERGY SYSTEMS) MAJOR ON SITE WIND ENERGY SYSTEMS**

1. A major on site WES which meets the following standards may be permitted as a special land use in all zoning districts except the Residential District.

2. Conditions. A major on site WES shall require the issuance of a special land use permit by the Planning Commission, which permit shall be issued if the following conditions, in addition to the general conditions, are met.

A. The major on site use wind energy system may consist of more than one tower upon a finding by the planning commission that all of the following conditions exist:

1. permitting more than one tower will not have an adverse aesthetic impact on the scenic beauty of the area, a primary reason for the tourism industry which is necessary for the area's economic survival;
2. permitting more than one tower will not have an adverse aesthetic impact on neighboring properties;
3. permitting more than one tower is necessary to generate sufficient power to be utilized on the site and will not result in the system generating more power than the site is capable of utilizing;
4. buffering is provided to minimize the view of the towers from adjacent properties;

- B. The major on site use wind energy system shall:
1. be designed to primarily serve the needs of a home, farm, or small business located on the same lot;
  2. have a tower height, measured to the top of the tower with the top of the blade in its vertical position, not exceeding the lesser of
    - a. one hundred fifty (150) feet; or
    - b. the distance from the WES to the nearest tower height measuring line.
  3. have no signage on the wind energy system other than the identification of the manufacturer;
  4. shall be a freestanding tubular monopole structure and shall have a non-reflective matte finish, except that the planning commission may, in its sole discretion, permit a different type of structure if it determines that the proposed structure will have no greater adverse impact on property values or on the aesthetics and rural character of the town ship than a freestanding tubular monopole structure with a non-reflective grey matte finish.

C. Setbacks. A major on site use WES shall not be placed within the setbacks for the zoning district in which it is located. For the purpose of determining setbacks, a Lease Unit Boundary shall not be considered if the distance to it extends across a road right-of-way.

D. Fall Zone. To provide a safe fall zone, in addition to the tower height limitations set forth herein, no part of a WES structure, including any guy wire anchors, may extend closer than the permissible tower height to any above ground utility lines or environmentally sensitive areas (bird habitats, wetlands, etc.). In the case of an environmentally sensitive area, the Planning Commission may adjust the setback upward or downward before approval of the major on site use wind energy system special land use permit following consideration of an environmental analysis prepared by an environmental engineer and acceptance of proposed mitigation activities.

E. Sound Pressure Level: The sound pressure level shall not exceed 55 dB(A) measured at the property lines or the lease unit boundary, whichever is farther from the source of the noise. For the purpose of determining sound pressure levels, a Lease Unit Boundary shall not be considered if the distance to such boundary extends across a road right-of-way. This sound pressure level shall not be exceeded for more than three minutes in any hour of the day. If the

ambient sound pressure level exceeds 55 dB(A), the standard shall be ambient dB(A) plus 5 dB(A).

F. Net Metering: A major on site use WES shall be subject to the existing Michigan Public Service Commission administrative rules governing net metering.

G The major on site use wind energy system shall comply with such other requirements as the planning commission, in its sole discretion, determines are necessary to protect the public health, safety and general welfare.

#### **SECTION 4.22.5 UTILITY GRID WIND ENERGY SYSTEMS (WIND ENERGY SYSTEMS)**

1. An utility grid WES may be permitted as a special land use in the Agricultural Conservation district, and such system shall meet the following special conditions in addition to the general conditions set forth above.

2. Special Conditions. An utility grid WES shall require the issuance of a special land use permit by the Planning Commission, which permit shall be issued if the following conditions, in addition to the general conditions, are met.

A. Minimum Acreage. A utility grid WES shall be located on a site which is no less than twenty (20) acres in size.

B. Setbacks. An utility grid WES shall not be placed within the setbacks for the Agricultural Conservation District. For the purpose of determining setbacks, a Lease Unit Boundary shall not be considered if the distance to it extends across a road right-of-way.

C. Tower height. The tower heights allowed for a utility grid WES shall be any heights permitted by the Planning Commission taking into consideration the height required to efficiently access the available wind energy, the safety of the surrounding properties and the general public, and the visibility of the WES from scenic roadways and residentially zoned districts.

D. Fall Zone. To provide a safe fall zone, the distance between a utility grid WES and the nearest tower height measuring lines shall be equal to, or greater than, the height of the WES tower including the top of the blade in its vertical position plus ten (10) feet. No part of the WES structure, including any guy wire anchors, may extend closer than the distance of the required fall zone to any tower measuring line, road right-of-way, other right of way or easement, above ground utility lines, environmentally sensitive areas (bird habitats, wetlands, etc.). In the case of an environmentally sensitive area, the Planning

Commission may adjust the setback upward or downward before approval of the utility grid WES special land use permit following consideration of an environmental analysis prepared by an environmental engineer and acceptance of proposed mitigation activities.

E. Maintenance Facility. A utility grid WES may include a maintenance facility for storing trucks, service equipment, spare parts, lubricants, and other supplies.

F. Any operations, maintenance, storage, office building, sub-station, or ancillary equipment shall comply with any property set-back requirement of the Agricultural Conservation District. Overhead transmission lines and power poles shall comply with the set-back and placement requirements applicable to public utilities.

G. Sound Pressure Level: The sound pressure level shall not exceed 55 dB(A) measured at the property lines or the lease unit boundary, whichever is farther from the WES. For the purpose of determining sound pressure levels, a Lease Unit Boundary shall not be considered if the distance to such boundary extends across a road right-of-way. This sound pressure level shall not be exceeded for more than three minutes in any hour of the day. If the ambient sound pressure level exceeds 55 dB(A), the standard shall be ambient dB(A) plus 5 dB(A).

Where, however, an adjacent parcel contains a residential use, school, hospital, or park, and the ambient sound level that exists at the property line or lease unit boundary is less than 55 dB(A), the sound produced by an utility grid WES shall not exceed the ambient sound level.

H. The system shall be designed to prevent unauthorized access to electrical and mechanical components and shall have access doors that are kept securely locked at all times when service personnel are not present.

I. A sign shall be posted near the tower or any operations, maintenance, storage or office building that contains emergency contact information. Signage placed at the road access shall be used to warn visitors about the potential danger of falling ice.

J. Appearance, Color, and Finish. The utility grid WES shall remain painted or finished the color or finish that was originally applied by the manufacturer, unless an alternative is approved in the special land use permit. All towers within a utility grid system, including any anemometer tower shall be a uniform color and finish.

K. Signage. An utility grid wind energy system shall have only one sign, not to exceed two (2) square feet in area, posted at the base of the tower or on a security fence. The sign shall contain a) Warning of high voltage, b) Manufacturer's and owner/operator's name, and c) Emergency contact numbers.

3. Discontinuation and decommissioning. A utility grid WES shall be removed to a depth of three feet below ground level within 90 days of the discontinuation of use.

A utility grid WES shall have a decommissioning plan outlining the anticipated means and cost of removing the WES at the end of its serviceable life or upon becoming a discontinued use. The plan shall contain cost estimates for the decommissioning of the system, which cost estimates shall be made by a third-party qualified professional, such as a Professional Engineer, a contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning.

The owner or operator of a utility grid WES shall post with the Township funds in an amount equal to the gross decommissioning costs. Decommissioning funds may be in the form of a performance bond, surety bond, or other form of financial assurance as may be acceptable to the Planning Commission. If the owner/operator indicates an intention to restart the system, the decommissioning process may be extended at the discretion of the Planning Commission.

#### **SECTION 4.22.6 PERMIT APPLICATION AND SITE PLAN REVIEW REQUIREMENTS (WIND ENERGY SYSTEMS)**

1. An application for a land use permit for a minor on-site use WES shall be submitted to and on a form prepared by the Zoning Administrator.

2. An application for a land use permit for a major on-site use WES or a utility grid WES shall be submitted to and on a form prepared by the Planning Commission. The Planning Commission can not consider the issuance of a special land use permit until it receives a complete application meeting the requirements of this section together with all permits or approvals that may be required from other agencies.

3. The applicant for a special land use under this section must provide a site plan meeting the requirements set forth in Article 6 as well as the requirements set forth in this section. The application shall include the following:

A. Documentation that sound pressure level, construction code, tower, interconnection (if applicable), and safety requirements have been



reviewed and the submitted site plan is prepared to show compliance with these issues.

- B. Proof of the applicant's public liability insurance for the project.
  - C. A copy of that portion of the applicant's lease(s) with the land owner(s) granting authority to install the anemometer tower and/or utility grid wind energy system; legal description of the property, including any property being leased. The site plan shall show the boundaries of the leased property.
  - D. Proposed phases for construction, along with a construction schedule.
  - E. The project area boundaries including lease unit boundaries.
  - F. The location, height, and dimensions of all existing and proposed structures and fencing.
  - G. The location, grades, average cross section and dimensions of all temporary and permanent on-site and access roads from the nearest county or state maintained road.
  - H. Any new infrastructure related to the project.
4. Additional Requirements for Utility Grid Wind Energy Systems. In addition to the above, the application and site plan for a proposed utility grid WES shall provide the following:

- A. A copy of a sound modeling and analysis report. The site plan also shall show locations of equipment identified as a source of sound, how that equipment is placed, and the sound levels based on the analysis, so that the Planning Commission can be assured that the utility grid will not exceed the maximum permitted sound levels.

The sound modeling and analysis shall conform to IEC 61400 and ISO 9613. After installation of the utility grid WES, sound pressure level measurements shall be done by a third party qualified professional according to the procedures in the most current version of ANSI S12.18. All sound pressure levels shall be measured with a sound meter that meets or exceeds the most current version of ANSI S1.4 specifications for a Type II sound meter. Documentation of the sound pressure level measurements shall be provided to the local government within 60 days of the commercial operation of the project.

- B. A copy of an environmental analysis by a third party qualified professional to identify and assess any potential impacts on the natural environment including, but not limited to wetlands and other fragile ecosystems, historical and cultural sites, and antiquities. The application for the special land use permit and the proposed site plan shall show mitigation measures to minimize potential impacts on the natural environment including lakes, rivers, streams, wetlands, animal habitats and any other environmentally sensitive areas. Such areas shall include, but are not limited to, major wildlife and avian migratory corridors, wilderness areas, national parks, and wildlife refuges. The applicant shall identify and evaluate the significance of any net effects or concerns that will remain after mitigation efforts.
  
- C. A copy of an avian and wildlife impact analysis by a third party qualified professional to identify and assess any potential impacts on wildlife and endangered species. The applicant shall take appropriate measures to minimize, eliminate or mitigate adverse impacts identified in the analysis, and shall show those measures on the site plan. The applicant shall identify and evaluate the significance of any net effects or concerns that will remain after mitigation efforts.
  - 1. Sites requiring special scrutiny include wildlife refuges, other areas where birds and/or bats are highly concentrated, such as wooded ridge tops that attract birds and bats, sites that are frequented by federally and/or state listed endangered species of birds and bats, significant bird migration pathways, and areas that have landscape features known to attract large numbers of raptors. At a minimum, the analysis shall include a thorough review of existing information regarding species and potential habitats in the vicinity of the project area. Where appropriate, surveys for bats, raptors, and general avian use should be conducted. The analysis shall include the potential effects on species listed under the federal Endangered Species Act and Michigan's Endangered Species Protection Law.
  
  - 2. The analysis shall indicate whether a post construction wildlife mortality study will be conducted and, if not, the reasons why such a study does not need to be conducted
  
- D. A copy of a shadow flicker and blade glint analysis at occupied structures on adjacent properties to identify the locations of shadow flicker and blade glint that may be caused by the project and the expected durations of the flicker and blade glint at these locations from sun-rise to sun-set over the course of a year. The site plan shall identify

problem areas where shadow flicker and blade glint may affect the occupants of the structures and show measures that shall be taken to eliminate or mitigate the problems.

- E. A Discontinuation and Decommissioning Plan for the site after completion of the project which includes the following supporting documentation:
  - 1. The anticipated life of the project.
  - 2. The estimated decommissioning costs net of salvage value in current dollars.
  - 3. The method of ensuring that funds will be available for decommissioning and restoration.
  - 4. The anticipated manner in which the project will be decommissioned and the site restored.
  
- F. A compliance summary showing how the project will comply with all of the requirements of the relevant federal, state, and/or local regulatory agency requirements.
  
- G. A description of the traffic logistics associated with transportation and construction of the components and equipment comprising the utility grid WES, including:
  - 1. Construction transport routes for bringing the components and equipment to the project site.
  - 2. Plans for intersection reconstruction where required.
  - 3. Plans for restoration of roads, curbing, culverts, signage, land features, buildings or other infrastructure altered during construction transportation.
  - 4. A construction transportation timetable
  - 5. Description of at least one alternative transport route and the rationale for the route chosen.
  
- H. A description of the complaint resolution process developed by the applicant to resolve complaints from nearby residents concerning the construction or operation of the project. The process must include the option to use an independent mediator or arbitrator and shall include a

time limit by which the applicant will act on a complaint. The process shall not preclude the local government from acting on a complaint. During construction and operation, the applicant shall maintain and make available to nearby residents a telephone number where a project representative can be reached during normal business hours.

- I. The final determination of whether a third-party qualified professional has the necessary neutrality to provide a reliable analysis of the relevant professional area under consideration shall be at the discretion of the Planning Commission. Every attempt should be made to assure that the qualified professional be a resident of Michigan or an employee of a Michigan firm in order to promote and support the Michigan economy.
  - J. A copy of an analysis by a third party qualified professional of possible interference with aeronautic and/or communication signals.
5. Utilities. The planning commission may require power distribution and transmission lines within agricultural and residential zones to be placed underground if it finds that such underground installation can be done without any environmental impairment, unless the site location and placement of such lines is governed by another governmental authority, such as the Michigan Public Services Commission.
6. Visual Impact. Utility grid wind energy system projects shall use tubular towers and all utility grid wind energy systems in a project shall be finished in a single, non-reflective matte finished color. A project consisting of more than one tower shall be constructed using wind energy systems of similar design, size, operation, and appearance throughout the project. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades. Nacelles may have lettering that exhibits the manufacturer and/or owner's identification. The applicant shall avoid state or federal scenic areas and significant visual resources listed in the Empire Township Master Plan.
7. Performance Security. The owner or developer of the utility grid WES shall provide a performance guarantee, as provided in section 6.11 of this zoning ordinance, to cover the cost of making repairs to public roads damaged by the construction of the wind energy system.

In addition, the Planning Commission may require the owner or developer of the utility grid wind energy system to provide a performance guarantee, as provided in section 6.11 of this zoning ordinance, to cover the cost of the Discontinuation and Decommissioning Plan.

## ARTICLE 5 SITE DEVELOPMENT STANDARDS

The site developments standards for each use are required to be met prior to any approval for that specific use. The land use district (Articles 7-12) specifically lists which uses are Permitted by Right and which ones are allowed with Special Use Approval.

### **SECTION 5.1 ROAD AND DRIVEWAY ACCESS**

Except as may otherwise be provided in this Ordinance, the following are the minimum standards for road and driveway access. Homeowners and developers are responsible for insuring that the design, construction, and maintenance of roads and driveways leading to their residences and associated structures are adequate to permit access for fire and rescue vehicles.

- A. Access for roads and/or driveways serving up to four (4) lots:
  - 1. Width requirement - twelve (12) feet maintained open and unobstructed.
  - 2. Right-of-way requirement - thirty (30) feet.
- B. Access for roads and/or driveways serving from five (5) to fourteen (14) lots; or less than five thousand (5,000) square feet of commercially developed building; or less than one thousand (1,000) feet in length:
  - 1. Width requirement - eighteen (18) feet maintained open and unobstructed.
  - 2. Right-of-way requirement - thirty (30) feet.
- C. Access for roads and/or driveways serving more than fourteen (14) lots; or more than five thousand (5,000) square feet of commercially developed building; or exceeding one thousand (1,000) feet in length:
  - 1. Width requirement - twenty-four (24) feet maintained open and unobstructed.
  - 2. Right-of-way requirement - forty (40) feet.
- D. Cul-de-sacs: Diameter of right-of-way required: One hundred twenty (120) feet. Outside edge of road shall be within ten (10) feet of cul-de-sac circumference.

- E. Setbacks: All roads shall meet the setbacks listed in the applicable land use district. In addition, roads shall be a minimum of twenty (20) feet from the property line. Roads shall be a minimum of one hundred (100) feet from the road right-of-way from a state highway and shall be a minimum of seventy five (75) feet from a county road.

## **SECTION 5.2 BED AND BREAKFAST**

A Bed and Breakfast shall meet Health Department regulations and shall contain a maximum of five (5) bedrooms available for the use of paying guests.

## **SECTION 5.3 COMMUNICATIONS TOWER**

The intent is to regulate location and size of communications towers so as not to detract from the rural character of Empire Township. Communications towers are permitted that meet the following requirements:

- A. Communications towers are to be located only in Section 22 (T28NR14W) of Empire Township.
- B. The base of the communications tower and wire cable anchor points shall be fenced. Minimum fence height to be five (5) feet.
- C. A communications tower shall be constructed within a “fall zone”, as determined, certified and approved by a professional engineer.
- D. No part of any communications tower or antenna including guide wires shall be constructed, located or maintained at any time, on or upon any required set-back area for the district in which the antenna or tower is to be located. The fall zone of the tower or antenna shall not extend into the required setback areas.
- E. The applicant shall provide verification that the antenna mount, structure and fall zone have been reviewed, certified and approved by a professional engineer and that the installation is in compliance with all applicable codes.
- F. A communications tower must meet the standards of the Federal Aviation Administration and the Federal Communications Commission.
- G. A communications tower shall be located so there is room for vehicles doing maintenance to maneuver on the property owned and or leased by the Applicant.

- H. The height of a communications tower shall not exceed one hundred ninety-nine (199) feet from grade.
- I. A communications tower shall not be lighted unless required by the Federal Aviation Administration.
- J. Existing onsite vegetation shall be preserved to the maximum extent practicable.
- K. A communications tower shall not be used for display advertising or identification of any kind except as required for safety and emergency purposes.
- L. No employees shall be located on the site on a permanent basis to service or maintain the communication tower or any antenna or other device placed thereon. Occasional or temporary repair and service activities are excluded from this restriction.
- M. A communications tower shall be removed by the property owner or lessee within six (6) months after active use ceases. If the property owner or lessee fails, refuses or neglects to remove, or cause to be removed, such tower within such six (6) month period, the communications tower shall be deemed a nuisance and the Township may enter upon the property and remove such tower. All costs incurred by the Township in removing the tower (including all administrative and professional fees) shall be the responsibility of the property owner/lessee and the Township may specially assess such costs against the property and shall have a lien on the property in the full amount of such costs which shall be enforceable in the same manner as unpaid property taxes.
- N. Any accessory structures shall not exceed a total of six hundred (600) square feet.
- O. Shared use of tower: To discourage the proliferation of communication towers, shared use of tower structures is both permitted and encouraged. Placement of more than one tower on a land site may be permitted if all setbacks, design and landscape requirements are met for each tower. New tower applications shall not be accepted unless the applicant makes a good faith effort to substantially demonstrate that no existing or planned tower can accommodate the applicants' antenna or transmitter. The application shall include documentation regarding the availability of any existing or approved, but unbuilt, communication towers within the transmission area that may meet the needs of the applicant. The supplied documentation shall evaluate the following factors:

1. Structural capacity of the communication towers.
2. Geographic service area requirements.
3. Mechanical or electrical incompatibilities.
4. Inability or ability to locate equipment on existing communications towers.
5. Any restriction or limitation of the Federal Communication Commission that would preclude the shared use of the communication tower.

#### **SECTION 5.4 GUEST HOUSE**

- A. Maximum: One (1) guest house per lot.
- B. Lot size: The lot shall be a minimum of twice the size of the required minimum lot size for parcels within the applicable land use district.
- C. Setbacks: Same as for the principal use.
- D. The square footage for a guest house shall be a maximum of 900 square feet.

#### **SECTION 5.5 HOME BASED BUSINESS**

Intent: Empire Township recognizes that many residents feel the necessity or desire to work at home. Increasing the working opportunities for individuals within the Township will increase employment options, thereby creating a source of income for residents. These businesses are often based on the recent advances in communications and electronics that have reduced the need for businesses to be located adjacent to production or population centers. Businesses that are largely in communications, professions, consulting, insurance, design, engineering, home services, and similar businesses frequently only depend on electronic communications for the business operation.

The Township also recognizes the right of all residents and property owners to be free from actual or potential nuisance that may be caused by non-residential activities conducted in a residential zone. The intent of this section is to provide standards to ensure home based businesses are compatibly with other allowed uses in residential zones, and thus maintain and preserve the residential character.



There are two types of home based businesses: Home Occupation and Cottage Industry. A home occupation is a commercial activity that is conducted within the residential dwelling unit or garage by a person residing on the same lot. A cottage industry is a commercial activity that is conducted on the premises in a separate accessory structure.

A. The following shall apply to all home based business (home occupation and cottage industry):

1. The home based business shall be incidental and subordinate to the principal use of the lot or parcel.
2. The use shall not detract from the residential character or the welfare of the surrounding properties, such as with increased noise, septic disposal, well water withdraw, traffic, lighting, or parking.
3. There shall be no exterior evidence of the home based business except for an unlighted nameplate sign not to exceed four (4) square feet.
4. If there is evidence that the restrictions listed for a home-based business have been violated, then a home-based business shall not be permitted on that parcel for one year, unless there is a transfer of ownership.
5. Traffic and delivery or pick up of goods shall not exceed that normally resulting from or associated with residential uses.
6. No machinery, mechanical devices or equipment shall be employed in the conduct of a home based business which generates any noise, vibration, radiation, odor, glare, smoke, steam, electrical interference or other conditions not typically associated with the use of the premises for residential purposes.
7. No process, chemicals, or hazardous materials shall be used or stored on sites which are contrary to State or Federal laws.
8. Adequate off-road parking shall be provided for patrons, clients, and off-site employees.
9. The hours shall not constitute a nuisance.

B. The following shall apply to all home occupations:

1. Home occupations are permitted in all land use districts in which single-family dwelling units are a permitted use.

2. Home occupations shall be operated in their entirety within the dwelling or within an attached or detached garage. The space for the home occupation shall not exceed 25% of the total square footage of the principal dwelling unit, excluding the size of the garage.
3. Home occupations shall be conducted only by the person or persons occupying the premises as their principal residence. A maximum of two (2) individuals not residing at the residence may be permitted to work at the residence.
4. Additions to the dwelling or garage for the purpose of conducting the home occupation shall have an architectural style that is compatible with the architecture of the dwelling unit and shall be designed so that the addition can be used for residential purposes if the home occupation is discontinued.
5. The outdoor storage of goods and/or materials associated with the home occupation is prohibited.

C. The following shall apply to all Cottage Industries:

1. Cottage industries may be permitted with approval of a special land use permit by the Planning Commission in the Agricultural Conservation and the Gateway land use districts. Cottage industries shall be reviewed on the basis of individual merit. A periodic review of each cottage industry may be performed to ensure the conditions of approval are followed.
2. If the premises and/or lot is sold, leased, or rented to a party other than the applicant, the permit for the cottage industry shall be reviewed by the Planning Commission for compliance with the conditions of approval.
3. Cottage industries shall be incidental and subordinate to the use of the premises for residential purposes and shall not detract from the residential character of the premises or neighborhood.
4. A cottage industry shall not exceed more than one building. The gross floor area of the building shall not exceed sixteen hundred (1,600) square feet.
5. The building for the cottage industry shall not be used for residential purposes (either short term or long term).
6. The outdoor storage of vehicles and/or materials of any kind is prohibited unless screened from view by a tight-board wood fence or landscaped buffer which shall retain the residential character of the neighborhood. All screening shall require approval by the Planning Commission.

7. The cottage industry shall be conducted only by the person or persons residing on the premises for residential purposes. The Planning Commission may allow additional employees or assistants.
8. To ensure that the cottage industry is compatible with surrounding land uses, a “not-to-exceed” number of vehicles that may be parked at any given time during business operation shall be established by the Planning Commission during the review and approval process.
10. Revisions or additions to a cottage industry shall constitute a change of use and shall be subject to Planning Commission Review.

### **SECTION 5.6 KENNEL**

Kennels, in which three (3) or more dogs, cats or other domestic pets, over one (1) year of age are boarded, housed or maintained, shall be restricted to parcels of land consisting of two (2) acres or more. Such animals shall be boarded, housed, or maintained in a totally enclosed building, with the exception of an outdoor exercise area, so as to not constitute a public nuisance and/or menace.

### **SECTION 5.7 PLANNED UNIT DEVELOPMENT**

Planned Unit Development regulations provide a beneficial and productive means for designing site plans within all districts of the Township’s Ordinance for housing, commercial or special use developments. These regulations, while adhering to the underlying densities specified in each district, provide for better design and planning of land uses by considering geographical, historical, cultural, and ecological elements of the area when determining standards, rather than the singular enforcement of lot sizes and standard setbacks.

These regulations are intended to promote the efficient and thoughtful use of the land while encouraging a diversity of housing types and mixed uses where permitted. In addition, the permanent open space created by the regulations will help to preserve the natural and scenic elements that are integral to the rural character of the Township, including farmland and woodlots so that agriculture and forestry can continue to be a part of the local economy.

The following development requirements shall apply to Planned Unit Developments:

- A. A Planned Unit Development is considered a special use; therefore it shall be processed as a special use and shall be subject to the requirements for Special Use Permit.

- B. All legal methods of land subdivision may be used in the design of a Planned Unit Development.
- C. Minimum planned unit development site size: The total minimum land area within the parcel making up a Planned Unit Development site is listed in Section 4.1 - "Table 1" for the district in which the Planned Unit Development site is located.
- D. The Planned Unit Developments shall be designed and developed in a manner compatible with and complementary to existing uses or development indicated by the current Master Plan for the immediate vicinity of the project site. Site planning on the property perimeter shall provide for the protection from adverse surrounding influences, as well as protection of the surrounding areas from potentially adverse influences from within the development.
- E. Interior setbacks for lots within a Planned Unit Development may be modified and reduced if the applicant can show how the setback reduction will meet the intent of the Empire Township Master Land Plan (such as preserving natural resources).
- F. The minimum lot size requirement for lots within a Planned Unit Development may be modified and reduced if the applicant can show how the proposed lot configurations meets the intent of the Empire Township Master Land Plan (such as preserving natural resources, clustering development, or preserving views).
- G. Open Space Standards: Open Space shall consist of a minimum of fifty percent (50%) of the total project area. All lands within Open Space areas are required to be protected by a permanent conservation easement or similar vehicle which safeguards the site's special resources. Land within the Planned Unit Development site that is not contained in Site Condominium units or common elements shall be dedicated or reserved as permanent Open Space.
  - 1. Open space use, location, design: Open Space shall be dedicated or reserved for one or more of the following uses:
    - a. Conservation Area as defined in this Ordinance.
    - b. Conservation and protection of any important historic resources.
    - c. Retention of productive farm land or forest land for continued agricultural and/or forestry uses without structures.

- d. Provision of passive outdoor recreation opportunities such as walking trails/nature trails.
  - e. Open Space may contain individual water supply wells or subsurface sewage disposal fields serving dwelling units on adjacent lots, or community wells, provided such structures do not conflict with the principle uses of the Open Space.
2. The location, size, character, and shape of each required Open Space shall be appropriate to its intended use. To the extent possible, the Open Space shall be one contiguous area of land. Open Space uses shall be located so they do not conflict with neighboring uses.
  3. Ownership of the Open Space shall be conveyed to a homeowners association, property owners association, public agency, non-profit organization or similar legal entity capable of, and willing to accept responsibility for managing the Open Space for its intended purpose.
  4. Each dedicated or reserved Open Space parcel shall be shown on all Planned Unit Development plans and recorded with the Leelanau County Register of Deeds, with a notation of its area and its intended Open Space use.
  5. The owner of the Open Space shall be responsible for maintaining the Open Space so that it continues to function effectively for its intended use, and any dedication or conveyance of an Open Space parcel shall provide for such responsibility. Maintenance provisions shall be filed with the Leelanau County Register of Deeds, either as part of recorded documentation providing for establishment of a homeowners association or similar legal entity that is to be responsible for maintenance and control of the Open Space or in a maintenance agreement recorded with the property deeds.

**SECTION 5.7.1 AMENDMENT OF A PLANNED UNIT DEVELOPMENT**

*(As amended by Ordinance # 02-2012, effective October 26, 2012)*

An amendment of an approved planned unit development (PUD) shall be permitted only under the following circumstances:

- A. The owner of the property for which a PUD approval has been given shall notify the Zoning Administrator of any desired change to the PUD.

Minor changes may be approved by the Zoning Administrator upon determining that the proposed revision(s) will not alter the basic design, character or scope of the planned unit development, nor any specified conditions imposed as part

of the original approval. A minor change may not increase the density of the approved PUD.

Minor changes shall include the following:

1. Reduction of the size of any building and/or sign.
  2. Movement of buildings and/or signs by no more than ten (10) feet.
  3. Landscaping approved in the PUD that is replaced by similar landscaping to an equal or greater extent.
  4. Changes in floor plans that do not exceed five (5%) percent of the total floor area and which do not alter the character of the use or increase the amount of required parking.
  5. Internal re-arrangement of a parking lot which does not affect the number of parking spaces or alter access locations or design.
  6. Changes related to item 1) through 5) above, required or requested by Empire Township, Leelanau County, or other state or federal regulatory agency in order to conform with other laws or regulations; provided the extent of such changes does not alter the basic design, density and character of the PUD, nor any specified conditions imposed as part of the original approval.
  7. All amendments to a PUD approved by the Zoning Administrator shall be in writing. After approval by the Zoning Administrator, the Applicant shall prepare a revised site plan showing the approved amendment. The revised site plan shall contain a list of all approved amendments and a place for the Zoning Administrator to sign and date all approved amendments.
- B. An amendment to an approved PUD that cannot be processed by the Zoning Administrator under subsection (A) above shall be processed in the same manner as the original PUD application.

An amended PUD shall not increase the density ratio of the original approved PUD.

## **SECTION 5.8 RADIO CONTROL MODEL AIRCRAFT FLYING FACILITIES**

Radio control model aircraft facilities are permitted in the Agricultural/Residential zoning designation with approval of a special use permit subject, compliance with the requirements listed in Recreational Uses of this Article, and to the following conditions:

- A. Parcel Size: The parcel size (acreage) for this use shall be a minimum of one hundred (100) acres. The entire acreage shall be free of occupied residential structures or other structures except for structures used exclusively in connection with the activity of flying radio-controlled model aircraft. The terrain and vegetative cover of the acreage shall permit full visibility of flying model aircraft at all times.
- B. Structures: No permanent type structures shall be allowed on the acreage.
- C. Flight Area: Must be visually defined with flags or other markers.
- D. Setback Area: In order to help reduce noise on adjacent parcels and to reduce danger from errant flights, the designated flight area for radio controlled model aircraft on the acreage shall be at least five-hundred (500) feet from adjacent parcels and one-hundred (100) feet from (including but not limited to) any public road or established public trail.
- E. Noise Limitations: All model aircraft engines shall be required to conform to a ninety-five (95) dba maximum using AMA standards. These limitations are subject to at least three (3) sample verifications on adjacent parcels conducted by an independent engineering firm using a certified noise meter. The applicant pays for all such costs. Noise meter measurements shall also assure that the closest neighbor will perceive a noise intensity level of sixty-five (65) dba or less with two (2) planes in the air. Club members shall aggressively pursue any new developments in muffler and propeller designs towards further reductions in allowable noise limits. In addition, the Empire Township Zoning Administrator shall be permitted to witness the verification procedures at any time unannounced. Club members shall provide a certified noise meter on site.
- F. Number of Aircraft in Flight: No more than two (2) model aircraft will be allowed to be airborne and fly simultaneously at any given time.
- G. Model Aircraft Operators: The operator of a radio controlled model aircraft flying facility shall ensure that radio controlled model aircraft will be flown only by persons who are members of and have agreed to abide by the rules, regulations and safety codes of the Academy of Model Aeronautics (AMA), or similar organization, and shall maintain a log book in which each user signs in each time he or she uses the flying facility.

- H. Hours and Days of Operation: Operation of motorized radio-controlled model aircraft shall be permitted to occur on the same four (4) days of each week, but never on Sunday. The days of permitted operation shall be at the discretion of the facility operator who shall designate those days (and the permitted hours of operation as provided below) in writing to the Township Zoning Administrator annually before the first flying operation of each year.

The permitted hours of operation for two (2) of the days shall be from 9:00 AM until 12:00 Noon and from 3:00 PM until 9:00 PM. The hours of permitted operation for the other two (2) designated days shall be from 9:00 AM until 9:00 pm. To avoid confusion, the facility operator shall post the days and hours of permitted operation at the site in such a manner that it may be read from the right-of-way line of the road.

1. Motorless (e.g., gliders) and electric radio-controlled model aircraft may be operated at any time during the daylight hours.
2. Restroom Facilities: Portable restroom facilities must be provided.
3. Alcoholic Beverages: Neither the operator or any user of the facility shall consume or permit the consumption of alcoholic beverages on the parcel at any time.
4. Site Plan: A site plan shall be filed with the Empire Township Planning Commission pursuant to Article 6 (Site Plan Review for Special Land Use Permits and Planned Developments) of the Empire Township Zoning Ordinance.

All other provisions of the Empire Township Zoning Ordinance must be adhered to including, but not limited to, parking, lighting and signs.

## **SECTION 5.9 RECREATIONAL USES**

Empire Township realizes that a substantial portion of their economy is based on tourism and outdoor recreational uses. To that extent, specific recreational uses will be permitted in the Agricultural/Residential and the Public Recreational land use districts if they meet the following requirements and are approved for a Special Use Permit where required. The intent of these regulations is to provide for recreational uses in a manner that does not negatively impact nearby residential properties.

- A. A maximum of one accessory indoor structure to a listed use may be permitted if reviewed and approved during the site plan application. The accessory structure shall not exceed 2,000 square feet.



- B. Buffer yard: There shall be a two hundred (200) foot wide buffer yard meeting the requirements listed in Article 4 between any recreational use and the surrounding properties. This buffer yard may be reduced by the Planning Commission if the adjacent property has been approved and is used for recreational uses. Recreational uses are not permitted in the buffer yard.
- C. Setback: All land areas and structures designated for recreational facilities and uses shall be setback a minimum of one hundred (100) feet from a public road or thoroughfare.
- D. Specified Standards: Hours of Operation shall be determined by the Planning Commission as part of the site plan review process.

### **SECTION 5.10 SHORT TERM RENTAL**

- A. Short- term rentals include single-family dwelling units that are rented to individuals for a fee. The length of a short-term rental is between one (1) day and twenty-one (21) days.
- B. The exterior of the dwelling shall appear as a standard single-family dwelling unit, with one (1) primary entrance.
- C. Sufficient parking for the rental use shall be provided on the property. Parking for no more than four (4) vehicles is permitted in the front yard. If more than four (4) parking spaces are needed, the additional parking spaces shall be in the side or rear yard and shall be surrounded by a twenty five (25) foot vegetated buffer.
- D. The short-term rental shall have a designated location for boats, bikes, jet ski, and personal water craft. This area shall be screened from adjacent properties and the road right-of-way with a landscape buffer meeting the requirements listed in Section 4.9(B) of this Ordinance. This storage area shall not be in required setback areas.

### **SECTION 5.11 SITE CONDOMINIUM AND SUBDIVISIONS**

The purpose of this Section is to regulate the creation and use of subdivisions and site condominium developments within the Township and to promote and protect the health, safety and general welfare of the public.

- A. General Requirements. The following general requirements shall apply.

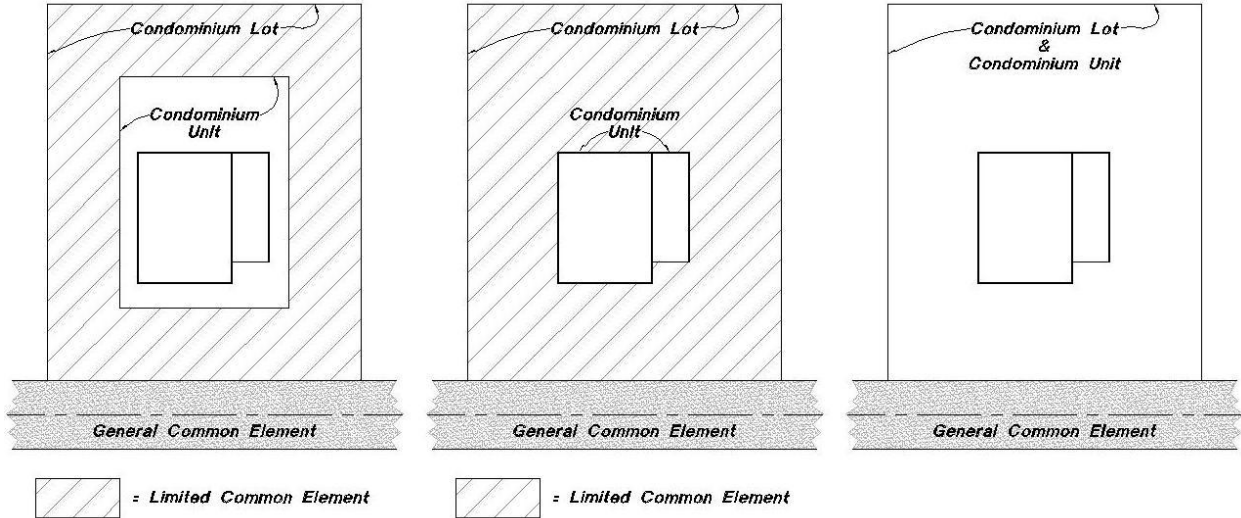
1. Compliance with Federal, State and Local Laws. All subdivisions and site condominium developments shall comply with all applicable Federal, State and local laws and ordinances.
2. Zoning Standards. All subdivisions and site condominium developments shall comply with all of the zoning standards of this Ordinance.
3. Required Review and Approval. Prior to the recording of a subdivision under the Michigan Land Division, Public Act 288 of 1967, or a master deed, required by the Michigan Condominium Act, Public Act 59 of 1978, the project shall undergo site plan review and approval by the Planning Commission as provide for in Article 6.
4. Compliance of Lot. For the purposes of these regulations, each lot in a subdivision and in a site condominium development shall be considered as a single lot and shall comply with all of the regulations of the land use district in which it is located; provided, however, that the Planning Commission may waive any of those regulations for a lot in a site condominium development so long as the density requirements required by this ordinance are met. In a subdivision and a site condominium development containing single-family detached dwelling units, not more than one (1) dwelling unit shall be located on a subdivision or site condominium lot, and no dwelling unit shall be located on a subdivision or site condominium lot with any other principal structure or use. Required yards shall be measured from the boundaries of a subdivision or site condominium lot. Provided, however, that these requirements are not applicable to a site condominium project, such as a campground, where lot sizes and density requirements are established by state or federal law, rule or regulation. *(As amended by Ordinance #02-2009, effective September 25, 2009)*
5. Easements for Utilities. Road rights-of-way shall be dedicated to the public or an association. The rights-of-way shall be for roadway purposes and for maintaining, repairing, altering, replacing, and/or removing pipelines, wires, poles, mains, conduits, and other installations of a similar nature, hereinafter collectively called "public infrastructure," for the purpose of providing public utilities, including electric, communications, water, drainage and sewers.

**B. Specified Standards. Applicable to Single Family or Multiple Family Residential Developments. *(As amended by Ordinance #02-2009, effective September 25, 2009)***

1. All roofs shall be a minimum of 4/12.
2. For developments that contain more than six (6) dwelling units, there shall be a minimum of two (2) housing styles that differ with the number of windows, color, garage placement, and door location.

3. Three Scenarios of Site Condominium Elements

**In a Single Family Detached Site Condominium Project**



C. Procedures for Site Plan Review. The following procedures shall apply:

1. Required Information.

- a. All regular subdivisions and condominium subdivisions shall include the information required by the respective Acts and all other information required under the regulations pertaining to the Land use district in which the subdivision or site condominium development is proposed or located.
- b. In the case of a subdivision or site condominium development consisting of single-family detached dwelling units, the location and dimensions of regular subdivision lots and condominium lots and condominium units and required yards shall be shown on the Site Plan.

2. Site Plan Review.

- a. An application for site plan approval shall be filed for review per the requirements of this Ordinance.
- b. For a subdivision, proposed deed restrictions, if any, shall accompany the application. For a site condominium development, the application for site plan review shall also include a copy of the proposed Master Deed and bylaws for review by the Township for compliance with the requirements of this Ordinance and/or any conditions imposed hereunder. Such review shall include, without limitation: the

description, boundaries, use and preservation of common elements; the maintenance of drainage, retention ponds, wetlands and other natural areas; and the maintenance of landscaping in common areas of the project. For a condominium subdivision, the Master Deed shall provide for the means by which any private road right-of-way may be dedicated to the public entity having jurisdiction in the future should the Condominium Association deem such dedication later appropriate.

- c. Prior to approval of the site plan, any deed restrictions for a subdivision or the Master Deed and bylaws for a site condominium development, shall be reviewed by legal counsel for the Township as to compliance with this Ordinance, any requirements imposed hereunder, other ordinances of the Township, and any applicable state and/or federal laws. The cost of such legal review shall be borne by the developer and shall be paid in full before any approval is final.
3. Performance Guarantees. As a condition of approval of the Site plan for a subdivision or a site condominium development, the Planning Commission may require the developer to provide a performance guarantee as provided for in Section 6.11 of this Ordinance.
  4. Manufactured Home Condominium Project. Manufactured home condominium developments shall conform to the requirements of this Ordinance and all other applicable Local and State laws, ordinances, and regulations.
  5. Additional Filings Required. Subsequent to the recording of the subdivision, and associated deed restrictions, or the Master Deed for a site condominium development, and subsequent to the construction of improvements, the developer shall file the following information with the Township Clerk:
    - a. One (1) Mylar copy and five (5) prints of the as-built subdivision or site condominium development plans.
    - b. Two (2) copies of the recorded deed restrictions for a subdivision or the Master Deed for a site condominium development with all pertinent attachments. The Master Deed shall ensure that the Township will not be responsible for maintenance or liability of the non-dedicated portions of the subdivision, that all private roads will be properly maintained, that snow removal will be provided and there will be adequate access and turnaround for emergency vehicles. Responsibility for the maintenance of storm water retention areas, drainage easements, drainage structures, lawn cutting and other general maintenance of common areas shall be clearly stated.

- c. Certification from the developer's engineer that improvements have been installed in conformance with the approved construction drawings and monuments.
- d. Upon fulfillment of all requirements, the developer shall apply to the Township Clerk for release of performance guarantees.

## **SECTION 5.12 MINERAL EXTRACTION**

Earth removal, quarrying, gravel processing and mining operations shall be required to meet the requirements of Article 6 and the following conditions:

1. Parcel size: Shall be a minimum of one hundred (100) acres, unbroken by road or thoroughfare, and shall be owned and operated by the entity requesting the Special Use Permit.
2. Setbacks:
  - a. All mining operations shall be a minimum of five hundred (500) feet from any public right-of-way; not including ingress and egress roads.
  - b. All mining operations, including ingress and egress roads, shall be a minimum of two hundred (200) feet from any other property line with a three-to-one (3-to-1) grade.
  - c. All mining processing equipment, including ingress and egress roads, shall not be located closer than five hundred (500) feet from an existing house on an adjacent property.
3. Maximum depth of excavation shall be above existing groundwater table not to create an adverse effect of quantity and quality of groundwater off from property.
4. Sight barriers, shall be provided along all boundaries of the site where quarrying, gravel processing and mining is proposed which lack natural screening conditions through existing vegetative growth. The following minimum standards shall apply:
  - a. A continuous screen at least six (6) feet in height is required to provide maximum screening of the site.
  - b. Landscape buffer may consist of earthen berms and/or living materials.
5. Reclamation of mined or excavated areas.

- a. Earth removal, quarrying, gravel processing and mining, shall be considered temporary uses. Mined or excavated sites shall be reclaimed properly and in a timely fashion.
  - b. Reclamation shall be completed as agreed upon by the Commission and applicant in an approved development site plan.
6. An operational statement which shall include at a minimum:
- a. The approximate date of commencement of the excavation and the duration of the operation.
  - b. Amount and type of material or resources to be removed.
  - c. Method of extracting and processing, including the disposition of overburden or topsoil.
  - d. Equipment proposed to be used in the operation of the excavation.
  - e. Location and type of processing plants, temporary and permanent.
  - f. Proposed hours and days of operation.
  - g. Amount and source of water to be utilized in processing.
  - h. Methods to prevent pollution of surface water, or ground water, and adverse effects on the quantity and quality of surface water and groundwater off the property.

**SECTION 5.13 AGRI-BUSINESS: WINERIES, CIDERIES, MICRO BREWERIES AND DISTILLERIES** *(As amended by Ordinance #01-2013, effective March 29, 2013)*

It is the intent of this ordinance to promote local agricultural production by allowing construction of processing facilities for cider, beer, wine, spirits and other alcoholic beverages regulated by the Michigan Liquor Control Code of 1998, being Public Act 58 of 1998 [MCL 436.1101 et seq] (the "Code") on lands where the ingredients for such products are raised or grown. Such facilities are permitted with or without tasting rooms. Retail sales of the alcoholic beverages produced on the site are permitted along with retail sales of related products. The growing of wine fruit and production of wine, the growing of cider fruit and the production of cider, the growing of the ingredients for making beer and the growing of crops to be used in distilling spirits are recognized as an integral component of the rural and agricultural ambiance of the

agricultural areas within Empire Township. It is, therefore, the intent of this section to maintain the viability of growing agricultural products by providing for the value added processing and direct sales of such alcoholic beverages and other end products of such processing.

Where permitted as a special land use, wineries, distilleries, micro breweries and cideries shall be required to meet the requirements of Article 6 and the following conditions:

1. The winery, cidery, micro brewery or distillery must, if required, be properly licensed by any state or federal regulatory agency, including the Michigan Liquor Control Commission.
2. The site dedicated to the winery, cidery, micro brewery and/or distillery use, and all other agricultural uses must be at least ten (10) acres. The minimum parcel width shall be at least 350 feet.
3. The site shall have a minimum of two planted acres of fruit or other crop used in the wine, cider, micro brewery or spirit processing, which shall be maintained pursuant to generally accepted agricultural management practices.
4. The total land area covered by buildings and structures used for the beverage processing, storage and sales may not exceed two percent (2%) of the contiguous lot area or 5,000 square feet, whichever is less.
5. All winery, cidery, micro brewery or distillery buildings shall be set back at least 100 feet from any lot line. To encourage the use of existing buildings, the setback requirements may be reduced to the other standards of the districts, subject to site plan review. In such cases, the setbacks will be set by the Empire Township Planning Commission in order to preserve grandfathered structures while taking into account the impact of the use on neighboring properties.
6. Retail sales and food service, if permitted by law, must be clearly accessory to production of the beverage being processed. Retail sales and food service areas shall occupy no more than twenty-five (25) percent of the floor area devoted to beverage processing and storage, or no more than 1,250 square feet, whichever is less.
7. **FOOD SERVICE-** A winery, cidery, micro brewery or distillery may offer food service that is directly related to the crops raised on the farm subject to the following conditions:

- a. The area serving food shall seat no more than twenty (20) patrons at one time.
  - b. Sale of food shall not exceed 10% of gross sales of licensed products.
  - c. Food service shall be completed at 6:00 pm or sunset, whichever is later.
  - d. Carry-out and deli-type foods are prohibited.
  - e. Winery must be licensed to prepare and serve food by the appropriate Health Agency.
8. Any alcoholic beverages sold at retail at the winery, cidery, micro brewery or distillery must be produced at said facility.
  9. Parking shall be provided in an area behind any tasting room/food service area and shall be screened from neighboring properties.
  10. All exterior lighting shall be downward directed and shielded to prevent light being directed off of the premises.
  11. Every winery, cidery, micro brewery and distillery is subject to the development review requirements as provided in Article 6 of this ordinance.
  12. Special Events and Activities.

Activities associated with the promotion of agriculture and education may be permitted. Such activities are not by right and are secondary to the agricultural function. Typical activities are wine appreciation/education seminars, non-profit benefits, weddings, wine and catered food events, seasonal natural events (mushroom hunts), crop harvest, etc. If any such activities are contemplated, the area designated for same shall be approved by the Planning Commission as part of site plan review.



## ARTICLE 6 DEVELOPMENT REVIEW

### **SECTION 6.1 INTENT**

- A. Prior to the establishment of a new use, change of use, addition to an existing use, or the erection of any structure in any land use district, when required by this Ordinance, a site plan shall be submitted and approved, approved with conditions, or disapproved by the Planning Commission in accordance with the requirements of this Article.
1. A pre-application conference shall be held as provided for in Section 6.2 before any application for which site plan review is required will be received.
  2. Site plan review and approval by the Planning Commission is required for all of the following:
    - a. all residential developments with four (4) or more dwelling units,
    - b. all non-residential developments occupying or utilizing more than twelve hundred (1200) square feet
    - c. all development of any kind in the Gateway Mixed Use and the Commercial Development districts.
    - d. all projects involving a density bonus
    - e. all special land use permits. All special land use applications shall meet the general site plan review requirements as well as those specifically applicable to the particular special land use.
  3. No site plan review shall be required for the construction of any structures, such as barns, silos, corn cribs, etc., in connection with a lawful agricultural activity.

### **SECTION 6.2 PRE-APPLICATION CONFERENCE**

A pre-application conference is required between the applicant, the site designer(s) and the Planning Commission for all projects requiring site plan approval. The purpose of this informal conference is to introduce the applicant and the site designer(s) to the Township zoning procedures, and to discuss the applicant's objectives in relation to the Township's official policies and ordinance requirements.

This conference can take place at a regularly scheduled meeting or at a special meeting. The applicant may present a site plan which **shall not be an engineered layout**; it should be conceptually drawn to allow for changes and revisions. Hand drawings are acceptable. This will insure that the costs invested in the site plan design are minimal prior to the opportunity for the Planning Commission to suggest changes. The Planning Commission members will be looking for design elements that will enhance the project and insure it meets the character of the Township and the intent of the Master Plan. Nothing said, suggested, or recommended by the Planning Commission guarantees approval. The recommendations made at the pre-application conference will be non-binding.

### **SECTION 6.3 REQUIRED DATA FOR SITE PLAN REVIEW**

- A. A site plan shall consist of an overall plan for the entire development. Sheet size shall be at least twenty-four (24) by thirty-six (36) inches with the plan drawn to a scale of not less than one (1) inch equals fifty (50) feet for property under three (3) acres, and at least one (1) inch equals one hundred (100) feet for properties (3) acres or more. Nine (9) complete sets shall be submitted for Planning Commission review. Two (2) complete sets and one (1) 11 X 17 sized set is required for Administrative review. The site plans shall be submitted to the Zoning Administrator thirty (30) days prior to the Planning Commission meeting.
- B. Site plans shall contain the following information:
1. The name and address of the professional land surveying civil engineering or architectural firm(s) or person(s) responsible for the preparation of the site plan.
  2. The name and address of the petitioner and property owner, if different.
  3. Date of preparation, revision dates, north arrow, and scale.
  4. Location of the development drawn at a scale of one (1) inch equal two thousand (2,000) feet with north point indicated. This location map shall depict the proposed development site, as well as all section lines and number, major roadways, and other significant area features.
  5. All lot and/or property lines, lot and easement dimensions, and a legal description of the lot. Required yard setbacks shall also be depicted and dimensioned on the plan.
  6. The location and height of all existing and proposed structures on and within one hundred (100) feet of the subject property and the names of all owners

and occupants of properties within three hundred (300) feet of the subject property.

7. The location and dimensions of all existing and proposed drives, sidewalks, curb openings, signs, exterior lighting, trash receptacles, parking areas (including dimensions of a typical parking space), unloading areas, and natural features.
8. The location, pavement type, and right-of-way width of all abutting roads, roads, or alleys.
9. The location and dimensions of all greenbelts, berms, fences, and and/or walls.
10. Size and location of existing and proposed utilities including proposed connections to public sewer or water supply systems, and location of all fire hydrants.
11. Size and location of all surface drainage facilities.
12. Proposed building elevations and floor plan.
13. For multiple-family development site plans, there shall be shown typical elevation views of the front and side of each type of building proposed, as well as typical dimensioned floor plans for each type of dwelling unit.
14. Site data chart comparing the existing and proposed improvements with the schedule of regulations for the appropriate land use district, as well as parking and landscape requirement calculations.
15. A summary schedule should be affixed, if applicable, which gives the following data:
  - a. The number of residential and/or non-residential units proposed, including, for residential units, the number, size, and location of one-bedroom units, two-bedroom units, mobile home sites, etc.; and for non-residential units, the number, size and location.
  - b. The development area of the site in acres and in square feet, including the breakdowns for any subareas or staging areas (excluding all existing rights-of-way).
16. Location and function of both developed and undeveloped open spaces, as well as the layout of facilities to be included on developed open spaces.

17. Depiction of major wooded areas and description of how they will be preserved.
18. Site grading and drainage plans.
19. Landscaping plans.
20. Description of the areas to be preserved in a natural state.
21. Existing and proposed contour shall be shown on all site plans (two (2) foot interval minimum) if required by the Township Engineer or Zoning Administrator.
22. A map showing the location of creeks, streams, lakes, ponds, and wetland areas within one thousand five hundred (1,500) feet of the property; or, if there are none, a signed statement to that effect.
23. A map depicting any significant views onto or from the site to or from adjoining properties or road right-of-ways.
24. Additional Required Information: The following information shall be submitted if requested by the Zoning Administrator:
  - a. A landscape plan identifying trees twelve (12) inches or larger in caliper.
  - b. A description of all exterior building materials.
  - c. Population profile for the development.
  - d. Proposed financing.
  - e. Traffic Impact Study.
  - f. Market and Economic Feasibility Study.
  - g. Other information pertinent to the development or use.
25. The requirements of this section are for all uses that require site plan approval. In addition, all site plans must demonstrate conformance with the applicable development requirements contained elsewhere in this Ordinance, such as off-road parking, loading, landscaping, unless specific requirement of this Zoning Ordinance is waived or modified in a manner provided for in this Ordinance.
26. A time line showing the estimated completion dates of the major components of the project.

#### **SECTION 6.4 AGENCY REVIEW**

- A. Copies of the application and the Site Plan may be required by one or more of the following agencies:
1. Michigan Dept. of Transportation
  2. County Road Commission
  3. County Drain Commissioner
  4. District Health Department
  5. County Building Inspector
  6. County Soil Erosion Officer
  7. County Agricultural Soil Conservation Service
  8. Empire Fire Department

The applicant shall obtain a letter of response from each agency that requires review of the proposed project or a stamped, signed Site Plan specifically indicating approval or no comment.

#### **SECTION 6.5 NOTIFICATION OF THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ)**

If the application shows any wetland areas on the Site Plan or on a required map showing creeks, streams, lakes, ponds, or wetland areas within one thousand five hundred (1,500) feet of the property in question, the Secretary of the Planning Commission shall send the DEQ a notice of meetings and hearings, and the DEQ shall be asked to express any concerns they may have. This does not relieve the applicant of any responsibility to supply the DEQ with copies of the application, the Site Plan, the maps submitted, and any other pertinent material, and to obtain a wetlands permit from the DEQ.

#### **SECTION 6.6 REVIEW BY ZONING ADMINISTRATOR; REPORT TO PLANNING COMMISSION**

Within ten (10) days of receipt of an application for site plan review, the Zoning Administrator shall review the application for compliance with the requirements of this zoning ordinance and shall prepare and submit to the Planning Commission a written analysis of the application including a checklist listing the application's compliance or

non-compliance with all of the requirements set forth in Section 6.3. The analysis shall also include an accurate legal description of the project site, the current zoning classification(s) of the project site, the need for any variances, and the Zoning Administrator's recommendation as to whether the site plan should be approved along with the reasons for such recommendation.

### **SECTION 6.7 STANDARDS FOR APPROVAL FOR SITE PLAN REVIEW BY THE PLANNING COMMISSION**

A site plan shall be reviewed and approved by the Planning Commission upon finding that the following conditions are met:

- A. That the proposed use will not be detrimental to the adjacent property or the surrounding neighborhood, including adjacent properties located in a different municipality.
- B. That there is a proper relationship between existing roads and highways and proposed deceleration lanes, service drives, ingress and egress drives, and parking areas to assure the safety and convenience of pedestrian and vehicular traffic.
- C. That buildings, structures, parking areas, utility areas, walls, and fences are so designed and located to minimize the adverse effects of such development on users of such development and occupants of adjacent properties.
- D. That any adverse effects of the proposed development and activities which will impact adjoining occupants or owners shall be minimized by appropriate landscaping, fencing, or other screening.
- E. That as many natural landscape features as possible are retained, particularly where they provide a barrier or buffer between the development and adjoining properties used for dissimilar purposes, and where they assist in preserving the general appearance of the neighborhood or help control soil erosion or the discharge of storm water.
- F. The proposed development provides for the proper development of any required public utilities and infrastructure.
- G. All buildings or groups of buildings are arranged to permit emergency vehicle access.
- H. That the plan for soil erosion control, storm water discharge, wells, and on-site septic systems have been approved. Site plan approval may be conditioned upon providing evidence that the necessary permits have been applied for. A land use

permit shall not be issued until the Zoning Administrator receives a copy of the required permit(s).

- I. Show that exterior lighting is arranged so that it is deflected downward and away from adjacent properties and that it does not impede the vision of traffic along adjacent roads or unimproved roads.
- J. Be served adequately by essential public facilities and services, including but not limited to roads, unimproved roads, off-road parking, police, fire protection, drainage district, refuse disposal, water and sewage facilities, schools, etc.
- K. The Planning Commission may further require landscaping, fences, and walls in pursuit of these objectives and same shall be provided and maintained as a condition of the establishment and the continued maintenance of any use to which they are appurtenant.

### **SECTION 6.8 VARIANCES**

Where the application is dependent upon the grant of any dimensional variances by the Zoning Board of Appeals, a favorable action by the Zoning Board of Appeals is necessary before the site plan may be approved. An approved site plan shall include a note referencing the case number and date of all variances granted.

### **SECTION 6.9 REVOCATION OF A SITE PLAN**

Any site plan approval shall be revoked when construction of the development is not in conformance with the approved plans. The applicant shall be notified fifteen (15) days in advance of the date, time and place the planning Commission will meet to review the site plan and the status of the development. At such meeting, the applicant shall have the opportunity to present any evidence or testimony to show why the site plan approval should not be revoked. After conclusion of the Planning Commission review, the Planning Commission shall revoke its approval of the development if it decides that the terms of the site plan approval and/or this Ordinance have been violated. Such decision shall be made in writing and delivered to the applicant at the applicant's last know address.

### **SECTION 6.10 SITE PLAN EXPIRATION**

The approval of any site plan under the provisions of this Ordinance shall expire and be considered automatically expired one (1) year after the date of the approval unless actual construction has commenced and is proceeding in accordance with the approved time line and the issuance of a valid building permit. If construction activity ceases for any reason for a period of more than six (6) months, any subsequent use of the land shall be subject to review and approval of a new site plan for the property in conformance with the regulations specified by this Ordinance. Except that the

Planning Commission may, at its discretion, upon application by the owner and for cause shown, provide for up to two (2) successive twelve (12) month extensions.

### **SECTION 6.11 PERFORMANCE GUARANTEE**

To ensure compliance with the Zoning Ordinance and any condition imposed; the Planning Commission may require that a cash deposit, certified check, unconditional irrevocable bank letter of credit, or surety bond acceptable to the Township covering the estimated cost of improvements associated with a project for which site plan approval is sought or restoration of the site to a safe condition if the project is abandoned, be deposited with the Township Clerk to ensure faithful completion of the improvements, and also be subject to the following:

- A. The performance guarantee shall be deposited at the time of the issuance of the building permit authorizing the activity of the project. The Township shall establish procedures whereby a rebate of any cash deposits in reasonable proportion to the ratio of work completed on the required improvements will be made as work progresses. This does not relieve the applicant from satisfying all applicable maintenance warranties and/or guarantees necessary to ensure the proper functioning of said public improvements.
- B. This section shall not be applicable to improvements for which a cash deposit, certified check, irrevocable bank letter of credit, or surety bond has been deposited pursuant to the Subdivision Control Act, Act 288 of the Public Acts of 1967, as amended.
- C. As used in this section, "improvements" mean those features and actions associated with a project which are considered necessary by the body or official granting zoning approval, to protect natural resources, or the health, safety, and welfare of the residents of the Township and future users or inhabitants of the proposed project or project area, including roadways, lighting, utilities, sidewalks, screening, landscaping, and surface drainage.

### **SECTION 6.12 REQUIRED FEES**

Fees for the review of site plans and special land use permits shall be established by resolution of the Township Board.

The fee schedule established by the Township Board shall include special fees to cover large and complex projects, reflecting the costs to the Township of repeated inspections and/or specialized professional reviews, including legal reviews.



### **SECTION 6.13 SPECIAL LAND USES**

Special land uses are uses permitted in a land use district which have unique characteristics that could possibly create problems, conflict with existing uses, or become a nuisance if located at an inappropriate site or without proper controls or limitations. Special land uses are, therefore, required to comply with additional conditions and standards for their operation and location. Prior to the issuance of a special land use permit, the requirements for such permit set forth in this Article shall be met in addition to all of the requirements for site plan review set forth in this Ordinance.

### **SECTION 6.14 PRE-EXISTING SPECIAL LAND USE**

Any existing use actually undertaken, which is permissible by right in the district, shall continue as a permissible use even if that use is later designated a special land use. Any expansion of the original permissible use, later designated special land use, must proceed through the special land use process for approval.

### **SECTION 6.15 REVIEW AUTHORITY FOR SPECIAL LAND USE PERMIT**

All applications for special land use permits shall be considered by the Planning Commission which may grant, deny, or grant with conditions such special land use permit. A decision of the Planning Commission on a special land use permit application may not be appealed to the Zoning Board of Appeals.

### **SECTION 6.16 ADDITIONAL SUBMITTAL REQUIREMENTS FOR A SPECIAL LAND USE**

- A. Detailed description of the proposed special land use for which the permit approval is requested, which shall include, but not be limited to the following:
1. The requirements provided in this Ordinance for site plan approval.
  2. The title of the project.
  3. Project completion schedule/development phases.
  4. Supporting statements, evidence, and data, information, and exhibits that addresses the standards and requirements for the special use permit.
  5. A statement of purpose, objectives, and development including:

- a. Discussion of the rationale for applying for a special land use permit, rather than developing the projected as a permitted use.
- b. Statement on the anticipated impact on the natural features, public facilities and services such as, but not limited to, police and fire protection, roads, and schools.
- c. A statement describing how the impacts from the proposed special land use will be minimized towards adjacent properties.
- d. A statement how the proposed special land use will be a benefit to the Township.

**SECTION 6.17 GOVERNING STANDARDS FOR A SPECIAL LAND USE**

In considering whether to grant, deny, or grant with conditions a special land use application, the Planning Commission shall establish that the following standards, together with all other requirements of this Ordinance, have been satisfied. The standards enumerated herein are intended to promote the intent and purpose of this Ordinance and to ensure that the land Use or activity authorized shall be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the proposed land use. These standards shall ensure that the proposed land use or activity is consistent with the public health, safety and welfare of the Township.

Each proposed special land use application shall meet the following criteria prior to approval:

- A. The use shall be designed, constructed, operated and maintained so that it will not change the essential character of the land use district in which it is proposed.
- B. The use shall not unduly burden the capacities of public services and facilities affected by the proposed special land use nor result in excessive additional public cost for the creation of facilities and services not otherwise available.
- C. The use shall not adversely affect the natural environment, especially any creek, stream, lake, pond, or wetlands area.
- D. The use shall not adversely affect farmland, but to the extent practicable preserve it as open space or buffer it with open space.
- E. The use shall not adversely impact any identified view corridors.

## **SECTION 6.18 CONDITIONS AND SAFEGUARDS**

Additional conditions and safeguards may be imposed by the Planning Commission if such conditions are reasonable and necessary to protect the natural environment or to conserve natural resources or energy, to ensure compatibility with adjacent uses of land, to promote the use of the land in a socially and economically desirable manner, and to ensure that public services and facilities affected by the proposed land use or activity will be capable of accommodating the increased activity.

Any conditions so imposed shall:

- A. Be designed to protect natural resources, including but not limited to modification of any setback requirements (only for Planned Unit Developments and Site Condominium Developments) and limitations on the area to be developed.
- B. Be designed to protect the health, safety, welfare, social and economic well-being of those who will be using the proposed special land use or activity under consideration.
- C. Be designed to protect Township residents, and lot owners adjoining the proposed special land use or activity, including but not limited to requirements such as screening, or the erection of natural or artificial barriers, or limitations on the time of day during which construction may occur, or during which special land use activities may be carried on.
- D. Be necessary to meet the intent and purposes of this Ordinance, and be related to the standards established for the land use activity under consideration, and be necessary to ensure compliance with those standards.
- E. Be necessary to ensure compliance with any part of the application received and approved by the Planning Commission.
- F. Meet the intent of the Empire Township Master Plan.

## **SECTION 6.19 GRANT OR DENIAL OF THE SPECIAL LAND USE PERMIT**

Following the receipt of a fully completed application for a special land use permit, the Planning Commission shall hold a public hearing on the special land use request. Notice of such public hearing shall be given in the time and manner as provided form in the MZEA.

If, after the public hearing(s) on the application for a special land use permit, the Planning Commission determines that all the standards have been met by the applicant and there are no further conditions or safeguards to be imposed, and that the request is in compliance with this Ordinance and any other applicable ordinances, and with state and federal statutes, the Planning Commission shall approve the special land use application and site plan.

If the Planning Commission determines that the application fails to establish a sufficient basis for granting approval for the special land use permit, it shall be denied.

The decision on a special land use shall be incorporated in a statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any conditions imposed.

### **SECTION 6.20 RE-APPLICATION FOR SPECIAL LAND USE**

No application for a special land use Permit which has been denied wholly or in part by the Planning Commission shall be resubmitted until the expiration of one hundred eighty (180) days from the date of denial, except on grounds of newly discovered evidence or proof of changed conditions.

### **SECTION 6.21 BINDING EFFECT FOR SPECIAL LAND USE**

The special land use permit, and any conditions attached to it, shall run with the land and be binding on subsequent land owners. Once a special land use permit is approved by the Planning Commission, the use shall not be substantially modified, expanded or otherwise altered, nor shall the conditions imposed with respect to the approval be changed except upon the mutual consent of the approving authority and the landowner.

### **SECTION 6.22 MINOR MODIFICATIONS DURING CONSTRUCTION FOR SPECIAL LAND USE PERMITS**

Minor changes in the special land use permit may be approved by the Planning Commission, if they find that such changes do not appreciably increase the size, impact, or nature of the development. It shall be the responsibility of the applicant to notify the Zoning Administrator and the Planning Commission in writing of any changes so contemplated. Prior to acting on any significant changes in the site plan, the Planning Commission shall hold a public hearing giving notice of same in the time and manner set forth in the MZEA.

**SECTION 6.23 AS-BUILT SITE PLANS FOR SPECIAL LAND USE PERMITS**

Upon completion/installation of all required improvements as shown on the approved site plan, the property owner shall submit to the Zoning Administrator three (3) copies of an "as built" site plan, certified by a registered civil engineer, at least one (1) week prior to the anticipated occupancy of any building or implementation of any use. If the project is built in phases, three (3) copies of the as-built site plan shall be so submitted at the completion of each phase, prior to anticipated occupancy. The Zoning Administrator shall make a final inspection and shall sign all three copies and return one copy of the as-built site plan to certify compliance. One copy of the as-built site plan shall be recorded with the County Register of Deeds at the cost of the applicant.

# ARTICLE 7 RESIDENTIAL DISTRICT

## **SECTION 7.1 INTENT AND PURPOSE**

The Residential District is primarily for single-family residential dwelling units. The specific intent for this district is to encourage traditional single-family uses and to prohibit uses that would substantially interfere with the development of single-family dwelling units and to discourage any land use that would generate traffic other than the normal traffic to serve the nearby residences.

## **SECTION 7.2 PERMITTED USES**

No building, nor structure, nor any part thereof, shall be erected, altered, or used, nor shall any land or premises be used in whole or in part for other than one (1) or more of the following specific uses:

- A. Single family dwelling with attached or detached garage and other accessory buildings with a minimum of seven hundred (700) square feet of living area exclusive of accessory buildings. The minimum width of a single-family dwelling unit shall be twenty-four (24) feet and the minimum length of a single-family dwelling unit shall be twenty-four (24) feet.
- B. Adult foster care home
- C. Child day care center
- D. Family day care home
- E. Foster family home
- F. Foster family group home
- G. Home occupation
- H. Places of worship
- I. Elementary, middle or secondary schools
- J. Residential schools
- K. State licensed residential facility

### **SECTION 7.3 SPECIAL LAND USES**

The following uses shall only be permitted with approval of a special land use permit by the Empire Township Planning Commission. The approval shall be based on the development meeting the general and specific requirements listed in this Zoning Ordinance.

- A. Lodge
- B. Guest house
- C. Group Day Care Home (subject to the conditions set forth in the MZEA)

### **SECTION 7.4 SITE DEVELOPMENT STANDARDS**

- A. Minimum Lot Size. Each dwelling or other principal structure hereafter erected in a Residential District shall be located on a lot or parcel of land having a minimum width of not less than one hundred (100) feet and shall have a minimum area of 30,000 square feet, unbroken by any public road or thoroughfare.
  - 1. This shall not prevent the use of a lot or parcel of land of lesser size that was in conformance prior to the effective date of this Ordinance. No portion of any lot or parcel of land may be used or counted in the calculation of required lot area for more than one (1) principal building.
  - 2. After the effective date of this Ordinance, any lot or parcel of land that has been created as a result of a division and the size of any resulting lot or lots is/are less than the requirements listed in this section, said lot shall be denied a land use permit.
- B. Density. With the exception of a single guest house, no more than one (1) single family dwelling is permitted on a single lot or site condominium unit. No guest house shall be permitted in addition to a primary residence unless the lot, parcel or site condominium unit has a minimum of 60,000 square feet.

# ARTICLE 8 PUBLIC RECREATION DISTRICT

## **SECTION 8.1 INTENT AND PURPOSE**

A substantial amount of land in Empire Township, most, but not all of which is owned by the State of Michigan or the Federal government, is dedicated to public recreational purposes and structures related thereto, such as an office or a visitors center. The intent of this district is to encourage the continued public recreational use of these lands, while allowing for complementary uses.

It should be noted the regulations in this land use district also apply to privately owned parcels within this designation.

## **SECTION 8.2 PERMITTED USES**

No building, nor structure, nor any part thereof, shall be erected, altered, or used, nor shall any land or premises be used in whole or in part for other than one (1) or more of the following specific uses:

- A. Parks, trails, greenways, and open space.
- B. Accessory structures not exceeding 800 square feet to the permitted uses. For the purposes of this district, accessory structures include restrooms, kiosks, and utility rooms.
- C. Single family dwelling with attached or detached garage and other accessory buildings with a minimum of seven hundred (700) square feet of living area exclusive of accessory buildings. The minimum width of a single-family dwelling unit shall be twenty-four (24) feet and the minimum length of a single-family dwelling unit shall be twenty-four (24) feet.
- D. Adult foster care home
- E. Child day care center
- F. Family day care home
- G. Foster family home
- H. Foster family group home
- I. Home occupation



- J. State licensed residential facility

### **SECTION 8.3 SPECIAL LAND USES**

The following uses shall only be permitted with approval of a special land use permit by the Planning Commission. The approval shall be based on the development meeting the specific requirements listed in this Ordinance and the intent and purpose of this Article..

- A. Structures housing the administrative staff of a recreational property, or structures used for recreational educational and/or recreational interpretive purposes open to the general public.
- B. Recreational vehicle park
- C. Outdoor recreational uses which do not generate noise and which are open to the general public. Such uses include:
  - 1. Archery range
  - 2. Athletic fields
  - 3. Driving range
  - 4. Frisbee golf course
  - 5. Golf course
  - 6. Mini-golf course
  - 7. Paintball course
  - 8. Children's playground
  - 9. Skateboard/roller blade park
  - 10. Tennis courts
  - 11. Riding stable
  - 12. Campground

**SECTION 8.4      MINIMUM LOT AREA**

The minimum lot area for this district shall be 5 acres.

**SECTION 8.5      SETBACKS**

All structures shall be set back a minimum of one hundred (100) feet from a public road or thoroughfare or from privately owned lots.

# ARTICLE 9 RESERVED

# ARTICLE 10 GATEWAY MIXED USE DISTRICT

## **SECTION 10.1 INTENT AND PURPOSE**

This district regulates the designated land areas along M-72, in the eastern portion of the Township. These parcels serve as a primary entrance area into the community, therefore building locations and designs are important in preserving Empire's rural character, especially in this vicinity.

Many of the existing parcels have been developed and/or subdivided and are no longer used for agricultural purposes. In addition, many of these parcels previously had a commercial zoning designation. During the 2005 Master Land Use Plan update process, some of the then permitted uses were found to be incompatible due to the character of the area, lack of infrastructure, natural features, and their impact on transportation services.

The intent of this district is to preserve the visual quality of the entrance area, or gateway, into the Township by allowing for a mixture of uses in concentrated clusters. The clusters are to be separated from M-72 by open areas or areas landscaped and maintained in such a way as to maximize the rural and scenic views which are vital to the Township's economy and well-being and to minimize views of development from M-72.

## **SECTION 10.2 PERMITTED USES**

No building or structure, nor any part thereof, shall be erected, altered or used; nor shall any land or premises be used in whole or in part for other than one (1) or more of the following specific uses:

- A. Artisan shop making custom made products for retail sale. Parking for the use shall be located behind the structure.
- B. Antique shop. Parking for the use shall be located behind the structure.
- C. Child day care center
- D. Congregate care facility
- E. Convalescent home
- F. Farms with a minimum of five (5) acres of contiguous land unbroken by a road.

- G. Foster family home
- H. Foster family group home
- I. Home occupation.
- J. Nurseries and greenhouses
- K. Park or open space conservation area.
- L. Riding stable with a minimum area of ten (10) acres of continuous land unbroken by a road.
- M. Roadside stands.
- N. Single-family residence with attached or detached garage and other accessory buildings with a minimum of seven hundred (700) square feet of living area exclusive of accessory buildings. The minimum width of a single-family dwelling unit shall be twenty-four (24) feet and the minimum length of a single-family dwelling unit shall be twenty-four (24) feet.
- O. State licensed residential facility.

### **SECTION 10.3 SPECIAL LAND USES**

The following uses shall only be permitted with approval of a special land use permit by the Planning Commission. The approval shall be based on the development meeting the specific requirements listed in this Ordinance.

- A. Apartment building
- B. Bed and breakfast
- C. Automobile or Vehicle Dealership
- D. Automobile repair garage.
- E. Automobile service station.
- F. Boat sales, service and storage
- G. Clinics

- H. Commercial sales of agricultural equipment provided the structure does not exceed 5,000 square feet
- I. Contractor's yard
- J. Cottage Industry
- K. Daycare center for more than seven (7) children
- L. Group day care home (subject to the conditions set forth in the MZEA)
- M. Kennel
- N. A planned unit development including any of the uses allowed by this Article.
- O. Wineries, cideries, micro-breweries or distilleries. *(As amended by Ordinance #01-2013, effective March 29, 2013)*

#### **SECTION 10.4 SITE DEVELOPMENT STANDARDS**

All uses within the Gateway Mixed Use district shall comply with the following building and site development standards:

- A. Minimum lot size and width: The minimum lot size shall be five (5) acres and the minimum lot width shall be three hundred (300) feet. The minimum lot size for a single-family residential unit shall be one (1) acre.
- B. Nonresidential setbacks. For non-residential structures, the following shall apply:
  - 1. There shall be a minimum of two hundred fifty (250) feet from the edge of the right-of-way from all state highways to the building wall.
  - 2. There shall be a minimum of seventy five (75) feet from the edge of right-of-way from all County Roads.
  - 3. There shall be a minimum of fifty (50) feet from all road easements.
  - 4. There shall be a minimum setback of seventy five (75) feet from all residential zoning boundary lines.
  - 5. There shall be a minimum of twenty-five (25) feet from all side property lines.
  - 6. Parking areas shall be a minimum of one hundred twenty five (125) feet from the edge of the right-of-way from all state highways, fifty (50) feet from the

edge of the right-of-way from a County Road, and twenty five (25) feet from all road easements or marginal access drives. Forty (40) feet of a 125 foot or a 50 foot setback, and 20 feet of a 25 foot setback shall be landscaped, meeting the requirements listed in Section 4.8, Landscaping.

7. There shall be a minimum of forty (40) feet from the rear property line.
- C. Residential setbacks. For all single family and accessory apartment structures, the following shall apply:
1. There shall be a minimum of forty (40) feet from the edge of the road right-of-way or road easement.
  2. There shall be a minimum of twenty-five (25) feet from all side property lines.
  3. There shall be a minimum of forty (40) feet from the rear property line.
- D. A parking area plan for nonresidential uses shall be submitted to the Planning Commission as part of site plan review. The plan shall show the location and size of the parking area, the number of parking spaces, surfacing, lighting, drainage, entrances, exists and any other features essential to the complete design and construction of the parking area. The Planning Commission shall determine if adequate parking spaces and the design meet the use requested and will not impair the public health, safety or unreasonably impose a burden or impact on an adjoining landowner. The parking area shall be landscaped, meeting the requirements listed in Article 4, Landscaping and Buffer Yards Shared parking between uses is encouraged.
- E. All non-residential structures greater than 2,000 square feet shall be designed to be oriented towards each other, not to the road right-of-way. In no event shall more than two (2) businesses with a common property line face M-72.
- F. The maximum size for a non-residential structure shall be 5,000 square feet.
- G. Landscaping shall be in accordance with a site plan approved by the Planning Commission. The landscaping plan shall be such as to meet the intent and purpose of the Gateway Mixed Use District and maximize the rural and scenic views which are vital to the Township's economy and well-being and to minimize views of development from M-72. The Planning Commission may increase the landscaping requirements of Section 4.9, but may not reduce said requirements.
- H. Access to the individual uses in the Gateway Mixed use District shall, whenever possible, be by way of a shared alternate access and/or a shared marginal access road.

I. Density.

1) Residential density.

No more than one dwelling per acre, except for lots in excess of ten (10) acres in size, in which case the Planning Commission may increase such density by no more than 50% where dwelling units are clustered and no less than 50% of the lot will remain perpetually as a conservation area.

Density may be increased by an additional 25% where the dwelling units are clustered and set back no less than 500 feet from M-72 and screened from view by landscaping approved by the Planning Commission as part of site plan review.

2) Non-residential density.

No more than 25% of the lot area may be occupied by the non-residential structure or structures and all related improvements, except for lots in excess of ten (10) acres in size, in which case the Planning Commission may increase such density by no more than 50% where structures are clustered and no less than 50% of the lot will remain perpetually as a conservation area.

Density may be increased by an additional 25% where the structures are clustered and set back no less than 500 feet from M-72 and screened from view by landscaping approved by the Planning Commission as part of site plan review, and the remaining area of the lot will remain perpetually as a conservation area.

3) Mixed use.

In the case of a mixed use development, the above density requirements shall be allocated to the site on a pro-rata basis between the areas occupied by the residential and non-residential components.



# ARTICLE 11 AGRICULTURAL CONSERVATION DISTRICT

## **SECTION 11.1 INTENT AND PURPOSE**

The main intent for land within this district is to promote farming operations and protect it from encroachment by other uses and integrate residential areas in appropriate locations.

## **SECTION 11.2 PERMITTED USES**

No building or structure, nor any part thereof, shall be erected, altered or used, nor shall any lands or premises be used, in whole or in part, for other than one (1) or more of the following specific uses:

- A. Agricultural operations, including, without limitation, dairying, raising grain, grass, mint and seed crops; raising vegetables; orchards; forestry; raising nuts and berries; floriculture; raising ornamental trees, shrubs and nursery stock; and beekeeping.
- B. Bed and breakfasts
- C. Cemeteries
- D. Child day care center
- E. Family day care home
- F. Farms: Keeping of animals for sale or profit shall have a minimum area of 10 acres of contiguous land unbroken by road or thoroughfare, public or private.
- G. Foster family home
- H. Foster family group home
- I. Home occupations
- J. Guest houses
- K. Nurseries and greenhouses.

- L. Riding stables: Shall have a minimum area of ten (10) acres of contiguous land unbroken by road or thoroughfare, public or private.
- M. Elementary, middle or secondary school
- N. Residential school
- O. Single-family residence with attached or detached garage and other accessory buildings with a minimum of seven hundred (700) square feet of living area exclusive of accessory buildings. The minimum width of a single-family dwelling unit shall be twenty-four (24) feet and the minimum length of a single-family dwelling unit shall be twenty-four (24) feet.
- P. Roadside stands.

### **SECTION 11.3 SPECIAL LAND USES**

The following uses shall only be permitted with approval of a special land use permit by the Planning Commission. The approval shall be based on the development meeting the specific requirements listed in this Ordinance.

- A. Commercial Kennels
- B. Congregate care facility
- C. Convalescent home
- D. Cottage industry
- E. Group day care home (subject to the conditions set forth in the MZEA)
- F. Mineral extraction, including mining of sand, gravel, or other natural resources, provided, however, that no mineral extraction, including mining of sand, gravel, or other natural resources, shall be conducted within five hundred (500) feet of any public highway right-of-way, nor closer than two hundred (200) feet from any neighboring property line, including ingress and egress of the operation.
- G. Outdoor Recreation, includes:
  - 1. Outdoor archery range
  - 2. Outdoor athletic fields

3. Outdoor driving ranges
  4. Outdoor Frisbee golf course
  5. Outdoor golf courses
  6. Outdoor mini-golf courses
  7. Outdoor paintball course
  8. Outdoor playgrounds
  9. Outdoor skateboard/roller blade park
  10. Outdoor tennis courts
  11. Campgrounds
  12. Clubs with or without lodging and dining facilities
  13. Accessory indoor structures to permitted uses that are greater than two thousand (2,000) square feet.
- H. Radio control model aircraft flying facilities.
- I. Recreational vehicle park
- J. General schools
- K. A planned unit development including any of the uses allowed by this Article.
- L. Wineries, cideries, micro-breweries or distilleries. *(As amended by Ordinance #01-2013, effective March 29, 2013)*

#### **SECTION 11.4 SITE DEVELOPMENT STANDARDS**

All uses within the Agricultural Conservation shall comply with the following building and site development standards:

- A. Minimum lot size and width. The minimum lot size shall be five (5) acres and the minimum lot width shall be that necessary to ensure the lot does not exceed a 4-to-1 depth-to-width ratio.

- B. Setbacks: The following setback requirements apply to all structures within this land use district:
1. There shall be a minimum front setback of forty (40) feet from the edge of the road right-of-way to the wall of the closest structure.
  2. There shall be a minimum rear setback of ten (10) feet from the rear property line.
  3. There shall be a minimum side setback of ten (10) feet from the side property line.
- C. Density. No more than one dwelling per five (5) acres, except for parcels in excess of twenty (20) acres in size, in which case the Commission may increase such density by no more than 50% where dwelling units are clustered and no less than 50% of the parcel will remain perpetually as a conservation area. The following uses are permitted in common open space areas: active agricultural operations, farming, playground equipment, common sewage disposal areas, and trails.

### **SECTION 11.5 CONTIGUOUS LAND USE DISTRICT**

Where any other land use district is contiguous to a farm located in the Agricultural Conservation District and the farm is partially in that other district, all farm uses and activities permitted in the Agricultural Conservation District may be carried on, on such contiguous land, provided any roadside stands are moved back of the other district's setback lines during seasons when not in use.

# ARTICLE 12 COMMERCIAL DEVELOPMENT DISTRICT

## **SECTION 12.1 INTENT AND PURPOSE**

The Commercial Development District is established to provide an aesthetically attractive working environment exclusively for, and conducive to, the development and protection of offices, research and development institutions, manufacturing establishments of a non-nuisance type, retail, and multiple family residential uses.

## **SECTION 12.2 PERMITTED USES**

No building or structure, nor any part thereof, shall be erected, altered or used, nor shall any lands or premises be used, in whole or in part, for other than one (1) or more of the following specific uses.

- A. Apartment building
- B. Automobile repair garage
- C. Automobile service station
- D. Businesses providing goods and services primarily to a retail trade including, but not limited to: bakeries, beauty shops, banks, clothing, grocery, and hardware
- E. Congregate care facility
- F. Convalescent home
- G. Doctors offices, human and veterinary clinics
- H. Governmental, business and professional offices and office buildings
- I. Hotels, motels
- J. Indoor manufacturing of five thousand (5,000) square feet or less, with no outside storage of products or materials used to produce products
- K. Clubs
- L. Log home manufacturing

- M. Lumber yards and construction materials sales
- N. Manufactured home park provided that a minimum of twenty-five thousand (25,000) square feet of lot area exist for each dwelling unit
- O. Restaurants, bars, taverns, billiard halls, dairy bars or uses combined shall have seating of eighty (80) or less
- P. General schools
- Q. Warehouse facility

### **SECTION 12.3 SPECIAL LAND USE**

- A. Any planned unit development

### **SECTION 12.4 SITE DEVELOPMENT STANDARDS**

All uses within the Commercial Development District shall comply with the following building and site development standards:

- A. Minimum lot size. The minimum lot size shall be 30,000 square feet.
- B. Setbacks: There shall be a fifty (50) foot setback from the edge of the road right-of-way and all side and rear property lines. There shall be a twenty-five (25) foot landscape buffer meeting the requirements listed in Section 4.9, Landscaping.
- C. The parking lot for non-residential uses shall be landscaped, meeting the requirements listed in Section 4.9, Landscaping. Shared parking is highly encouraged.
- D. No buildings shall have more than fifteen (15) horizontal feet of wall facing the road without a window or door opening.
- E. Density. No more than one (1) dwelling is permitted for every thirty thousand (30,000) square feet of buildable area.

## ARTICLE 13 NON-CONFORMING USES OR STRUCTURES

### **SECTION 13.1 NON-CONFORMING USES**

Where, at the effective date of adoption or amendment of this Ordinance, a lawful use of land exists which is no longer permissible under the terms of this Ordinance as enacted or amended, such use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- a. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance except upon the approval of the Planning Commission which shall hold a public hearing on the proposed expansion.
- b. No such nonconforming use shall be moved, in whole or in part, to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Ordinance except upon the approval of the Planning Commission which shall hold a public hearing on the proposed move.
- c. The Planning Commission shall not approve the expansion or the move on the same lot of a non-conforming use unless it finds, after holding a public hearing, that the proposed expansion or move is necessary for the use to continue its profitability or usefulness, and that said expansion can be accomplished in a manner which will not have an adverse effect upon neighboring properties or the land use district in which the non-conforming use is located, and that the use following the expansion or move will be compatible with surrounding uses.

### **SECTION 13.2 CHANGES IN NON-CONFORMING USES**

No non-conforming use shall be changed to any other non-conforming use and any non-conforming use changed to a conforming use shall not thereafter revert to any non-conforming use.

### **SECTION 13.3 DISCONTINUATION OF NON-CONFORMING USES**

Where, at the effective date of adoption or amendment of this Ordinance, any building, structure or land, the use of which has been permitted as a nonconforming use or nonconforming structure pursuant to the provisions of this Article is no longer intended by its owner to continue as a nonconforming use or nonconforming structure, the use of the land or the structure shall be discontinued. The owner's intent to no longer

continue the nonconforming use of the land or structure shall be established by a preponderance of the evidence which shall consider the following:

- A. Whether utilities have been disconnected.
- B. Whether any signs have been removed or have fallen into disrepair.
- C. Whether any fixtures within and outside the building have been removed.
- D. Whether the property has fallen into disrepair or is considered "blighted."
- E. Whether U.S. Mail delivery has been terminated or mail is forwarded to another address.
- F. Whether the classification of the property for tax purposes has been changed to reflect another use.
- G. Whether any license associated with the use has expired.
- H. Whether there are any other similar changes to the nonconforming structure or use.

Action to determine if a nonconforming use was intended to be discontinued by the owner may be delayed if any of the following is ongoing:

- A. Ownership or possession of the property is the subject of a pending Probate Court proceeding;
- B. The property is the subject of an Insurance settlement dispute; or
- C. The property is the subject of an ongoing criminal investigation.

#### **SECTION 13.4 NON-CONFORMING STRUCTURES**

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance which could not be built under the terms of this Ordinance by reason of restrictions on the lot area, lot coverage, building height, setbacks, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No such structure may be enlarged or altered in a way that increases its nonconformity.
- B. Should such structure be destroyed by any means to an extent of more than



sixty (60%) percent of its replacement cost, exclusive of the foundation, it shall be reconstructed only in conformity with the provisions of this Ordinance. The sixty percent (60%) provision shall not apply to non-conforming single-family residential structures; however, application for rebuilding shall be made within one (1) year from the date of damage or destruction.

- C. Should such structure be moved any distance for any reason whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

### **SECTION 13.5 REPAIR OF NON-CONFORMING STRUCTURES**

Nothing contained in this Ordinance shall bar or prevent the owner from making such repairs and reinforcements in any nonconforming structure as may be necessary in the interest of public safety or to secure the continued advantageous use of such building, but the right to make repairs shall not constitute a right to change any specific use, or extend or expand said use to adjoining property.

### **SECTION 13.6 DESTRUCTION OF NON-CONFORMING STRUCTURES**

Nothing in this Ordinance shall bar or prevent the owner from reconstructing, repairing, restoring, and resuming the use of any non-conforming structure damaged by fire, collapse, explosion, acts of God, or of the public enemy occurring after the effective date of this Ordinance; provided, however, any such restoration shall be commenced within one (1) year and completed within two (2) years following the date of the damage, otherwise such use shall terminate. Reconstructed facilities will conform to current requirements for health, sanitation and safety. The reconstruction shall be limited to the original size of the structure and no such reconstruction shall be commenced until the plan for same has been reviewed and approved by the Zoning Administrator. Any expansion requires a land use permit.

### **SECTION 13.7 LAWFUL NON-CONFORMING LOTS OF RECORD**

A legal lot prior to the enactment of this Ordinance may be used as a building site, provided that all other requirements (use, set-backs, height, etc.) of this Ordinance are met.

## **SECTION 13.8 RIGHT OF APPEAL**

Any party aggrieved by any order, determination, or decision by the Zoning Administrator, the Planning Commission, the Zoning Board of Appeals, or the Township Board made under this Article may obtain a review in the circuit court for Leelanau County as provided for in the MZEA.

# ARTICLE 14 ZONING BOARD OF APPEALS

## **SECTION 14.1 CREATION**

A Zoning Board of Appeals is hereby established.

## **SECTION 14.2 MEMBERSHIP**

The Township Board shall appoint the three (3) members of the Zoning Board of Appeals as follows:

- A. One member shall be a member of the Township Planning Commission.
- B. One member may be a member of the Township Board, but such member shall not serve as chairperson.
- C. An elector residing in the unincorporated portion of the Township who is not an employee or contractor of the Township.
- D. Not more than 2 alternate members may be appointed for the same term as regular members to the Zoning Board of Appeals. An alternate member may be called as specified to serve as a member of the Zoning Board of Appeals in the absence of a regular member if the regular member will be unable to attend 1 or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which a member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. The alternate member has the same voting rights as a regular member of the Zoning Board of Appeals.
- E. Each member shall serve a 3 year term. When a member is first appointed, the appointment may be for less than 3 years to provide for staggered terms.

## **SECTION 14.3 PER DIEM**

A member of the Zoning Board of Appeals may be paid a reasonable per diem and reimbursed for expenses actually incurred in the discharge of his or her duties as determined by the Township Board.

## **SECTION 14.4 GENERAL PROCEDURE**

This Board of Appeals shall appoint one (1) of its members to be chairperson, and one (1) to be secretary, and it shall establish rules and regulations to govern its procedures. The concurring vote of a majority of the members of the Zoning Board of Appeals is necessary to reverse an order, requirement, decision, or determination of an administrative official or body, to decide in favor of the applicant on a matter upon which the Zoning Board of Appeals is required to pass under this Zoning Ordinance, or to grant a variance from the requirements of this Zoning Ordinance.

The Zoning Board of Appeals shall not conduct business unless a majority of its regular members are present.

## **SECTION 14.5 PUBLIC MEETINGS**

All meetings of the Zoning Board of Appeals shall comply with the Michigan Open Meetings Act. Minutes of all meetings of the Zoning Board of Appeals shall be filed with the Township Clerk.

## **SECTION 14.6 POWERS**

The Zoning Board of Appeals is empowered to act upon the following matters

- A. Questions arising in the administration of this Ordinance regarding the interpretation of this Zoning Ordinance, including interpretation of the Empire Township Zoning Map.
- B. Appeals from an order or decision made by the Zoning Administrator, the Planning Commission or any other official body where it is alleged by the appellant that there is an error in such order or decision.
- C. All matters which this Ordinance properly refers to the Zoning Board of Appeals for determination.
- D. Requests for a nonuse variance relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the Zoning Ordinance or to any other nonuse-related standard in the Zoning Ordinance. In granting a variance, the Zoning Board of Appeals may impose conditions as is otherwise allowed under this Ordinance. Before granting a nonuse variance, the Zoning Board of Appeals shall find:

1. The strict application of the provisions of this Ordinance would result in practical difficulties which relate only to the property for which the variance is sought. The practical difficulties shall:
  - a. prevent the carrying out the strict letter of this Ordinance;
  - b. are related to the physical characteristics of the property and not the economics of the particular use;
  - c. consist of extraordinary physical conditions such as shallowness, slope or topography of the property involved, or to the intended use of the property, or uses in the same land use district.
2. Granting the variance will not be contrary to the public interest or to the intent of this Ordinance.
3. Granting the variance shall not have the effect of permitting the establishment within a district of any use which is not permitted by right within that land use district.
4. Granting the variance will not cause a substantial adverse effect upon property values in the immediate vicinity of the request.
5. Granting the variance is necessary for the preservation of substantial property rights possessed by other properties in the same land use district.
6. Granting the variance will observe the spirit of this Ordinance.

#### **SECTION 14.7 SPECIFIC PROCEDURES**

- A. Appeals: An appeal under this Zoning Ordinance shall be taken within such time as shall be prescribed by general rule adopted by the Zoning Board of Appeals. A written notice of appeal shall be in writing and shall be filed with the officer from whom the appeal is taken and with the Zoning Board of Appeals. The written notice of appeal shall specify the grounds for the appeal, accompanied by such fee as is established from time to time by resolution of the Township Board. The body or officer from whom the appeal is taken shall immediately transmit to the Zoning Board of Appeals all of the papers constituting the record upon which the action appealed from was taken.

Following receipt of a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, the Zoning Board of

Appeals shall hold a public hearing on the request giving notice of said public hearing in the time and manner set forth in the MZEA.

- B. Variances: All requests for variances over which the Zoning Board of Appeals has jurisdiction shall be filed in writing with the Zoning Administrator accompanied by such fee as is established from time to time by resolution of the Township Board.

Following receipt of a written request for a variance, the Zoning Board of Appeals shall fix a reasonable time for the hearing of the request and give notice of said hearing in the time and manner set forth in the MZEA.

- C. Stay of Proceedings: An appeal to the Zoning Board of Appeals stays all proceedings in furtherance of the action appealed from unless the body or officer from whom the appeal is taken certifies to the Zoning Board of Appeals after the notice of appeal is filed that, by reason of facts stated in the certificate, a stay would, in the opinion of such body or officer, cause imminent peril to life or property, in which case proceedings may be stayed by a restraining order issued by the Zoning Board of Appeals or a circuit court.
- D. Appearance at Hearings: At the hearing, a party may appear in person or by agent or attorney.
- E. Zoning Board Action: The Zoning Board of Appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit. The Zoning Board of Appeals shall state the grounds of any determination made by it.
- F. Re-submission: No application for variances or special exception which has been denied shall be resubmitted within one hundred eighty (180) days from the last date of denial, except on grounds of newly-discovered evidence of proof of changed conditions found to be valid.

#### **SECTION 14.8 FINALITY OF DECISION**

The decision of the Zoning Board of Appeals shall be final. Any party aggrieved by the decision may file an appeal with the Circuit Court for Leelanau County. As provided in the MZEA, an appeal to circuit court under this section shall be filed within 30 days after the Zoning Board of Appeals certifies its decision in writing or approves the minutes of its decision.

## ARTICLE 15 ADMINISTRATION

### **SECTION 15.1 APPOINTMENT AND DUTIES**

The Zoning Administrator shall be appointed by and serve at the pleasure of the Township Board. The Zoning Administrator shall perform such duties as the Township Board may prescribe, in addition to any duties prescribed in this Ordinance.

### **SECTION 15.2 DUTIES AND POWERS OF ZONING ADMINISTRATOR**

The Zoning Administrator shall enforce this Ordinance and:

- A. Issue all land use permits as required by this Ordinance and maintain the records.
- B. Conduct inspection of all buildings and structures, and the use of all lands subject to the provisions of this Ordinance to determine compliance.
- C. Maintain permanent and correct records of this Ordinance, including, but not limited to, maps, amendments, special use permits, variances and appeals.
- D. Provide and maintain a public information office relative to all matters arising out of the administration of this Ordinance.
- E. Investigate all applications for variances, permits or other matters which must be submitted to the Zoning Board of Appeals or the Planning Commission for approval, and submit to the Zoning Board of Appeals or the planning Commission a detailed analysis of the application, its compliance or non-compliance with the terms of this Ordinance, any conditions which must be met before a permit or variance can be granted, and his or her recommendation regarding the application for the Zoning Board of Appeals or the Planning Commission to consider
- F. Initiate appropriate action to prevent, restrain, correct or abate any illegal act or violation of this Ordinance.
- G. Shall notify the applicant of the appeal period.

### **SECTION 15.3 LAND USE PERMITS**

Any person planning to erect a building or structure of more than one hundred (100) square feet of floor area, or to alter any existing structure to the extent of more than one hundred (100) square feet of floor area, or to establish a new use for any premises in any land use district, shall, before commencement of any of the foregoing in any way, file an application in writing with the Zoning Administrator for a land use permit. The Zoning Administrator shall issue a land use permit, if in the Administrator's opinion, such planned building, structure, or land use is in compliance with the provisions of this Ordinance. Unless prevented by circumstances beyond his or her control, the Zoning Administrator shall issue said land use permit, or deny the same in writing, within forty-eight (48) hours of the time of such application.

- A. Temporary Land Use permit: The Zoning Administrator is authorized to issue a land use permit for temporary uses, as follows:
1. Carnival, circus or fair for a period not to exceed seven (7) days, subject to the approval of the Zoning Board of Appeals.
  2. Open lot sale of Christmas trees for a period not to exceed forty-five (45) days.
  3. Real estate sales office located in a subdivision, site condominium in any district for a period not to exceed one (1) year provided no cooking or sleeping accommodations are maintained in the structure.
  4. Contractor's office and equipment sheds in any district until completion of construction, provided that such office be placed on the construction site.
  5. All temporary land use permits may be renewed provided that it is determined by the Zoning Administrator that said use will cause no traffic congestion and would not create a nuisance to surrounding areas.
- B. Completion: Any single-family building or accessory building, or addition thereto, must be completed on the exterior surfaces with a suitable finishing material, including painting, or staining in the case of wood, within six (6) months from date of issuance of the building permit.

### **SECTION 15.4 DENIAL OF PERMITS**

The Zoning Administrator shall deny an application for a land use permit if the proposed building or structure or land use does not comply with the provisions of this Ordinance. The Zoning Administrator shall promptly inform the applicant in writing of such denial and shall advise the applicant of his/her right to appeal a decision and the



time in which they may appeal the decision and any documentation needed to submit such appeal.

### **SECTION 15.5 POSTING OF PERMIT**

Upon receipt of a land use permit issued by the Zoning Administrator, the owner of the property or the recipient of the permit shall post said permit on the property as may otherwise be required by law or regulation and if such posting is not visible to a person standing in the public right of way on which the property is situated, an additional copy of the permit shall be posted in a location so that it will be readily visible to a person standing in the public right of way on which the property is situated.

### **SECTION 15.6 NOTICE FOR PUBLIC HEARINGS**

Whenever a hearing or a public hearing is required by this Ordinance or otherwise by law, notice of the hearing shall be given in the time and in the manner set forth in the MZEA.

# ARTICLE 16 VIOLATIONS AND ENFORCEMENT

## **SECTION 16.1 NUISANCE PER SE**

Buildings and structures erected, altered, moved or converted, or any use of land or premises in violation of any provision of this Ordinance are declared to be a nuisance per se.

## **SECTION 16.2 CORRECTION**

Upon determining that a violation of this Ordinance exists, the Zoning Administrator shall take action to enforce same. Such action may consist of the following:

- A. issuance of a written order to the owner of the premises and/or the person responsible for the violation to correct same within a time stated in the written notice;
- B. If the violation is not corrected within the time established by the Zoning Administrator, or in lieu of issuing the written order referenced in A, Above, the Zoning Administrator may issue a municipal civil infraction violation notice or a municipal civil infraction citation to the person or persons responsible for the violation.

Additionally, the Township may institute any other action to correct the nuisance, including seeking injunctive relief, a writ of mandamus, abatement, or any other appropriate action or proceedings to prevent, enjoin, abate or remove any unlawful erection, maintenance or use.

The rights and remedies provided herein are cumulative and in addition to all other remedies provided by law.

## **SECTION 16.3 AUTHORIZED TOWNSHIP OFFICIALS; SCHEDULE OF CIVIL FINES.**

- A. The Zoning Administrator together with officers of the Leelanau County Sheriff's department, are authorized to issue municipal civil infraction citations and municipal civil infraction violation notices for any violations of this Ordinance.
- B. Schedule of Fines for Citations.

1. A person who, as a result of violating any provision of this Ordinance, is issued a municipal civil infraction citation and is responsible for a municipal civil infraction, shall pay a civil fine (of not less than \$100 nor more than \$500.00, plus costs and other sanctions, for each infraction.
2. Repeat offenses shall be subject to increased, fines as set forth, below. As used in this Section, "repeat offense" means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision of this Ordinance (i) committed by a person within any 12 month period and (ii) for which the person admits responsibility or is determined to be responsible. The increased fine for a repeat offense under any ordinance shall be as follows:
  - a. The fine for any offense which is a repeat offense shall be no less than \$250 plus costs and other sanctions.
  - b. The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be no less than \$500 plus costs and other sanctions.

C. Schedule of Fines for Violation Notices.

A person who, as a result of violating any provision of this Ordinance is issued a "municipal civil infraction violation notice", upon a determination of responsibility thereon, shall pay a civil fine at the Empire Township Municipal Ordinance Violations Bureau as follows:

1. \$100 for the first violation.
2. \$250 for the second violation within a 12 month period.
3. \$500 for a third violation within a 12 month period.

## ARTICLE 17 SEVERABILITY

### **SECTION 17.1 VALIDITY**

If any clause, sentence, sub-sentence, paragraph, section or part of this Ordinance be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, sub-sentence, paragraph, section or part directly involved in the controversy in which said judgment shall have been rendered.

## ARTICLE 18 AMENDMENTS

### **SECTION 18.1 MEETING OF ZONING BOARD UPON RECEIPT OF PETITION**

Any person affected by this Ordinance may submit a petition in writing to the Planning Commission, asking that consideration be given to amendment of this Ordinance in the particulars set out in the petition. Upon receipt of such a petition, the Planning Commission shall, within thirty (30) days, hold a meeting to consider such petition. The person submitting such petition shall be notified of the time and place of such meeting not later than ten (10) days prior to the meeting thereto. Petitions by property owners for zoning amendments shall be accompanied by the appropriate fee established for same by resolution of the Township Board.

### **SECTION 18.2 FREQUENCY**

Unless an applicant can show changed circumstances, a request for an amendment to this Ordinance affecting the same parcel or parcels of property or any part thereof, and requesting the same change in district classification by a property owner or owners shall not be eligible for consideration more often than once every twelve (12) months.

### **SECTION 18.3 PROOF OF BENEFIT**

Any person seeking an amendment of this ordinance or the zoning map has the burden of proving that the requested amendment will substantially benefit the health, safety and general welfare of the general public and in no way jeopardize the health, safety or welfare of the general public.

### **SECTION 18.4 JUSTIFICATION**

All requests for amendment of the zoning map adopted by this Ordinance must be filed with the Planning Commission and the request shall contain justification for amending this Ordinance, as well as any pertinent charts, maps, documents that may clarify the said proposal. The request shall be accompanied by the appropriate fee as provided by resolution of the Township Board.

## **SECTION 18.5    CONDITIONAL REZONING**

*(As amended by Ordinance #03-08, effective April 19, 2008)*

### A. Intent.

It is recognized that there are certain instances where it would be in the best interests of the Township, as well as advantageous to property owners seeking a change in zoning boundaries, if certain conditions could be proposed by property owners as part of a request for a rezoning. It is the intent of this Section to provide a process consistent with the provisions of the Michigan Zoning Enabling Act by which an owner seeking a rezoning may voluntarily propose conditions regarding the use and/or development of land as part of the rezoning request.

### B. Application and Offer of Conditions.

1. An owner of land may voluntarily offer in writing conditions relating to the use and/or development of land for which a rezoning is requested. This offer may be made either at the time the application for rezoning is filed or may be made at a later time during the rezoning process.
2. The required application and process for considering a rezoning request with conditions shall be the same as that for considering rezoning requests made without any offer of conditions, except as modified by the requirements of this Section.
3. The owner's offer of conditions may not purport to authorize uses or developments not permitted in the requested new land use district.
4. Any use or development proposed as part of an offer of conditions that would require a special land use permit under the terms of this Ordinance may only be commenced if a special land use permit for such use or development is ultimately granted in accordance with the provisions of this Ordinance.
5. Any use or development proposed as part of an offer of conditions that would require a variance under the terms of this Ordinance may only be commenced if such variance is ultimately granted by the Zoning Board of Appeals in accordance with the provisions of this Ordinance.
6. Any use or development proposed as part of an offer of conditions that would require site plan approval under the terms of this Ordinance may only be commenced if site plan approval for such use or development is ultimately granted in accordance with the provisions of this Ordinance.

7. The offer of conditions may be amended during the process of rezoning consideration provided that any amended or additional conditions are entered voluntarily in writing by the owner. An owner may withdraw all or part of its offer of conditions any time prior to final rezoning action of the Township Board provided that, if such withdrawal occurs subsequent to the Planning Commission's public hearing on the original rezoning request, then the rezoning application shall be referred to the Planning Commission for a new public hearing with appropriate notice and a new recommendation.

C. Planning Commission Review.

1. The Planning Commission, after public hearing and consideration of the factors for rezoning set forth in Section of this Ordinance, may recommend approval, approval with recommended changes or denial of the rezoning; provided, however, that any recommended changes to the offer of conditions are acceptable to and thereafter offered in writing by the owner.
2. In performing its review under this section, the Planning Commission may retain whatever planning and legal assistance it needs to permit it to adequately review the proposed conditional rezoning and the conditions to be attached thereto as well as the proposed Statement of Conditions which would be attached to the conditional rezoning as set forth in section E below.
3. The cost of such legal and/or planning assistance shall be borne by the owner(s) of the subject property and the Township may require that the estimated cost of such legal and/or planning assistance be deposited with the Township prior to retaining such assistance. Following completion of the conditional rezoning process, any sums deposited with the Township in excess of the sum required for such legal and/or planning assistance shall be refunded forthwith to the owner(s). Likewise, any sums owed by the owner(s) to the Township in excess of those deposited shall be paid forthwith.

D. Township Board Review.

1. After receipt of the Planning Commission's recommendation, the Township Board shall deliberate upon the requested rezoning and may approve or deny the conditional rezoning request. The Township Board's deliberations shall include, but not be limited to, a consideration of the factors for rezoning set forth in Section 18.6 of this Ordinance. Should the Township Board consider amendments to the proposed conditional rezoning advisable and if such contemplated amendments to the offer of conditions are acceptable to and thereafter offered by the owner in writing, then the Township Board shall, in accordance with Section 405 of the Michigan Zoning Enabling Act

refer such amendments to the Planning Commission for a report thereon within a time specified by the Township Board and proceed thereafter in accordance with said statute to deny or approve the conditional rezoning with or without amendments.

2. In performing its review under this section, the Township Board may retain any additional planning and legal assistance it needs to permit it to adequately review the proposed conditional rezoning and the conditions to be attached thereto as well as the proposed Statement of Conditions which would be attached to the conditional rezoning as set forth in section E below.
3. The cost of such legal and/or planning assistance shall be borne by the owner(s) of the subject property and the Township may require that the estimated cost of such legal and/or planning assistance be deposited with the Township prior to retaining such assistance. Following completion of the conditional rezoning process, any sums deposited with the Township in excess of the sum required for such legal and/or planning assistance shall be refunded forthwith to the owner(s). Likewise, any sums owed by the owner(s) to the Township in excess of those deposited shall be paid forthwith.

E. Approval.

1. If the Township Board finds the rezoning request and offer of conditions acceptable and all fees due from the owner(s) have been paid, the offered conditions shall be incorporated into a formal written Statement of Conditions acceptable to the owner and conforming in form to the provisions of this Section. The Statement of Conditions shall be incorporated by attachment or otherwise as an inseparable part of the ordinance adopted by the Township Board to accomplish the requested rezoning.
2. The Statement of Conditions shall:
  - a. Be in a form recordable with the Register of Deeds of Leelanau County or, in the alternative, be accompanied by a recordable Affidavit or Memorandum prepared and signed by the owner giving notice of the Statement of Conditions in a manner acceptable to the Township Board.
  - b. Contain a legal description of the land to which it pertains.
  - c. Contain a statement acknowledging that the Statement of Conditions runs with the land and is binding upon successor owners of the land.



- d. Incorporate by attachment or reference any diagram, plans or other documents submitted or approved by the owner that are necessary to illustrate the implementation of the Statement of Conditions. If any such documents are incorporated by reference, the reference shall specify where the document may be examined.
  - e. Contain a statement acknowledging that the Statement of Conditions or an Affidavit or Memorandum giving notice thereof may be recorded by the Township with the Register of Deeds of Leelanau County.
  - f. Contain the notarized signatures of all of the owners of the subject land preceded by a statement attesting to the fact that they voluntarily offer and consent to the provisions contained within the Statement of Conditions.
3. Upon the rezoning taking effect, the Zoning Map shall be amended to reflect the new zoning classification along with a designation that the land was rezoned with a Statement of Conditions. The Township Clerk shall maintain a listing of all lands rezoned with a Statement of Conditions.
  4. The approved Statement of Conditions or an Affidavit or Memorandum giving notice thereof shall be filed by the Township with the Register of Deeds of Leelanau County. The owner(s) of the subject land shall reimburse the Township for the cost of such recording, as well as any other costs provided for in this Ordinance, prior to implementing the use authorized by the conditional rezoning.
  5. Upon the rezoning taking effect, the use of the land so rezoned shall conform thereafter to all of the requirements regulating use and development within the new land use district as modified by any more restrictive provisions contained in the Statement of Conditions.

F. Compliance with Conditions.

1. Any person who establishes a development or commences a use upon land that has been rezoned with conditions shall continuously operate and maintain the development or use in compliance with all of the conditions set forth in the Statement of Conditions. Any failure to comply with a condition contained within the Statement of Conditions shall constitute a violation of this Zoning Ordinance and be punishable accordingly. Additionally, any such violation shall be deemed a nuisance per se and subject to judicial abatement as provided by law.
2. No permit or approval shall be granted under this Ordinance for any use or development that is contrary to an applicable Statement of Conditions.

G. Time Period for Establishing Development or Use.

Unless another time period is specified in the Ordinance rezoning the subject land, the approved development and/or use of the land pursuant to building and other required permits must be commenced upon the land within 18 months after the rezoning took effect and thereafter proceed diligently to completion. This time limitation may upon written request be extended by the Township Board if (1) it is demonstrated to the Township Board's reasonable satisfaction that there is a strong likelihood that the development and/or use will commence within the period of extension and proceed diligently thereafter to completion and (2) the Township Board finds that there has not been a change in circumstances that would render the current zoning with Statement of Conditions incompatible with other zones and uses in the surrounding area or otherwise inconsistent with sound zoning policy.

H. Reversion of Zoning.

If approved development and/or use of the rezoned land does not occur within the time frame specified under Subsection G above, then the land shall revert to its former zoning classification as set forth in the Michigan Zoning Enabling Act, PA 110 of 2006. The reversion process shall be confirmed by the Township Board after receiving a report from the Zoning Administrator, concurred in by the Planning and Zoning Board after notice to the owner(s) of the subject property, that the approved development and/or use of the rezoned land did not occur within the time frame specified under Subsection G above.

I. Subsequent Rezoning of Land.

When land that is rezoned with a Statement of Conditions is thereafter rezoned to a different zoning classification or to the same zoning classification but with a different or no Statement of Conditions, whether as a result of a reversion of zoning pursuant to Subsection H above or otherwise, the Statement of Conditions imposed under the former zoning classification shall cease to be in effect. The Township Clerk shall record with the Register of Deeds of Leelanau County a notice that the Statement of Conditions is no longer in effect.

J. Amendment of Conditions.

1. During the time period for commencement of an approved development or use specified pursuant to Subsection G above or during any extension thereof granted by the Township Board, the Township shall not add to or alter the conditions in the Statement of Conditions.

2. The Statement of Conditions may be amended thereafter in the same manner as was prescribed for the original rezoning and Statement of Conditions.

K. Township Right to Rezone.

Nothing in the Statement of Conditions nor in the provisions of this Section shall be deemed to prohibit the Township from rezoning all or any portion of land that is subject to a Statement of Conditions to another zoning classification. Any rezoning shall be conducted in compliance with this Ordinance and the Michigan Zoning Enabling Act.

L. Failure to Offer Conditions.

The Township shall not require an owner to offer conditions as a requirement for rezoning. The lack of an offer of conditions shall not affect an owner's rights under this Ordinance.

### **SECTION 18.7 DECLARATION OF A ZONING MORATORIUM**

Notwithstanding any other provision of this zoning ordinance, the Township Board may, by resolution, declare a moratorium on the issuance of any permit under this Ordinance, the processing of any permit application hereunder, the processing of any rezoning request, the processing of any site plan review, special land use request, or the processing of any other application made under this zoning ordinance.

Such a moratorium may be declared by the Township Board only under the following conditions:

- A. The Township Board finds, based on facts appearing in the public record before it, that such a moratorium is necessary to protect the public health, safety and welfare and that no other action short of imposing such a moratorium can adequately protect the public health, safety and welfare;
- B. The moratorium is for a limited period of time, not to exceed six (6) months, but may be extended for no more than one (1) additional six (6) month period upon a new and separate finding of the facts required by subsection A, above;
- C. The moratorium is limited in its scope and area of application so as to only affect those matters and that area necessary to protect the public health, safety and welfare;
- D. The resolution declaring the moratorium shall be published in a newspaper of general circulation within the Township;

- E. The resolution declaring the moratorium shall specify the effective date of such moratorium which may be the date of publication or another date following such publication; and
- F. The resolution declaring the moratorium shall be adopted by a vote of no fewer than five (5) members of the Township Board.

EMPIRE TOWNSHIP  
LEELANAU COUNTY

ORDINANCE NO. 02-2015

AMENDMENT TO THE EMPIRE TOWNSHIP ZONING ORDINANCE

AN ORDINANCE TO AMEND THE EMPIRE TOWNSHIP ZONING ORDINANCE TO PROVIDE CLARIFICATION THAT STRUCTURES ARE NOT PERMITTED IN THE SIDE SETBACK AREA, ADD DOCKS AND RAFTS IN THE DEFINITIONS OF STRUCTURES, DEFINE THE MANNER OF MEASURING SIDE SETBACKS IN LAKE ACCESS AREAS, REQUIRE PLANNING COMMISSION DETERMINATION FOR USES OTHER THAN THOSE CURRENTLY PERMITTED IN THE GATEWAY MIXED-USE DISTRICT, AND CLARIFY THAT THERE ARE MINIMUM SETBACKS IN SITE DEVELOPMENT STANDARDS BY ADDING THE WORD "SETBACK" WHERE IT IS IMPLIED BUT NOT STATED.

EMPIRE TOWNSHIP HEREBY ORDAINS:

Section 1. AMENDMENT OF ZONING ORDINANCE

The Empire Township Zoning Ordinance is hereby amended in the following matters **(TEXT ADDITION – SHOWN AS BOLD, ITALICS, AND ALL CAPITALS)**:

Section 2. ARTICLE 2 - Section 2.2 - Definitions are amended as follows:

Setback: The minimum required distance between a lot line and structure. Further defined as:

A. (No changes)

B. (No changes)

C. Setback, Side: The minimum required distance, extending from the front setback to the rear setback, between the principal and accessory buildings and the side lot line. No buildings **OR STRUCTURES** are permitted in the setback area. **FOR LAKEFRONT PROPERTIES NO STRUCTURES ARE PERMITTED WITHIN SIDE YARD SETBACK AREAS, WHICH SETBACK AREAS ARE MEASURED FROM THE SIDE BOUNDARIES OF THE LOT AS EXTENDED TO THE CENTER OF THE LAKE.**

Structure: Anything constructed or erected, the use of which requires location on the ground **(INCLUDING THE GROUND UNDER WATER ON A LAKE OR RIVER)** or attachment to something having location on the ground.

Structures include, but are not limited to, principal and accessory buildings, towers, decks, **DOCKS, MOORED OR ANCHORED RAFTS**, fences, privacy screens, walls, antennae, swimming pools, signs, and gas or liquid storage facilities. Driveway access drives, sidewalks, road directional or road name signs,

and landscape improvements are not considered structures in regard to restrictions on placement within setback areas.

**Section 3. ARTICLE 4 - Section 4.7 – Lake Access/Keyholing is amended as follows:**

A. (No changes)

B. No lot abutting Lake Michigan, South Bar Lake, Big Glen or Little Glen Lake shall be used to provide lake access for any water related activity, including, without limitation, swimming (including placement of a raft), fishing, docking or mooring of any watercraft, to or for any person except as follows:

1. On a lot zoned for single family residential use, the owner(s) of the lot or the residents of the dwelling on the lot may use said lot for lake access for any water related activity, including, without limitation, swimming (including placement of a raft), fishing, docking or mooring of any watercraft, **AS LONG AS PLACEMENT COMPLIES WITH THE 10 FOOT SIDE YARD SETBACK REQUIREMENTS OF THIS ORDINANCE. (SECTION 4.1)**

**Section 4. ARTICLE 10 - Section 10.3 Special Land Uses are amended by adding the following sentence to end of Section 10.3:**

***NO USE OTHER THAN THOSE SPECIFICALLY PERMITTED UNDER SECTION 10.2 OR 10.3, ABOVE, SHALL BE PERMITTED, UNLESS THE PLANNING COMMISSION DETERMINES, FOLLOWING A PUBLIC HEARING FOR WHICH NOTICE HAS BEEN GIVEN AS PROVIDED BY LAW, THAT THE PROPOSED USE IS SUBSTANTIALLY SIMILAR TO A USE WHICH IS LISTED IN SECTION 10.2 OR 10.3 AND THAT IT MEETS THE INTENT OF THE GATEWAY MIXED USE ZONING DISTRICT AS SET FORTH IN SECTION 10.1.***

**Section 5. ARTICLE 10 - Section 10.4 B. and C. of Site Development Standards are amended as follows:**

- B. Nonresidential setbacks. For non-residential structures, the following shall apply:
1. There shall be a minimum **SETBACK** of two hundred fifty (250) feet from the edge of the right-of-way from all state highways to the building wall.
  2. There shall be a minimum **SETBACK** of seventy five (75) feet from the edge of right-of-way from all County Roads.
  3. There shall be a minimum **SETBACK** of fifty (50) feet from all road easements.
  4. There shall be a minimum setback of seventy five (75) feet from all residential zoning boundary lines.
  5. There shall be a minimum **SETBACK** of twenty-five (25) feet from all side property lines.
  6. Parking areas shall be a minimum of one hundred twenty five (125) feet from the edge of the right-of-way from all state highways, fifty (50) feet from the edge of the right-of-way from a County Road, and twenty five (25) feet from all road easements or marginal access drives. Forty (40) feet of a 125 foot or a 50 foot

setback, and 20 feet of a 25 foot setback shall be landscaped, meeting the requirements listed in Section 4.8, Landscaping.

7. There shall be a minimum **SETBACK** of forty (40) feet from the rear property line.

C. Residential setbacks. For all single family and accessory apartment structures, the following shall apply:

1. There shall be a minimum **SETBACK** of forty (40) feet from the edge of the road right-of-way or road easement.

2. There shall be a minimum **SETBACK** of twenty-five (25) feet from all side property lines.

3. There shall be a minimum **SETBACK** of forty (40) feet from the rear property line.

### **Section 6: Effective Date**

This Ordinance shall become effective upon publication in accordance with law.

At a regular meeting of the Township Board for Empire Township held on the 8th day of December, 2015, Deering moved for adoption of the foregoing ordinance and Price supported the motion.

Voting for: Deering, Neiswonger, Bolton, Price, Noonan.

Voting against: None.

The Township Supervisor declared the ordinance adopted.

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William B. Bolton  
Township Supervisor

### **CERTIFICATION**

The foregoing is a true copy of Ordinance No. 02-2015 which was duly adopted by the Empire Township Board at a regular meeting held on December 8, 2015.

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Christine M. Neiswonger  
Township Clerk

<b>EMPIRE TOWNSHIP ZONING FEE SCHEDULE</b>
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Land Use Permits:

Single Family Residential (SFR)	\$ 100.00	w/attached garage add \$ 40.00
Addition to (SFR)	\$ 50.00	
Decks, Porches, etc.	\$ 40.00	
Duplex	\$ 150.00	Multi Family - \$ 75.00 each unit
Garage / Accessory Buildings (Additions included)	\$ 50.00	Over 2,000 sq. ft. \$ 100.00
AG Buildings	\$ 50.00	AG affidavit required
Residential Driveway only	\$ 50.00	
Commercial Driveway	\$ 100.00	
Commercial Buildings/change of use	\$ 250.00	Over 3,500 sq. ft. \$ 350.00
Formal Zoning Review / per parcel	\$ 50.00	Upon Request
Home Occupation Review	\$ 100.00	Upon Request for permitting agencies
ZBA Procedures	\$ 500.00	plus professional fees and out of pocket expenses, to include but not be limited to Engineering, Survey, Planning and Legal Fees.
Permit for Sign	\$ 50.00	
Parcel Line Adjustment	\$ 100.00	
Land Division Approval	\$ 300.00	and \$ 75.00 for each additional parcel
Zoning Class Change / Amendment	\$ 500.00	plus professional fees and out of pocket expenses, to include but not be limited to Engineering, Survey, Planning and Legal Fees
Site Plan Review / Special Use Permit ( Minor projects )	\$ 250.00	Planning Commission approval required
( Major Projects ) per Zoning Ordinance	\$ 750.00	Additional fee for items listed below *
* Commercial Communication Towers	\$ 750.00	plus professional fees and out of pocket expenses, to include but not be limited to Engineering, Survey, Planning and Legal Fees.
* Private Road Construction	\$ 750.00	plus professional fees and out of pocket expenses, to include but not be limited to Engineering, Survey, Planning and Legal Fees.
* Planned Unit Development	\$ 750.00	plus professional fees and out of pocket expenses, to include but not be limited to Engineering, Survey, Planning and Legal Fees.
* Condo-Regular & Site	\$ 750.00	plus professional fees and out of pocket expenses, to include but not be limited to Engineering, Survey, Planning and Legal Fees.
Failure to obtain permit prior to Construction		2 x the permit cost

Approved: MAY 9, 2017

Effective: JUNE 19, 2017



EMPIRE TOWNSHIP  
LEELANAU COUNTY  
September 11, 2018

ORDINANCE NO. 02-2018

AMENDMENT TO THE EMPIRE TOWNSHIP ZONING ORDINANCE

AN ORDINANCE TO AMEND THE EMPIRE TOWNSHIP ZONING ORDINANCE BY DELETING SECTION 4.19 - SPECIAL EVENTS OR ACTIVITIES NOT SPECIFIED BY ORDINANCE.

EMPIRE TOWNSHIP HEREBY ORDAINS:

Section 1. AMENDMENT OF ZONING ORDINANCE

Section 4.19 of Article 4 - General Provisions, of the Empire Township Zoning Ordinance shall be removed in its entirety and amended to read as follows:(~~stricken words~~; **ADDED WORDS**):

~~SECTION 4.19 - SPECIAL EVENTS OR ACTIVITIES NOT SPECIFIED BY ORDINANCE.~~

~~Short term special events/activities not specified by this Ordinance shall be approved by the Township Board. Before approving a special event or activity, the Township Board shall determine that such event or activity will not be detrimental to the intent of the land use district in which it is permitted and may establish conditions for conducting such special event or activity so as to protect the intent of said land use district. The approval shall be in writing and shall specify the conditions established by the Township Board as well as the number of days and the times of day the special event or activity may be carried on.~~  
**RESERVED FOR FUTURE USE**

Section 2. SEVERABILITY

This Ordinance and the various parts, sections, sub-sections, phrases, sentences, paragraphs, and clauses thereof are hereby declared to be severable. If any part, sentence, paragraph, section, sub-section, phrases, or clause is adjudged unconstitutional or invalid, it shall not affect the remainder of the Ordinance.

Section 3: Effective Date

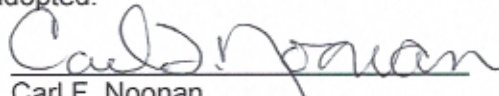
This Ordinance shall take effect on the 30th day following its publication as required by law.

At a regular meeting of the Township Board for Empire Township held on the 11th day of September, 2018, DEEGAN moved for adoption of the foregoing ordinance and NEISWONGER supported the motion.

Voting for: DEERING, NEISWONGER, NOONAN, PRICE, DEEGAN

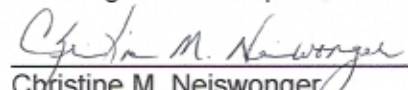
Voting against: NONE

The Township Supervisor declared the ordinance adopted.

  
Carl F. Noonan  
Empire Township Supervisor

CERTIFICATION

I hereby certify that the foregoing is a true and correct copy of Ordinance No. 02-2018 which was duly adopted by the Empire Township Board at a regular meeting held on September 11, 2018.

  
Christine M. Neiswonger  
Empire Township Clerk

EMPIRE TOWNSHIP  
LEELANAU COUNTY  
September 8, 2020

ORDINANCE NO. 02-2020

AMENDMENTS TO THE EMPIRE TOWNSHIP ZONING ORDINANCE

AN ORDINANCE TO AMEND THE EMPIRE TOWNSHIP ZONING ORDINANCE TO INCLUDE REFERENCES TO THE EMPIRE TOWNSHIP SPECIAL TEMPORARY EVENT ORDINANCE – ORDINANCE NO. 01-2020.

EMPIRE TOWNSHIP HEREBY ORDAINS:

**Section 1. AMENDMENT OF ZONING ORDINANCE**

1. Amend Article 2, Section 2.2 Definitions to include the following:

**Special Temporary Event:** Any temporary use of a lot, other than a lot or property owned by Empire Township, for purposes other than its already principally permitted use, which is operated pursuant to a license issued under Empire Township Special Temporary Event License ordinance and which offers products, goods or services, including entertainment services; whether or not conducted for fees or profit and include the following examples:

- i. Car shows, antique show, flea markets
- ii. Art music, ethnic food, theatrical, or other festivals providing lawful entertainment;
- iii. Sporting events and competitions.

2. Amend Article 4 to add thereto a new **Section 4.23 Special Temporary Events** to read as follows:

Special Temporary Events which are conducted in compliance with the terms and conditions of a special temporary event license issued by the Township may be permitted in the following zoning districts.

Public Recreation District  
Gateway Mixed use District  
Agricultural Conservation District  
Commercial development District

3. Amend Article 8, Section 8.3 Special Land Uses to include the following:

D. Special Temporary Event (subject to the Empire Township Special Temporary Event Ordinance) - on a lot or parcel 100 acres or less with no residences within 500 feet of the boundaries of the event.

4. Amend Article 10, Section 10.3 Special Land Uses to include the following:

P. Special Temporary Event (subject to the Empire Township Special Temporary Event Ordinance) – on a lot or parcel 20 acres or less with no residences within 100 feet of the boundaries of the event.

5. Amend Article 11, Section 11.3 Special Land Uses to include the following:

J. Special Temporary Event (subject to the Empire Township Special Temporary Event Ordinance) – on a lot or parcel of 50 acres or less with no residences within 200 feet of the boundaries of the event.

6. Amend Article 12, Section 12.3 Special Land Uses to include the following:

A. Any planned unit development

B. Special Temporary Event (subject to the Empire Township Special Temporary Event Ordinance) – on a lot or parcel of 40 acres or less with no residences within 200 feet of the boundaries of the event.

## **Section 2. SEVERABILITY**

This Ordinance and the various parts, sections, sub-sections, phrases, sentences, paragraphs, and clauses thereof are hereby declared to be severable. If any part, sentence, paragraph, section, sub-section, phrases, or clause is adjudged unconstitutional or invalid, it shall not affect the remainder of the Ordinance.

## **Section 3: Effective Date**

This Ordinance shall take effect on the 30th day following its publication as required by law.

At a regular meeting of the Township Board for Empire Township held on the 8th day of September, 2020, Deegan moved for adoption of the foregoing ordinance and Casey Noonan supported the motion.

Voting for: Price, Casey Noonan, Deegan, Neiswonger, Carl Noonan

Voting against: None

The Township Supervisor declared the ordinance adopted.

Carl F. Noonan  
Empire Township Supervisor

## **CERTIFICATION**

I hereby certify that the foregoing is a true and correct copy of Ordinance No. 02-2020 which was duly adopted by the Empire Township Board at a regular meeting held on September 8, 2020.

Christine M. Neiswonger  
Empire Township Clerk