

**OSHTEMO CHARTER TOWNSHIP BOARD
7275 West Main Street
Kalamazoo, MI 49009**

February 9th, 2021

Refer to www.oshtemo.org home page for Virtual Meeting Information

**REGULAR MEETING
6:00 P.M.
AGENDA**

1. Call to Order
2. Roll Call & Remote Location Identification
3. Pledge of Allegiance
4. Public Comment on Non-Regular Session Items

WORK SESSION ITEMS

5. Discussion with Legal & Ordinance Enforcement Depts on Non-discharge Areas
 - a. Non-discharge of Firearms - Bow Arms
 - b. Boundaries
6. Other Updates & Business

BREAK (Time Permitting) – 7:05 P.M.

REGULAR SESSION ITEMS – 7:15 P.M.

7. Consent Agenda
 - a. Approve Minutes – January 26th, 2021
 - b. Receipts & Disbursements Report
 - c. Board/Committee Appointments
 - d. Paid on Call Compensation Policy
 - e. Fire Alarm Ordinance Amendments – Second Reading
 - f. Zoning Ordinance Amendments – Second Reading
 - i. Pools on corner Lots (Front Yard Setback)
 - ii. Child and Adult Care Centers
 - g. Fire Department Lexipol Policies
 - h. Elections Budget Amendment.
8. Consideration of City of Kalamazoo Water Agreement with Final Version of Appendices
9. Discussion/Consideration of Poverty Exemptions per Recent Changes in State Law
10. Other Township Business & Question Updates
11. Public Comment
12. Board Member Comments
13. Adjournment

**Policy for Public Comment
Township Board Regular Meetings, Planning Commission & ZBA Meetings**

All public comment shall be received during one of the following portions of the Agenda of an open meeting:

a. Citizen Comment on Non-Agenda Items or Public Comment – while this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official or staff member to respond at a later date. More complicated questions can be answered during Township business hours through web contact, phone calls, email (oshtemo@oshtemo.org), walk-in visits, or by appointment.

b. After an agenda item is presented by staff and/or an applicant, public comment will be invited. At the close of public comment there will be Board discussion prior to call for a motion. While comments that include questions are important, depending on the nature of the question, whether it can be answered without further research, and the relevance to the agenda item at hand, the questions may not be discussed during the Board deliberation which follows.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name, but it is not required.

All public comment offered during public hearings shall be directed, and relevant, to the item of business on which the public hearing is being conducted. Comment during the Public Comment Non-Agenda Items may be directed to any issue.

All public comment shall be limited to four (4) minutes in duration unless special permission has been granted in advance by the Supervisor or Chairperson of the meeting.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor or Chairperson of the meeting shall terminate any public comment which does not follow these guidelines.

(adopted 5/9/2000)
(revised 5/14/2013)
(revised 1/8/2018)

Questions and concerns are welcome outside of public meetings during Township Office hours through phone calls, stopping in at the front desk, by email, and by appointment. The customer service counter is open from Monday-Thursday 8:00 am- 5:00 pm, and on Friday 8:00 am-1:00 pm. Additionally, questions and concerns are accepted at all hours through the website contact form found at www.oshtemo.org, email, postal service, and voicemail. Staff and elected official contact information is provided below. If you do not have a specific person to contact, please direct your inquiry to oshtemo@oshtemo.org and it will be directed to the appropriate person.

Oshtemo Township Board of Trustees		
<u>Supervisor</u>		
Libby Heiny-Cogswell	216-5220	libbyhc@oshtemo.org
<u>Clerk</u>		
Dusty Farmer	216-5224	dfarmer@oshtemo.org
<u>Treasurer</u>		
Clare Buszka	216-5260	cbuszka@oshtemo.org
<u>Trustees</u>		
Cheri L. Bell	372-2275	cbell@oshtemo.org
Kristin Cole	375-4260	kcole@oshtemo.org
Zak Ford	271-5513	zford@oshtemo.org
Kizzy Bradford	375-4260	kbradford@oshtemo.org

Township Department Information			
<u>Assessor:</u>			
Kristine Biddle	216-5225	assessor@oshtemo.org	
<u>Fire Chief:</u>			
Mark Barnes	375-0487	mbarnes@oshtemo.org	
<u>Ordinance Enf:</u>			
Rick Suwarsky	216-5227	rsuwarsky@oshtemo.org	
<u>Parks Director:</u>			
Karen High	216-5233	khigh@oshtemo.org	
Rental Info	216-5224	oshtemo@oshtemo.org	
<u>Planning Director:</u>			
Iris Lubbert	216-5223	ilubbert@oshtemo.org	
<u>Public Works:</u>			
Marc Elliott	216-5236	melliott@oshtemo.org	

Zoom Instructions for Participants

Before a videoconference:

1. You will need a computer, tablet, or smartphone with a speaker or headphones. You will have the opportunity to check your audio immediately upon joining a meeting.
2. If you are going to make a public comment, please use a microphone or headphones with a microphone to cut down on feedback, if possible.
3. Details, phone numbers, and links to videoconference or conference call are provided below. The details include a link to “**Join via computer**” as well as phone numbers for a conference call option. It will also include the 11-digit Meeting ID.

To join the videoconference:

1. At the start time of the meeting, click on this link to [join via computer](#). You may be instructed to download the Zoom application.
2. You have an opportunity to test your audio at this point by clicking on “Test Computer Audio.” Once you are satisfied that your audio works, click on “Join audio by computer.”

You may also join a meeting without the link by going to [join.zoom.us](#) on any browser and entering this **Meeting ID: 860 8472 3859**

If you are having trouble hearing the meeting or do not have the ability to join using a computer, tablet or smartphone then you can join via conference call by following instructions below.

To join the conference by phone:

1. On your phone, dial the toll-free teleconferencing number: **1-929-205-6099**
2. When prompted using your touchtone (DTMF) keypad, enter the Meeting ID number: **860 8472 3859#**

Participant controls in the lower-left corner of the Zoom screen:



Using the icons at the bottom of the Zoom screen, you can (some features will be locked to participants during the meeting):

- Participants – opens a pop-out screen that includes a “Raise Hand” icon that you may use to raise a virtual hand. **This will be used to indicate that you want to make a public comment.**
- Chat – opens pop-up screen that allows participants to post comments during the meeting.

If you are attending the meeting by phone, to use the “Raise Hand” feature **press *9 on your touchtone keypad.**

Public comments will be handled by the “Raise Hand” method as instructed above within Participant Controls.

MEMORANDUM

To: Township Board
From: James Porter
Date: February 4, 2021
Subject: Township Non-Discharge of Firearms Area

OBJECTIVE:

To provide information to the Board regarding past requests for an expansion of the Non-Discharge of Firearms Area.

BACKGROUND:

Many of you may not be aware, but the Township requested that the Department of Natural Resources (DNR) expand the Non-Discharge of Firearm Area within the Township in 2015. The purpose of this memo is to provide the Board with some background information regarding that prior request.

INFORMATION PROVIDED:

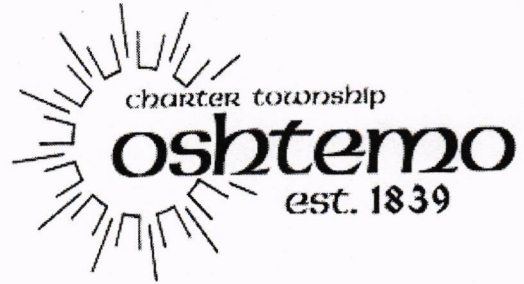
Attached to this memo you will find:

- (1) memo from Township Counsel to the Township Board dated 03-07-2016 regarding no hunting/no discharge firearms area (with attached copies of the Non-Discharge Zone as it exists and of the Non-Discharge Zone as requested by the Township Board in 2015);
- (2) a copy of a presentation by Wes and Annmarie Freeland regarding accidental firearm discharge damage to their home;
- (3) a copy of the denial of the Township's request by the DNR hearing officer; and
- (4) memo from Township Counsel "Law regarding hunting area control measures in Michigan" dated 02-02-2021.

STATEMENT OF REQUESTED BOARD ACTION:

If the Board wishes to proceed with an expansion of the area and restrictions for the Non-Discharge Zone, the Township Board would need to draft a Resolution to request these actions from the DNR. Such a Resolution from the Board could include a resolution to request another hearing by the DNR to expand the Non-Discharge Area as well as a request to add a restriction to the Non-Discharge Area to include the use of bow and arrow.

Memo



To: Oshtemo Charter Township Board
From: James W. Porter
Date: March 7, 2016
Subject: No Hunting/Non-Discharge of Firearms

When I last addressed this issue with the Board, you will recall that I had requested that we send a letter to the Attorney General's Office to ask for clarification on the issue of non-discharge of firearms while hunting and/or target-shooting. While the Board had consented to my drafting such a letter, it appears that such a letter is no longer necessary.

I was recently contacted by the Department of Natural Resources, and given that conversation, as well as a recent amendment in state law, it has clarified the concerns which I had regarding both the authority of the D.N.R. and the Township to not only close areas to hunting, but to also close those areas to the discharge of firearms.

Therefore, at this time, I believe the Township could reinstate its request that the D.N.R. expand the Township's no hunting/non-discharge of firearms areas, which would have the effect of not only closing these areas to hunting, but close them to target-shooting, as well.

BACKGROUND

For the Board members who are not real familiar with this process, the D.N.R. has authority over the prohibiting of hunting and the discharge of firearms if it establishes what is commonly referred to as a "hunting control area." It was under the D.N.R.'s authority that the Township enacted Ordinance No. 319 in October of 1994. This closes certain areas to hunting and target-shooting within the Township. There was an attempt to expand that area in 2005, but the D.N.R. rejected our request for an expansion of the no hunting/non-discharge of firearms area.

Because of recent events in Section 12, as well as the expansion of residential development within Sections 1, 2, 14 and 36, it would be my recommendation that the Township request an expansion of its no hunting/non-discharge of firearms area. In order to seek an expansion of the no hunting/non-discharge of firearms area, this Board would need to pass a resolution asking that the D.N.R., pursuant to Section 419 of Public Act 451 of 1994, hold a public hearing and determine whether the no hunting/non-discharge of firearms be expanded.

INFORMATION PROVIDED

If the Board passes the resolution, the D.N.R. would then schedule a public hearing to determine what, if any, additional areas would be closed to hunting and target-shooting. I have attached a map of the current restricted areas within the Township. See Exhibit A. I have also attached a copy of a map which would call for the expansion of the no hunting/non-discharge of firearms area to include the southern half of Sections 1 and 2, the northwest area of Section 14, the southwest area of Section 26, and the southeast area of Section 36. This is attached as Exhibit B.

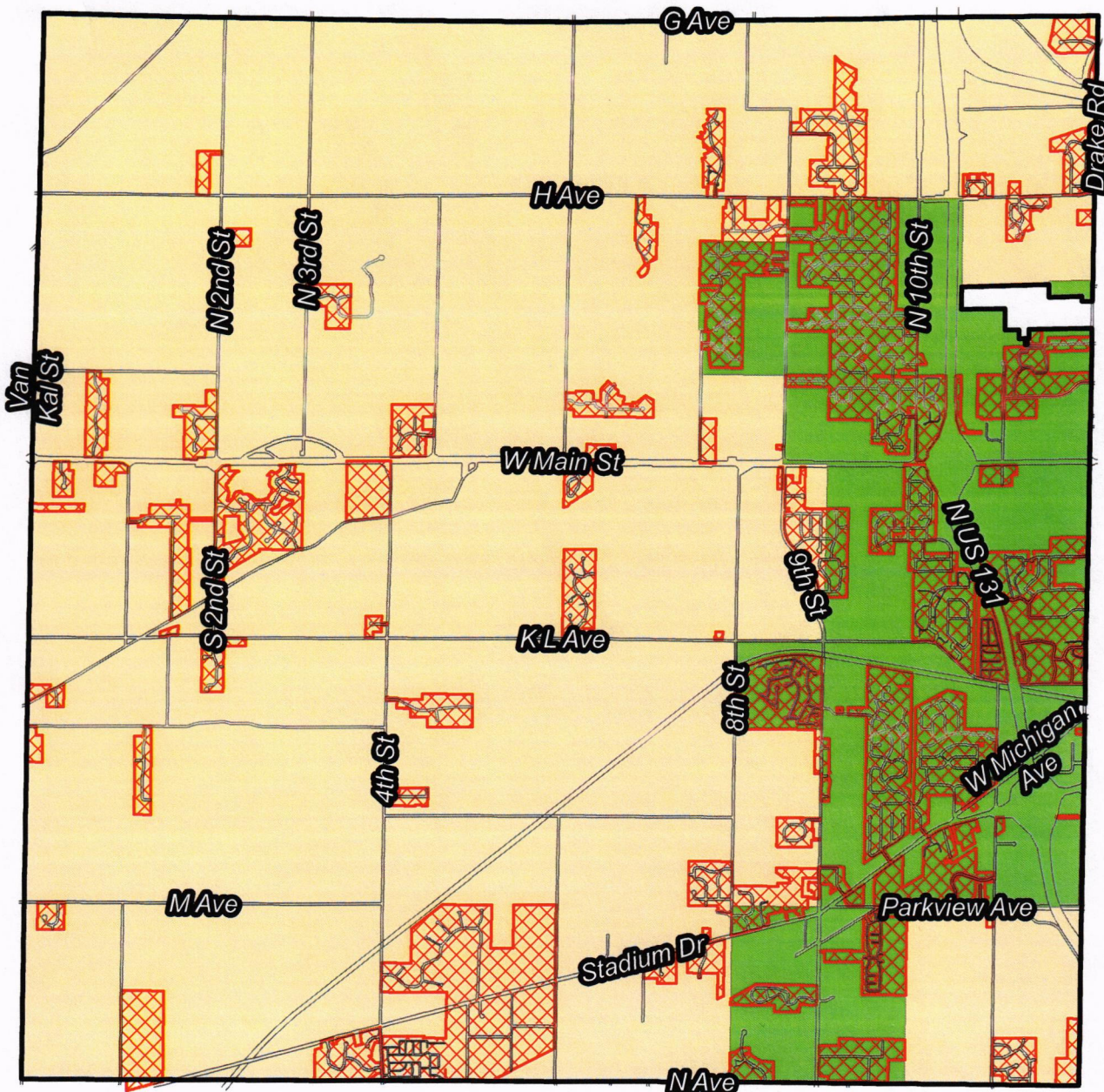
I have also attached a broader request, but I am not certain that the D.N.R. would grant this if requested, but perhaps, the Board would like to see a review of broader limitations and let the D.N.R. provide its own recommendation. Therefore, I have attached a third map which includes all of Sections 1 and 2, all portions of Section 12, the northwest and southwest portions of Section 14, the northwest and southwest portions of Section 26, as well as the southern half of Section 36. This is attached as Exhibit C.

REQUEST TO THE BOARD




If the Board wishes to have this matter move forward, my recommendation would be that you request a resolution outlining those areas which you want to see closed, and I will prepare it for your next Board meeting of April 12, 2016, at which time, it will be submitted to the D.N.R. to schedule a public hearing for further considerations.

No Discharge Zone

Existing Boundaries

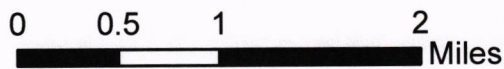
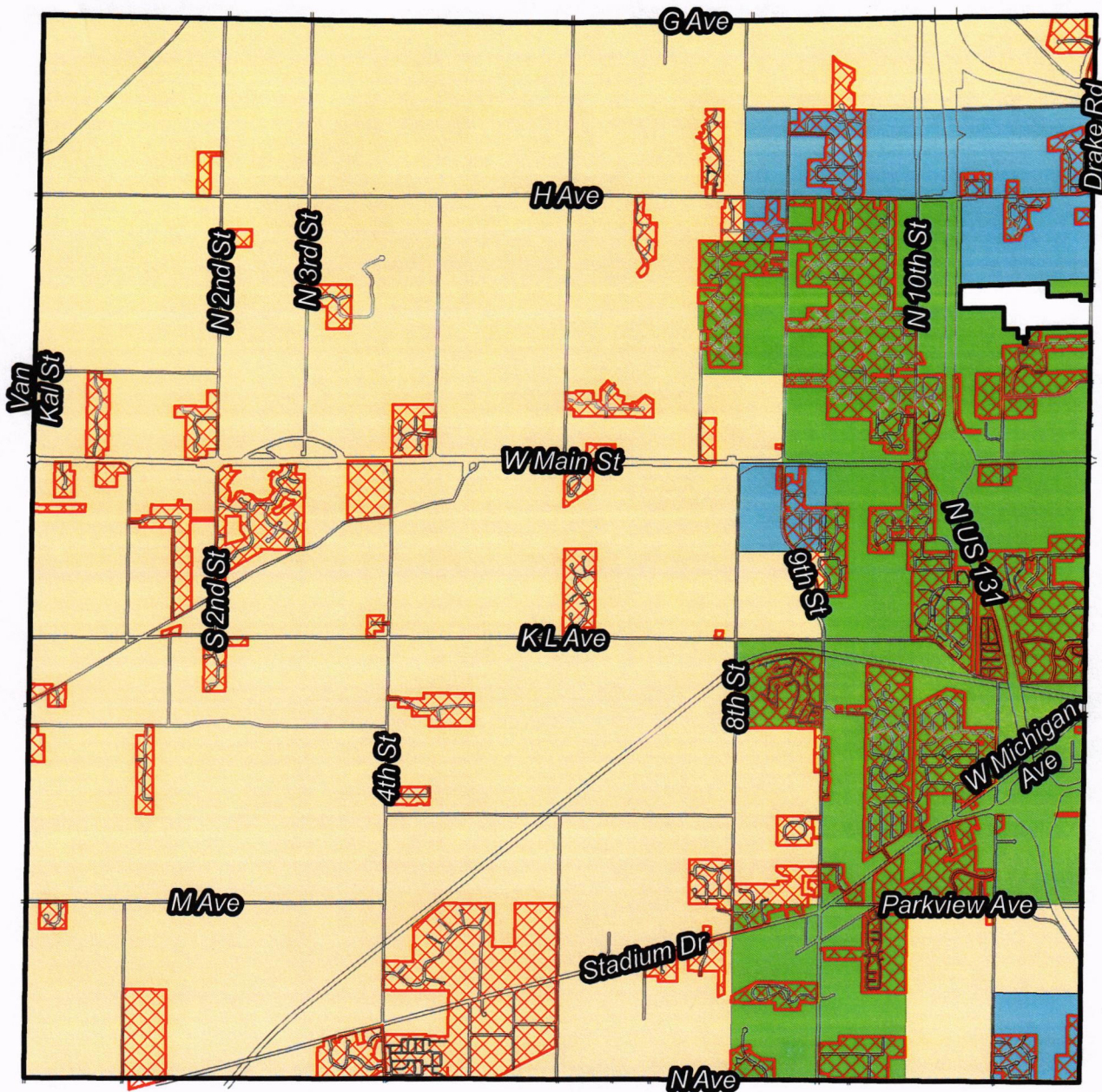


LEGEND

-  No Discharge Of Firearms Area
-  Plats & High Density Residential
-  Road Right-of-Way



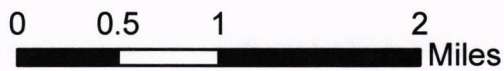
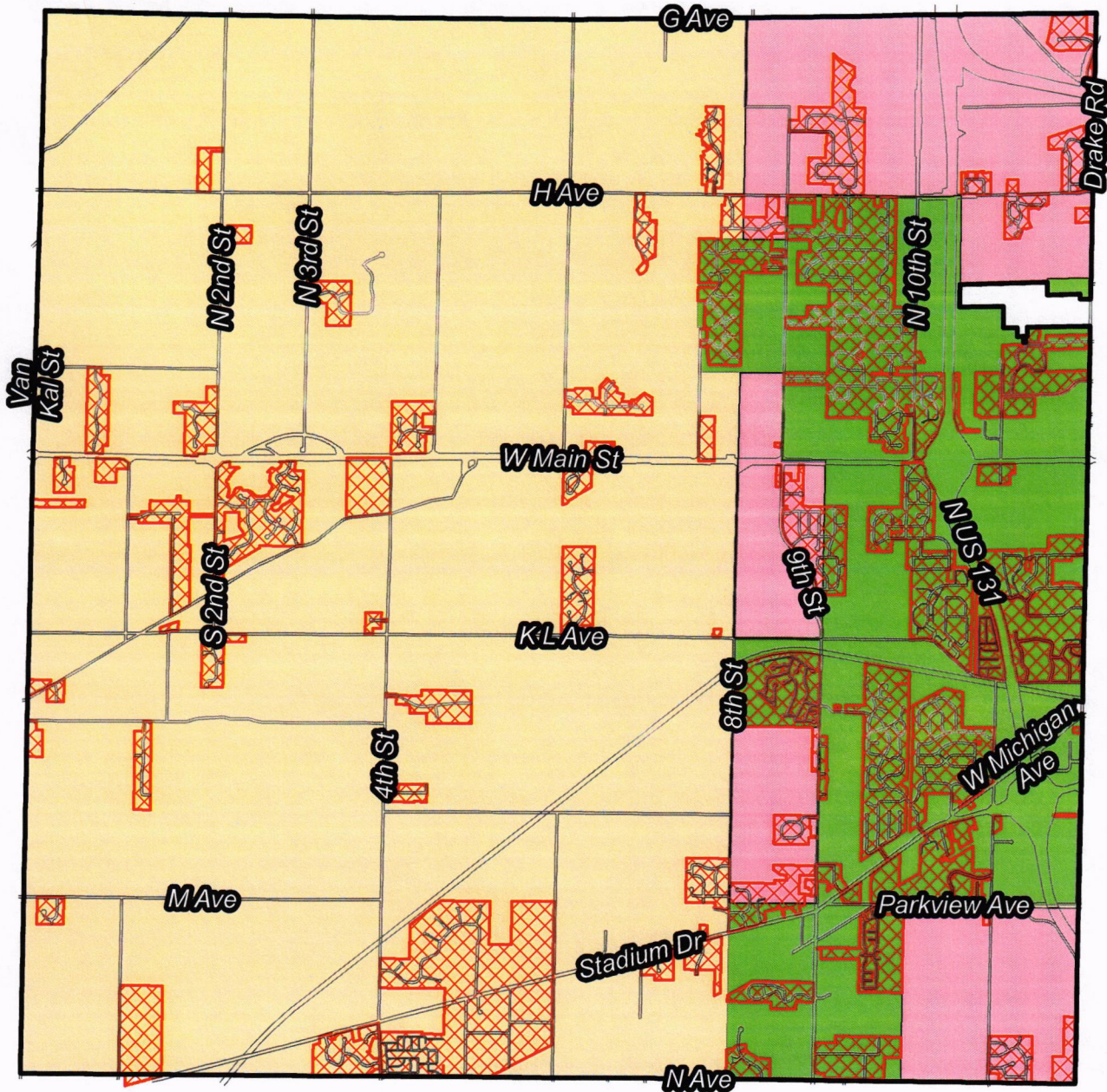
No Discharge Zone Expansion Option A







LEGEND

-  No Discharge Of Firearms Area
-  Expansion Option A
-  Plats & High Density Residential
-  Road Right-of-Way

No Discharge Zone Expansion Option B



LEGEND

-  No Discharge Of Firearms Area
-  Expansion Option B
-  Plats & High Density Residential
-  Road Right-of-Way

Department of Natural Resources Public Hearing

8-17-16

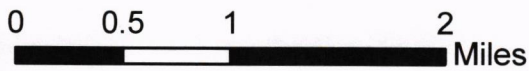
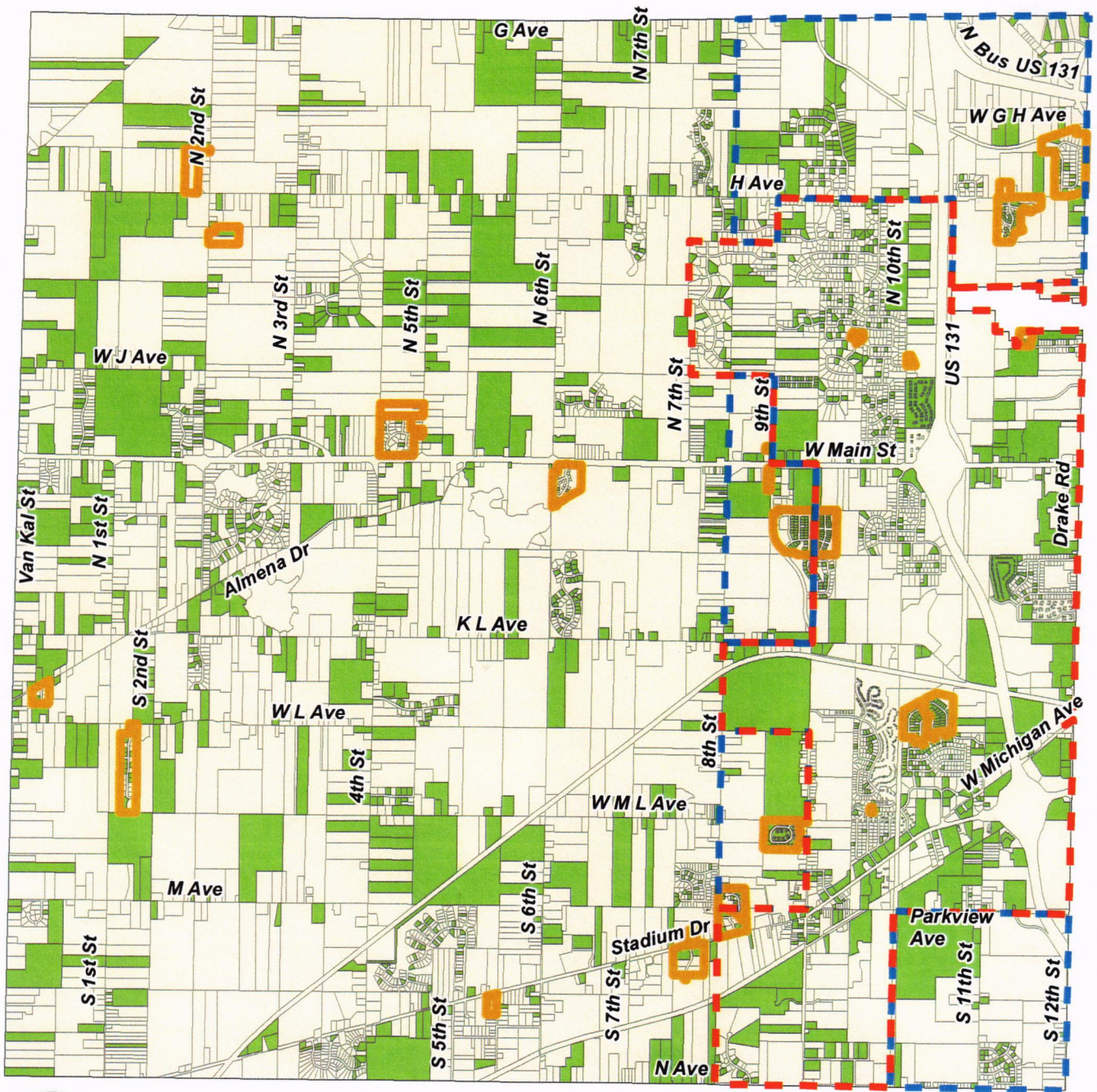
A Brief Background

**Accidental Firearm Discharge Damage
at
Wes and Annmarie Freeland's Home
2545 Creek Shire Ct. Kalamazoo, MI 49009**

**June 7, 2015
Approximately 2 Minutes Prior to 7:08:47 PM EDT**

D. N. R. Copy

Development Activity Since 2005



Legend

- Property Issued a Building Permit Since 2005
- Subdivision/Site Condominium Established Since 2005
- No-Discharge Area**
- Existing No Hunting, Non-Discharge of Firearms Area
- Proposed Expansion

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.40111 Taking animal from in or upon vehicle; transporting or possessing firearm in or upon vehicle; person with disability; transporting or possessing unloaded firearm in or upon vehicle on sporting clays range; transporting or possessing bow in or upon vehicle; written permission to hunt or discharge firearm; definitions.

Sec. 40111. (1) Except as otherwise provided in subsection (3) or (4), this part, or in a department order authorized under section 40107, an individual shall not take an animal from in or upon a vehicle.

(2) Except as otherwise provided in subsection (3) or (4), this part, or in a department order authorized under section 40107, an individual shall not transport or possess a firearm in or upon a vehicle, unless the firearm is unloaded in both barrel and magazine and enclosed in a case, carried in the trunk of a vehicle, or unloaded in a motorized boat.

(3) A person with a disability may transport or possess a firearm in or upon a vehicle, except for a car or truck, on a state licensed game bird hunting preserve if the firearm is unloaded and the vehicle is operated at a speed of not greater than 10 miles per hour. A person with a disability may possess a loaded firearm and may discharge that firearm to take an animal from in or upon a vehicle, except for a car or truck, on a state licensed game bird hunting preserve if the vehicle is not moving. The department may demand proof of eligibility under this subsection. An individual shall possess proof of his or her eligibility under this subsection and furnish the proof upon the request of a peace officer.

(4) An individual may transport or possess an unloaded firearm in or upon a vehicle on a sporting clays range.

(5) Except as otherwise provided in this part, an individual shall not transport or possess a bow in or upon a vehicle, unless the bow is unstrung, enclosed in a case, or carried in the trunk of a vehicle.

(6) An individual shall not hunt or discharge a firearm within 150 yards of an occupied building, dwelling, house, residence, or cabin, or any barn or other building used in connection with a farm operation, without obtaining the written permission of the owner, renter, or occupant of the property.

(7) As used in this section:

(a) "Person with a disability" means a disabled person as that term is defined in section 19a of the Michigan vehicle code, 1949 PA 300, MCL 257.19a, and who is in possession of 1 of the following:

(i) A certificate of identification or windshield placard issued to a disabled person under section 675 of the Michigan vehicle code, 1949 PA 300, MCL 257.675.

(ii) A special registration plate issued to a disabled person under section 803d of the Michigan vehicle code, 1949 PA 300, MCL 257.803d.

(b) "Unloaded" means, for a break-action firearm, that the action is open with the breech exposed, whether or not the breech contains a shell. Unloaded means, for a non-break-action firearm, that the barrel of the firearm does not contain a shell.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2012, Act 246, Imd. Eff. July 2, 2012;—Am. 2012, Act 340, Imd. Eff. Oct. 16, 2012.

Popular name: Act 451

Popular name: NREPA

CARELESS, RECKLESS, OR NEGLIGENT USE OF FIREARMS

Act 45 of 1952

AN ACT to prohibit the careless, reckless or negligent use of firearms and to provide penalties for the violation of this act; and to repeal certain acts and parts of acts.

History: 1952, Act 45, Eff. Sept. 18, 1952. The People of the State of Michigan enact:

752.861 Careless, reckless or negligent use of firearms; penalty.

Sec. 1. Any person who, because of carelessness, recklessness or negligence, but not wilfully or wantonly, shall cause or allow any firearm under his immediate control, to be discharged so as to kill or injure another person, shall be guilty of a misdemeanor, punishable by imprisonment in the state prison for not more than 2 years, or by a fine of not more than \$2,000.00, or by imprisonment in the county jail for not more than 1 year, in the discretion of the court.

History: 1952, Act 45, Eff. Sept. 18, 1952.

752.862 Careless, reckless or negligent use of firearms; injury of property; penalty.

Sec. 2. Any person who, because of carelessness, recklessness or negligence, but not wilfully or wantonly, shall cause or allow any firearm under his control to be discharged so as to destroy or injure the property of another, real or personal, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail for not more than 90 days or by a fine of not more than \$100.00, if the injury to such property shall not exceed the sum of \$50.00, but in the event that such injury shall exceed the sum of \$50.00, then said offense shall be punishable by imprisonment in the county jail for not more than 1 year or by a fine not exceeding \$500.00.

History: 1952, Act 45, Eff. Sept. 18, 1952.

752.863 Section repealed.

Sec. 3. Section 235a of Act No. 328 of the Public Acts of 1931, being section 750.235a of the Compiled Laws of 1948, is hereby repealed.

History: 1952, Act 45, Eff. Sept. 18, 1952.

752.863a Reckless, wanton use or negligent discharge of firearm; penalty.

Sec. 3[a]. Any person who shall recklessly or heedlessly or wilfully or wantonly use, carry, handle or discharge any firearm without due caution and circumspection for the rights, safety or property of others shall be guilty of a misdemeanor.

History: Add. 1955, Act 14, Eff. Oct. 14, 1955.

Compiler's note: Section 3, as added by Act 14 of 1955, appears as Sec. 3[a] to distinguish it from the preceding section. The compilation number formerly assigned to this section was § 752.a863.

752.864 Firearms; injury to person or property, suspension of hunting privileges.

Sec. 4. In addition to the penalties provided in other sections of this act, the court may suspend the hunting privileges of any person convicted of violating any provision of this act for a period of not to exceed 3 years from the date of conviction.

History: Add. 1958, Act 15, Eff. Sept. 13, 1958.

HUNTING LAWS RELATED TO SAFETY ZONES

PART 401

WILDLIFE CONSERVATION

324.40111 Taking animal from in or upon vehicle; transporting or possessing firearm in or upon vehicle; transporting bow in or upon vehicle; written permission to hunt or discharge firearm.

Sec. 40111.(4) A person shall not hunt or discharge a firearm within 150 yards of an occupied building, dwelling, house, residence, or cabin, or any barn or other building used in connection with a farm operation, without obtaining the written permission of the owner, renter, or occupant of the property.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

“Residence” means a permanent building serving as a temporary or permanent home. Residence may include a cottage, cabin, or mobile home, but does not include a structure designed primarily for taking game, a tree blind, a tent, a recreational or other vehicle, or a camper.

Act 81 of 1954

AN ACT to prohibit the careless, reckless or negligent use of bows and arrows; and to provide penalties for the violation of this act.

History: 1954, Act 81, Eff. Aug. 13, 1954.

The People of the State of Michigan enact:

752.881 Careless, reckless or negligent use of bow and arrow; penalty.

Sec. 1. Any person who, because of carelessness, recklessness or negligence, but not wilfully or wantonly, shall cause or allow any bow or arrow under his immediate control, to be used so as to kill or injure another person, shall be guilty of a misdemeanor, punishable by imprisonment in the state prison for not more than 2 years, or by a fine of not more than \$2,000.00, or by imprisonment in the county jail for not more than 1 year, in the discretion of the court.

History: 1954, Act 81, Eff. Aug. 13, 1954.

752.882 Property destruction, penalty.

Sec. 2. Any person who, because of carelessness, recklessness or negligence, but not wilfully or wantonly, shall cause or allow any bow or arrow under his control to be used so as to destroy or injure the property of another, real or personal, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail for not more than 90 days or by a fine of not more than \$100.00, if the injury to such property shall not exceed the sum of \$50.00, but in the event that such injury shall exceed the sum of \$50.00, then said offense shall be punishable by imprisonment in the county jail for not more than 1 year or by a fine not exceeding \$500.00.

History: 1954, Act 81, Eff. Aug. 13, 1954.

752.883 Bow and arrow; injury to person, suspension of hunting privileges.

Sec. 3. In addition to the penalties provided in sections 1 and 2, the court may suspend the hunting privileges of any person convicted of violating this act for a period of not to exceed 3 years from the date of conviction.

History: Add. 1958, Act 14, Eff. Sept. 13, 1958.



Freeland's understanding of [red box] approximate range location

Critical Care facility

Kalamazoo Central High School

Friendship Village - senior living

The Foundations - senior living

Kal. RESA, Croydon School

Rosewood - Hospice

Northampton

W Village Blvd



Freeland's

Beech Ave

Bronson Way

Summer Ridge Dr

Canterbury Ave

Highgate Rd

Stafford Rd

Dev

Grand

Ponti

Ottav

Ala

Iroc

W-H Ave

Dr

t-Dr

Goggle Earth
Oshtemo Township, Area of Westport Village - Enlarged
Image Date 10-4-2011





Wes &
Anmarie
Freeland

© 2015 Google

Google earth

Oshtemo Township, Area of Westport Village - Enlarged Goggle Earth Image Date 10-4-2011





© 2015 Google

Google earth



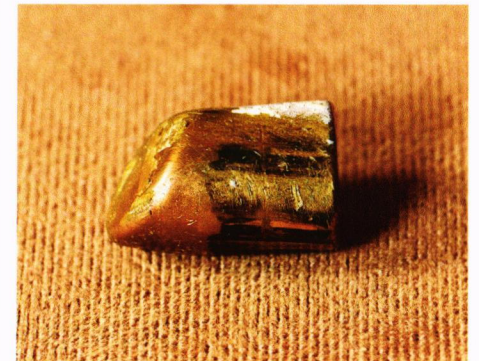
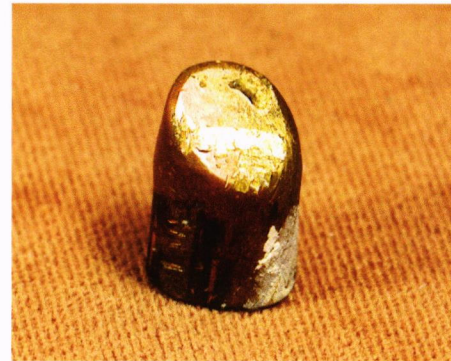


One of the Four East
Facing Windows

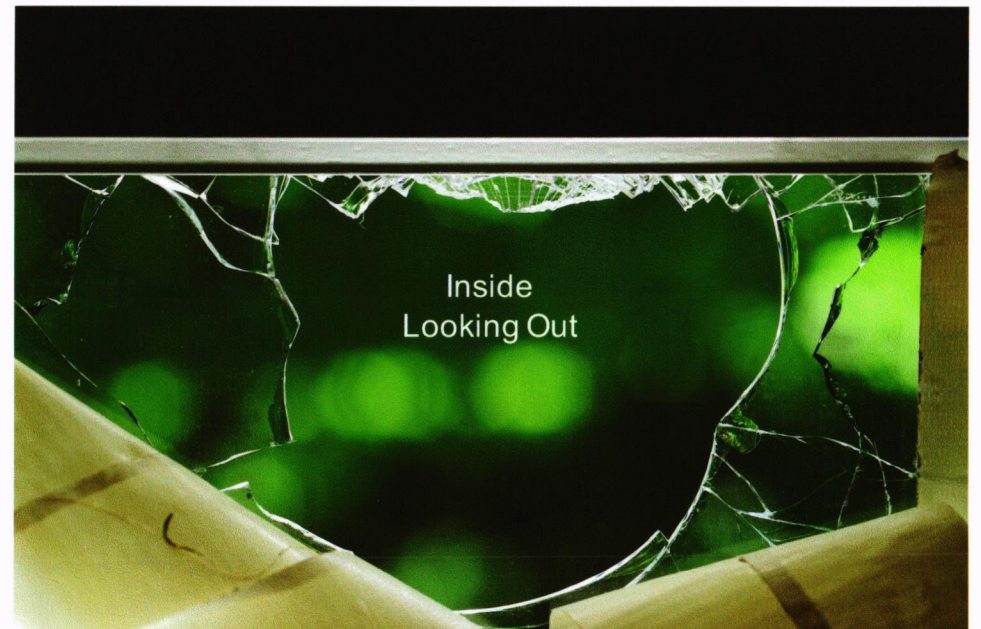


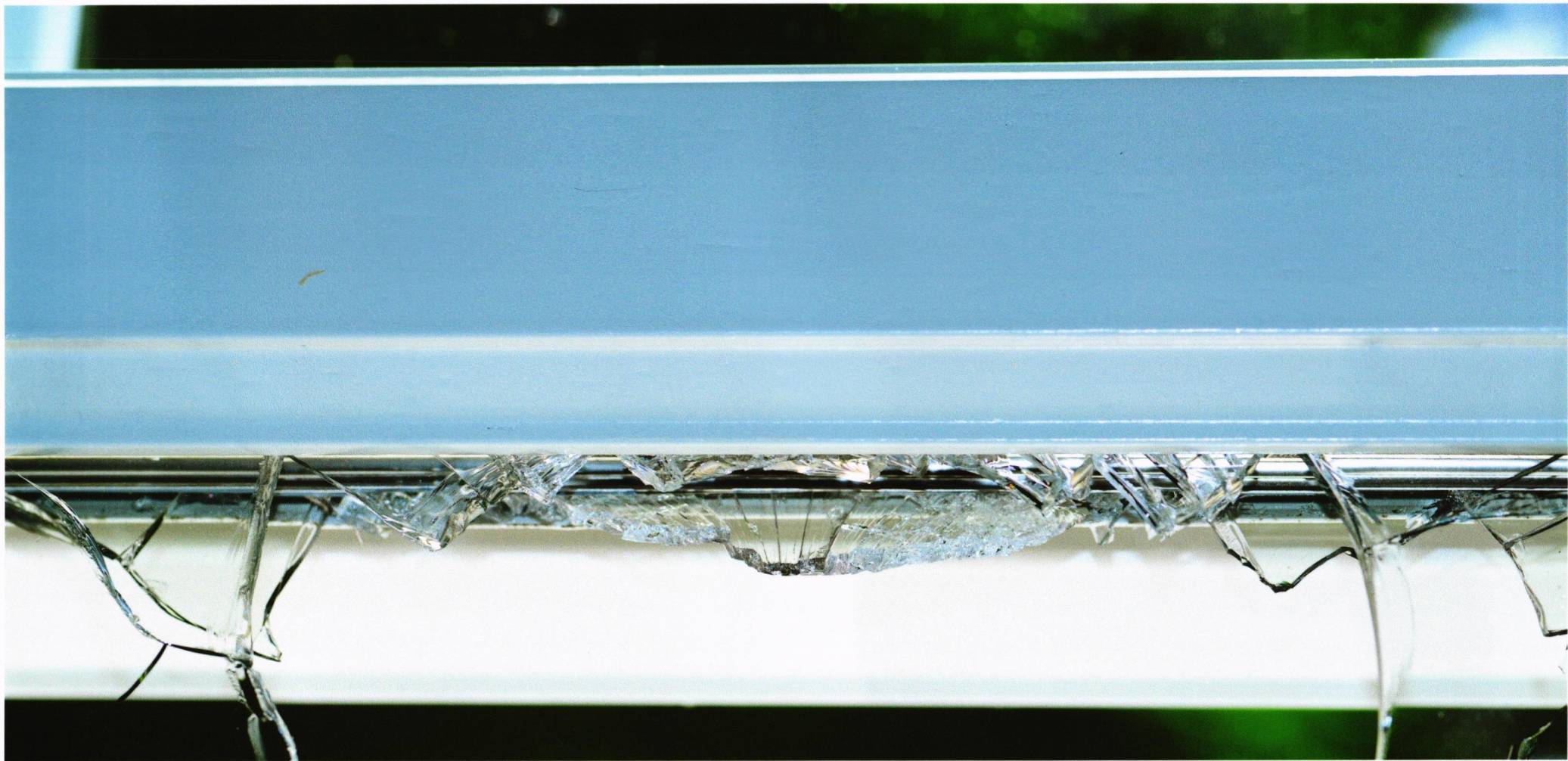
Bullet's Trajectory

The bullet's trajectory arched down gradually having not hit the window at any severe degree of angle. The glass breakage point is very close to the bottom of the upper frame / top of the glass. Otherwise, it might explain the paint mark in the following four images:



If a severe angle had occurred the bullet would have gouged, to some degree, the window frame. There is no frame creasing nor damage what so ever, as seen inside or out on the top frame's lower side in the following images and on the following page:





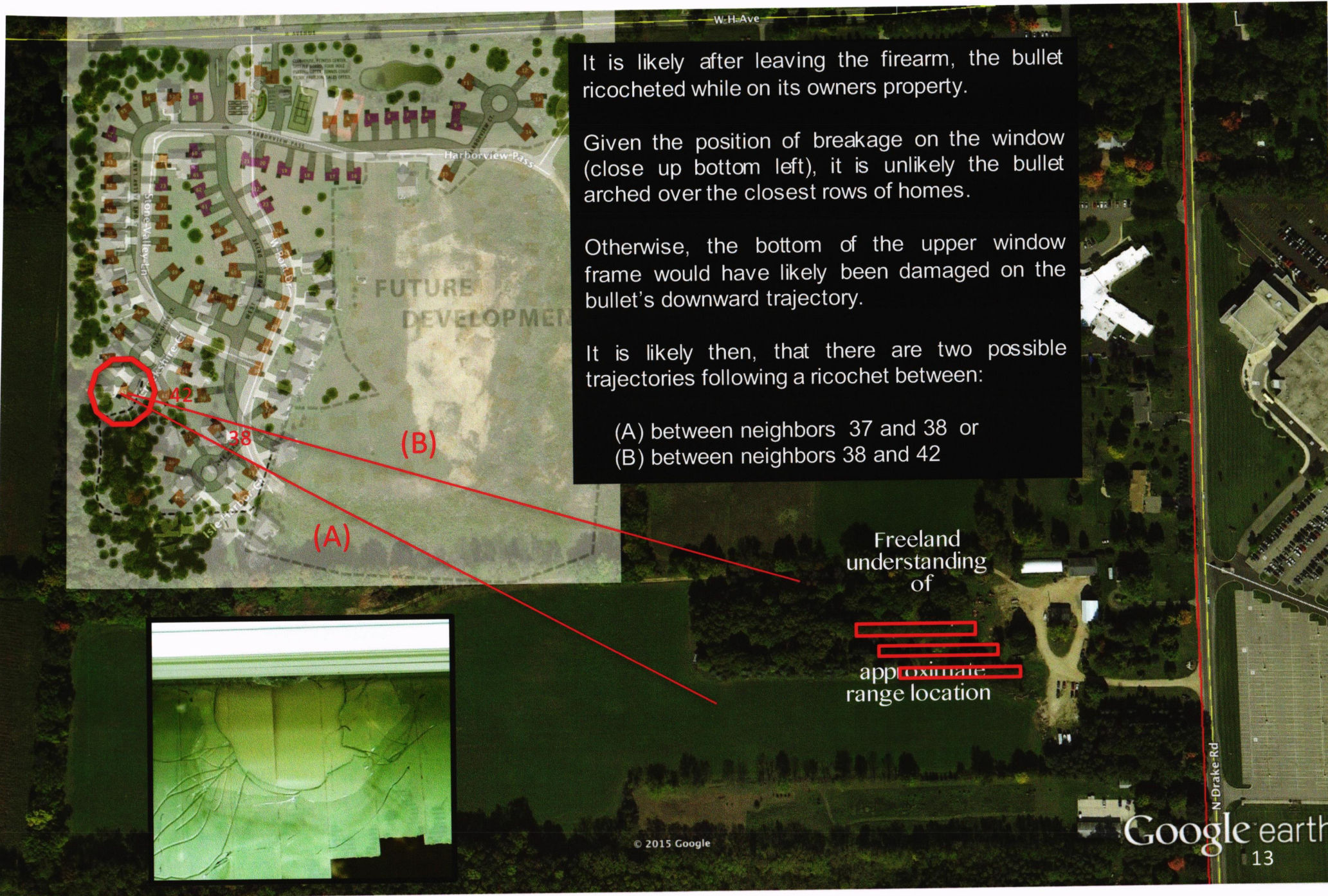
Bullet's Trajectory

Therefore, after the bullet left the weapon and was likely redirected by first hitting some object where its deformation and the paint mark were made. That is only one conclusion and there could be others.

However, it does suggest that the trajectory was both low and, as typical, in the common arc of any other bullet. It did not hit the window at any severe degree of angle. If it had, it might explain the paint mark in the following images:

Oshtemo Township, Area of Westport Village - Enlarged

Goggle Earth Image Date 10-4-2011



It is likely after leaving the firearm, the bullet ricocheted while on its owners property.

Given the position of breakage on the window (close up bottom left), it is unlikely the bullet arched over the closest rows of homes.

Otherwise, the bottom of the upper window frame would have likely been damaged on the bullet's downward trajectory.

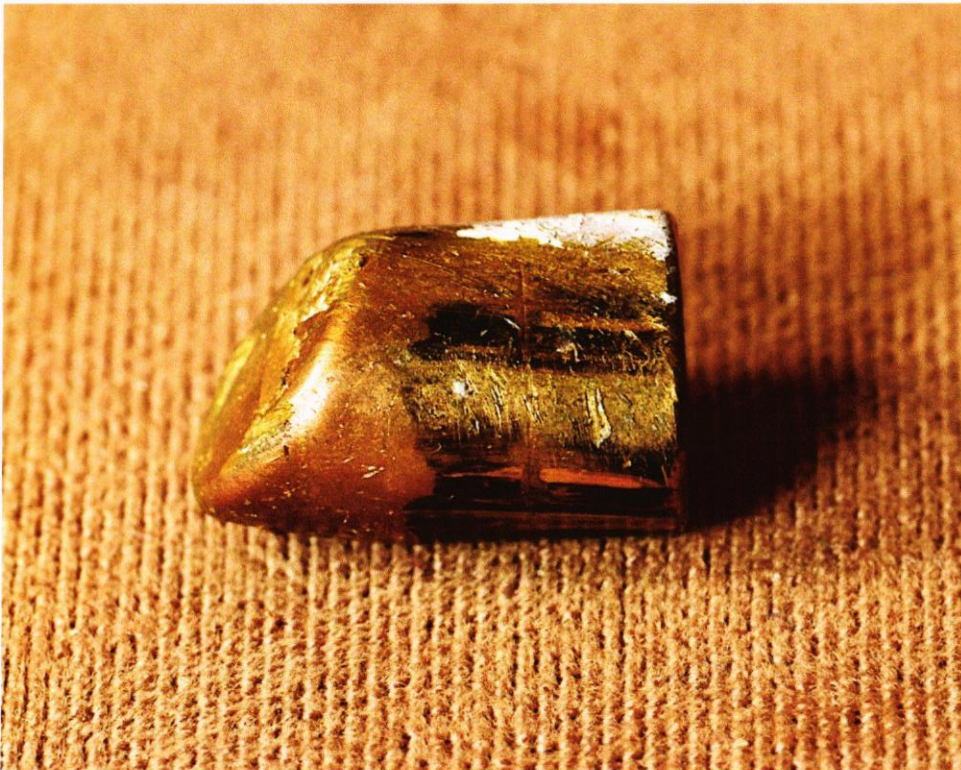
It is likely then, that there are two possible trajectories following a ricochet between:

- (A) between neighbors 37 and 38 or
- (B) between neighbors 38 and 42

Freeland understanding of

approximate range location





The gap between the two windows, including their frames, is close to 5.5'.

Wes Freeland was at his computer ten foot in from the left window at the time of the bullet shattering the glass. A few feet could have been exponentially tragic.

Shards of glass were, were literally, spread over all but a small corner of the living room, approximately 50% of the kitchen and about 60% of the the computer room.

Wes cleaned several times and Molly Maids repeated. Up to six months later (slightly into 2016) tiny shards of glass were being exposed to the light.



Incident/Investigation Report

Agency: KCSD

Case Number: 15-004996

Date: 06/15/2015 08:25:11

Property

Seq. # 1	Description DOUBLE PANED WINDOW	Serial Number	Make/Model		
Owner SOCIETY		License / State	Color		
Status DESTROYED / DAMAGED /	Status Officer (3138) LEVACK, JOSEPH DEP	Quantity 1.00	Units of Measure	Value \$200.00	
Gun Type	Caliber	Finish	Grip	Gun Stock	
Condition	Gun Test <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Test Type	Sight Test <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Sight Type	
Property Notes					

Notes/Narratives

NARRATIVE

INFORMATION:

On June 7, 2015 at approximately 1904 hours I was dispatched to 2545 Creek Shire Court. Dispatch advised the caller, WESLEY FREELAND, advised a bullet had come through his window. FREELAND advised Dispatch he felt this was a stray bullet from someone target shooting, and felt it came from the east of his house.

CONTACT WITH COMPLAINANT/VICTIM WESLEY FREELAND:

I made contact with FREELAND at his residence located at 2545 Creek Shire Court. FREELAND invited me in and showed me where the bullet had come through the window. It struck a window on the west side of the house. He pointed out a bullet appearing to be either a .380 caliber or a 9mm that had come to rest on the living room floor. I asked FREELAND where he was when this occurred. FREELAND stated he was in the room just adjacent to the living room working at his desk when he heard a loud explosion. He stated at first he thought a bird had gone through the window, but then he discovered the bullet lying on the living room floor. FREELAND stated he often hears shooting off to the east of his location. There are several farms and what use to be rural areas just to the east and west of the plat FREELAND lives in, which is made up of new construction. While speaking with FREELAND I heard several gun shots coming from the east. I advised FREELAND I would be back to talk with him after I attempted to make contact with whomever was shooting.

CONTACT WITH SUSPECT DANIEL NIEWOONDER:

I walked through the woods that are around the Creek Shire plat. I heard several shots. The sounds of the shots eventually lead me to [redacted] directly east of FREELAND's residence. Once I arrived there I found two males standing near a barn. I made contact with DANIEL NIEWOONDER and asked if they had been shooting. NIEWOONDER stated he had, providing me with his driver's license and a concealed weapons permit. I asked NIEWOONDER what they had been shooting. He stated he was shooting [redacted]. They were shooting out back of the property into a large dirt pile. I advised NIEWOONDER that one of his rounds had gone astray and gone through someone's window. NIEWOONDER's initial reaction was shock. NIEWOONDER seemed very upset about this and asked if anyone had been injured. I advised him no. He asked me what he could do to make this right. I advised him I would speak with the homeowner and find out how he wished to proceed. NIEWOONDER stated he was willing to pay for any damages and do whatever he could to correct the situation. NIEWOONDER stated they had been shooting there for years and never had an issue. He did have a back drop so it was unclear if a round went over the back drop or if it was a result of a ricochet.

FURTHER CONTACT WITH COMPLAINANT/VICTIM WESLEY FREELAND:

Incident/Investigation Report

Agency: KCSD

Case Number: 15-004996

Date: 06/15/2015 08:25:11

Notes/Narratives

I returned to FREELAND's address to advise him I had found the individual that had been shooting. I told him they were shooting from NIEWOONDER Landscaping property located at [redacted]. I told him that DANIEL NIEWOONDER was shooting at a back drop with his friends and had fired the round that had gone through his window. I told him that NIEWOONDER was willing to pay for the damages and was apologetic about the mishap. FREELAND stated that would be fine, he did not wish prosecution in the case and asked me to provide NIEWOONDER with his contact information. FREELAND also stated he would also be making an insurance claim for the damage. I provided Mr. FREELAND with the case number and a card and cleared the scene.

FURTHER CONTACT WITH SUSPECT DANIEL NIEWOONDER:

I returned to [redacted] and re-contacted NIEWOONDER. I provided him with Mr. FREELAND's contact information and also advised him that due to the construction behind their property they should adjust the direction they are shooting from. NIEWOONDER also provided me with the handgun he had been shooting and I recorded the information. NIEWOONDER stated in the future they would adjust where they shoot at so there was no possibility of an incident like this occurring in the future.

FIREARM INFORMATION:

FURTHER INFORMATION:

It should be noted that the distance between where NIEWOONDER was shooting and FREELAND's home was over a quarter of a mile away. It should also be noted that there were other houses and woods separating the target shooting range and Mr. FREELAND's house. It is likely the stray bullet was the result of a ricochet.

CASE STATUS:

Closed as no prosecution is desired in this case.

RESPECTFULLY SUBMITTED,

JOSEPH LEVACK
DEPUTY, #3138

/clf

06/11/2015

CONTINUATION

Questions

Please let us know.
The Freeland's
375-6616

h
m



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES
LANSING

Attachment 3



KEITH CREAGH
DIRECTOR

May 9, 2017

Ms. Deborah Everett
Oshtemo Township Clerk
7275 W. Main Street
Kalamazoo, MI 49009-9334

Dear Ms. Everett:

SUBJECT: Hunting Area Control Resolution – Charter Township of Oshtemo,
Kalamazoo County

The Michigan Department of Natural Resources (Department) has, as requested by the Oshtemo Township Board, conducted an investigation into the need for expanding the current Hunting Area Control (R317.139.1) in the eastern portion of the Township.

A public hearing was held on August 17, 2016, at the Oshtemo Township Hall, pursuant to Part 419 of Public Act 451, as amended, to help determine if expanding the current Hunting Area Control is needed to address possible problems related to the discharge of firearms in the requested area within the Township.

The investigation also included site visits, contacts with local law enforcement officials, a review of hunting and shooting complaints in the proposed area as well as a review of hunting accidents and/or hunter casualties in the area.

- A total of 30 individuals gave testimony at the public hearing. Some of those individuals, along with several others, provided written comments. The overwhelming majority of all public comments opposed the expansion.
- From January 2012 through December 2016, there were 6 hunting and/or shooting complaints called into emergency dispatch centers in the area.
- From 2010 through the 2016 hunting seasons there were no reported hunting accidents and/or hunter casualties in the area.
- There are a few new residential subdivisions in the proposed area.
- Much of the proposed area is made up of larger tracks of land, much of which is used for agriculture purposes.

The necessity to establish a Hunting Area Control is based on the need for public safety, beyond which existing safety regulations are determined to be inadequate. Factual incidents involving public safety issues and other such evidence or documentation that a safety problem exists must govern the Department's recommendation for a Hunting Area Control ordinance. No testimony or evidence of substantive incidents was provided during the public hearing or during the subsequent investigation which would warrant the expansion of the existing Hunting Area Control.

Ms. Deborah Everett, Township Clerk
Page 2 of 2
May 9, 2017

Accordingly, the request to expand the existing Hunting Area Control as proposed by the Township is denied.

Should the need arise to address safety concerns related to hunting, trespass, and/or the careless or reckless discharge of firearms, in addition to contacting local law enforcement officials, you may also wish to contact the District Law Supervisor for your area, Lt. Gerald Thayer, at (269) 685-6851. Complaints may also be referred to the Department's 24-hour hotline at 1-800-292-7800.

Sincerely,



Lt. Thomas R. Wanless, Hunter Education Administrator
Law Enforcement Division
Recreational Safety, Enforcement & Education Section
(517) 284-6026

Cc: Sheriff Richard C. Fuller III
Lt. Gerald Thayer, DNR
Cpl. Ryan Rademacher



MEMORANDUM

To: Township Board
From: James Porter
Date: February 2, 2021
Subject: Law regarding hunting area control measures in Michigan

This memo will provide a brief outline of how the Department of Natural Resources, pursuant to its statutory powers, operates regarding the creation or expansion of a non-discharge zone. The Department of Natural Resources, pursuant to Chapter 324 of the Natural Resources and Environmental Protection Act, Part 419 regulates the hunting area controls that are applicable to the Township.

Section 41.901 states that the DNR has the power to regulate and prohibit hunting, the discharge of firearms, and the use of bow and arrow as provided for in Part 419 of the Natural Resources and Environmental Protection Act. Section 41.901 also allows a governing body of any political subdivision to request that the DNR recommend closure of an area to alleviate to any problems with the discharge of firearms or use of bow and arrow. As a governing body, the Township would be required under this section to approve a certified resolution asking the DNR to establish a date for a public hearing. Once the request is approved, the DNR will receive testimony and, upon completion of the public hearing, make a statement of facts and a recommendation of prescribed regulations for the area.

Under Section 41.902, once the DNR has made its finding and issued its recommendations, the governing body may, by a majority vote, advise the DNR by certified resolution that it approves or disapproves the prescribed controls. If the governing body approves, then a local ordinance will be enacted; however, such ordinance must be identical in all respects to the regulations prescribed by the DNR. The governing body would then forward a certified copy of the passed resolution to the DNR. Please note, under Section 41.902, the Board may repeal the ordinance at any time.

Section 41.903 requires that the DNR designate closure notice signs, that at least four notices be posted on the boundaries of the closed area, and that a notice of closure be published for three successive weeks in the newspaper.

Section 41.904 limits the prohibition against the discharge of firearms and makes it inapplicable to peace officers or members of the armed forces in the discharge of their duties.

Section 41.905 provides that any person that violates this part, or a rule promulgated under this part, is guilty of a misdemeanor.

To the best of my knowledge, the process described above was followed when the Non-Discharge Area for Oshtemo Township was initially formed. Because the hunting area control

statute states that the DNR establishes the regulations, and that the local governing body may only adopt an ordinance that is identical in all respects to that regulation, if the Township Board wishes to add bow and arrow to its ordinance, I believe we will need to initiate this process again. That is, the Township will need to pass and file a certified resolution with the DNR asking for a public hearing, and wait for the DNR recommendations that include the new prohibition before the Township would be able to amend our ordinance. I believe the same process would be required for the Township to expand the current Non-Discharge Area.

Accordingly, if the Board wishes to proceed with an amendment to the Non-Discharge Area Ordinance, the process would be to direct counsel to prepare such a resolution for your next Board meeting. Once approved and certified, the Board can send a resolution to the DNR requesting the public hearing to request that bow and arrow be prohibited in the current zone, and re-initiate its request for an expansion of the non-discharge area.

Kalamazoo County Consolidated Dispatch Authority Call Data
October 2018 - September 2020
(159 Calls in No Discharge Zone --- 20 Calls in Possible Expansion Zone)

<u>Date/Time</u>	<u>Call Type/Nature Code</u>	<u>Address</u>	<u>NDZ</u>	<u>Possible NDZ Expansion</u>
2018-10-31 00:02:55.057	Shots Fired	600 Block S DRAKE RD	x	
2018-11-04 23:41:39.000	Shots Fired	S 9TH ST / STADIUM DR	x	
2018-12-04 11:19:36.560	Shots Fired	3000 Block CRYSTAL LN	x	
2018-12-08 22:33:29.657	Shots Fired	CONCORD PLACE DR	x	
2018-12-08 22:43:49.490	Shots Fired	CONCORD PLACE DR	x	
2018-12-09 14:34:02.463	Shots Fired	CENTURY AVE / S DRAKE RD	x	
2018-12-15 11:39:28.400	Shots Fired	5000 Block BEECH AVE	x	
2018-12-17 14:59:41.623	Shots Fired	2000 Block S 9TH ST		x
2018-12-25 16:38:18.707	Shots Fired	1400 Block S 9TH ST	x	
2019-01-02 21:39:06.087	Shots Fired	CONCORD PLACE DR	x	
2019-01-06 12:22:48.097	Shots Fired	4000 Block S 11TH ST		x
2019-01-10 23:59:32.343	Shots Fired	6000 Block PARKVIEW AVE	x	
2019-02-02 22:27:48.577	Shots Fired	4100 Block S 11TH ST		x
2019-02-06 00:55:01.367	Shots Fired	BUTTERFLY RD (Canterbury Apts)	x	
2019-02-17 20:13:22.393	Shots Fired	6000 Block PENNY LN	x	
2019-03-14 00:23:05.287	Shots Fired	5800 JEFFERSON COMMONS DR	x	
2019-03-14 00:23:13.503	Shots Fired	5800 JEFFERSON COMMONS DR	x	
2019-03-16 10:39:34.097	Shots Fired	3000 Block MILL CREEK DR		x
2019-03-16 13:24:26.587	Shots Fired	3000 Block ANDOVER DR, Apt. A	x	x*
2019-03-23 02:08:22.167	Shots Fired	5000 Block PARKVIEW AVE	x	
2019-04-08 18:20:45.567	Shots Fired	5800 JEFFERSON COMMONS DR	x	
2019-04-15 08:38:17.123	Shots Fired	S 11TH ST / CRYSTAL LN	x	
2019-05-03 01:51:14.997	Shots Fired	5800 JEFFERSON COMMONS DR	x	
2019-05-10 02:37:28.240	Shots Fired	DRAGONFLY RD (Canterbury Apts)	x	
2019-05-15 21:30:57.547	Shots Fired	5000 Block SCENIC WAY DR	x	
2019-05-16 18:51:55.333	Shots Fired	2000 Block STRATHMORE ST	x	
2019-05-16 19:06:30.773	Shots Fired	1000 Block S 9TH ST		x
2019-05-17 18:25:45.087	Shots Fired	1000 Block S 11TH ST	x	
2019-05-17 18:26:18.993	Shots Fired	1000 Block S 11TH ST	x	
2019-05-23 16:51:54.643	Shots Fired	4000 Block S 12TH ST		x
2019-05-28 21:08:52.893	Shots Fired	3000 Block ANDOVER DR	x	x*
2019-06-18 22:51:46.777	Shots Fired	700 Block S DRAKE RD	x	
2019-06-22 23:32:03.603	Shots Fired	2000 Block CRYSTAL LN	x	
2019-07-08 17:36:48.640	Shots Fired	200 Block BEYMOURE ST	x	
2019-07-09 00:10:17.287	Shots Fired	5000 Block CROYDEN AVE	x	
2019-07-09 03:26:39.577	Shots Fired	6000 Block ATLANTIC AVE	x	
2019-07-14 15:06:32.657	Shots Fired	3000 Block CRYSTAL LN	x	
2019-07-21 12:22:26.743	Shots Fired	5000 Block SWEET BRIAR DR		x
2019-07-21 12:23:47.683	Shots Fired	5000 Block SUNDOWNER LN		x
2019-08-26 04:23:29.847	Shots Fired	5800 JEFFERSON COMMONS CIR	x	
2019-08-28 08:38:07.967	Shots Fired	6000 Block W KL AVE	x	
2019-08-31 00:04:03.717	Shots Fired	BUTTERFLY RD (Canterbury Apts)	x	
2019-08-31 01:37:16.087	Shots Fired	5000 Block W MAIN ST	x	
2019-09-01 20:47:41.997	Shots Fired	3000 Block CRYSTAL LN	x	

2019-09-13 01:59:22.443	Shots Fired	3000 Block CRYSTAL LN	x	
2019-09-15 21:52:26.893	Shots Fired	5800 JEFFERSON COMMONS CIR	x	
2019-10-06 03:21:37.117	Shots Fired	5800 JEFFERSON COMMONS DR	x	
2019-10-07 22:19:55.173	Shots Fired	1000 Block S 11TH ST	x	
2019-10-18 18:42:45.663	Shots Fired	6000 Block STADIUM DR	x	
2019-11-02 17:56:40.177	Shots Fired	8000 Block W MAIN ST	x	
2019-11-09 07:17:43.563	Shots Fired	1000 Block S DRAKE RD	x	
2019-11-22 02:57:44.423	Shots Fired	5800 JEFFERSON COMMONS WAY	x	
2019-11-29 21:12:37.850	Shots Fired	743 DRAGONFLY RD (Canterbury Apts)	x	
2019-12-01 21:19:33.450	Shots Fired	5000 Block W MAIN ST	x	
2019-12-05 18:01:21.403	Shots Fired	CONCORD PLACE DR	x	
2019-12-15 14:15:13.733	Shots Fired	6000 Block MANDY LN	x	
2019-12-31 18:16:23.143	Shots Fired	1000 Block SKYLARK CT	x	
2019-12-31 21:27:02.377	Shots Fired	1000 Block S 11TH ST	x	
2020-01-01 00:04:31.260	Shots Fired	700 Block S DRAKE RD	x	
2020-01-01 00:04:52.777	Shots Fired	5900 COPPER BEECH BLVD	x	
2020-01-11 01:46:29.517	Shots Fired	1000 Block S 11TH ST	x	
2020-01-11 01:46:31.047	Shots Fired	5000 Block W MICHIGAN AVE	x	
2020-01-17 22:23:49.623	Shots Fired	5800 JEFFERSON COMMONS CIR	x	
2020-01-22 23:07:05.190	Shots Fired	5900 COPPER BEECH BLVD	x	
2020-01-31 17:40:08.670	Shots Fired	5800 JEFFERSON COMMONS DR	x	
2020-02-02 02:54:37.100	Shots Fired	W KL AVE / COPPER BEECH BLVD	x	
2020-02-02 02:54:58.990	Shots Fired	5000 Block BLINDMANS CV	x	
2020-02-02 02:55:18.227	Shots Fired	5900 COPPER BEECH BLVD	x	
2020-02-02 02:56:44.680	Shots Fired	CONCORD PLACE DR	x	
2020-02-02 03:00:31.443	Shots Fired	5800 JEFFERSON COMMONS CIR	x	
2020-02-16 00:11:52.903	Shots Fired	5000 Block BECKLEY DR	x	
2020-02-27 02:28:37.147	Shots Fired	5000 Block PARKVIEW AVE	x	
2020-03-02 20:05:54.947	Shots Fired	BUTTERFLY RD (Canterbury Apts)	x	
2020-03-08 21:22:37.840	Shots Fired	BUTTERFLY RD (Canterbury Apts)	x	
2020-03-08 21:22:39.777	Shots Fired	BUTTERFLY RD (Canterbury Apts)	x	
2020-03-12 19:09:49.687	Shots Fired	3000 Block NORTHFIELD TRL		x
2020-03-19 00:35:43.850	Shots Fired	700 Block S DRAKE RD	x	
2020-03-24 00:21:59.857	Shots Fired	700 Block S DRAKE RD	x	
2020-03-27 16:19:34.107	Shots Fired	7000 Block E FOXMOOR CT	x	
2020-03-31 18:04:36.473	Shots Fired	S 9TH ST / W KL AVE	x	x
2020-04-02 21:02:56.127	Shots Fired	5200 CROYDEN AVE	x	
2020-04-05 22:43:03.677	Shots Fired	5200 CROYDEN AVE	x	
2020-04-07 23:00:40.963	Shots Fired	2900 CRYSTAL LN	x	
2020-04-15 17:04:42.067	Shots Fired	6000 Block W MAIN ST	x	
2020-04-17 21:46:00.817	Shots Fired	CONCORD PLACE DR	x	
2020-04-18 23:27:39.317	Shots Fired	5800 JEFFERSON COMMONS WAY	x	
2020-04-25 01:48:36.590	Shots Fired	600 Block MAPLE HILL DR	x	
2020-04-26 13:49:28.813	Shots Fired	5000 Block SUNDOWNER LN		x
2020-04-27 00:40:57.433	Shots Fired	600 Block MAPLE HILL DR	x	
2020-04-27 00:41:08.353	Shots Fired	BUTTERFLY RD (Canterbury Apts)	x	
2020-04-27 00:41:25.963	Shots Fired	5000 Block SKYRIDGE AVE	x	
2020-04-27 01:14:43.083	Shots Fired	1000 Block S DRAKE RD	x	

2020-04-28 20:59:31.117	Shots Fired	5900 COPPER BEECH BLVD	x	
2020-04-28 21:39:38.080	Shots Fired	5800 JEFFERSON COMMONS DR	x	
2020-05-02 19:09:58.200	Shots Fired	500 Block LODGE LN	x	
2020-05-04 18:45:10.560	Shots Fired	BUTTERFLY RD (Canterbury Apts)	x	
2020-05-05 23:02:11.873	Shots Fired	5900 COPPER BEECH BLVD	x	
2020-05-07 03:53:02.483	Shots Fired	CONCORD PLACE DR	x	
2020-05-08 17:39:00.207	Shots Fired	4000 Block FOUNTAIN SQUARE DR		x
2020-05-08 18:42:50.313	Shots Fired	4000 Block S 12TH ST		x
2020-05-08 21:30:45.387	Shots Fired	5800 JEFFERSON COMMONS DR	x	
2020-05-09 02:38:07.230	Shots Fired	58000 EAST JEFFERSON COMMONS CIR	x	
2020-05-09 21:58:44.237	Shots Fired	200 Block BELLE ST		x
2020-05-11 00:36:41.783	Shots Fired	BUTTERFLY RD (Canterbury Apts)	x	
2020-05-11 00:37:02.677	Shots Fired	700 Block S DRAKE RD	x	
2020-05-12 00:42:52.963	Shots Fired	1000 Block REVERE LN	x	
2020-05-12 00:43:15.727	Shots Fired	100 Block MANDALAY DR	x	
2020-05-12 00:59:45.013	Shots Fired	5800 NORTH JEFFERSON COMMONS CIR	x	
2020-05-15 23:44:12.530	Shots Fired	600 Block MAPLE HILL DR	x	
2020-05-16 02:30:41.440	Shots Fired	700 Block S DRAKE RD	x	
2020-05-17 00:49:16.167	Shots Fired	5900 COPPER BEECH BLVD	x	
2020-05-18 19:27:17.957	Shots Fired	5800 JEFFERSON COMMONS WAY	x	
2020-05-20 20:32:59.293	Shots Fired	CHESTNUT HILLS DR / STADIUM DR	x	
2020-05-20 21:43:47.910	Shots Fired	1000 Block MOUNT ROYAL DR	x	
2020-05-21 23:36:36.153	Shots Fired	CONCORD PLACE DR	x	
2020-06-01 23:24:53.717	Shots Fired	5000 Block DRIFTWOOD AVE	x	
2020-06-02 21:13:29.073	Shots Fired	DRAGONFLY RD (Canterbury Apts)	x	
2020-06-17 22:14:06.467	Shots Fired	6000 Block ANDOVER DR	x	x*
2020-06-20 01:02:08.110	Shots Fired	1000 Block MOUNT ROYAL DR	x	
2020-06-22 00:03:04.567	Shots Fired	5200 CROYDEN AVE	x	
2020-06-22 20:14:17.823	Shots Fired	7000 Block E FOXMOOR CT	x	
2020-06-22 20:25:53.307	Shots Fired	N 9TH ST / PENNY LN	x	
2020-06-27 15:06:52.220	Shots Fired	1900 Block N 9TH ST	x	
2020-07-03 22:56:11.587	Shots Fired	400 Block S DRAKE RD	x	
2020-07-09 23:17:29.600	Shots Fired	5200 CROYDEN AVE	x	
2020-07-10 00:06:56.353	Shots Fired	5800 WEST JEFFERSON COMMONS CIR	x	
2020-07-10 03:25:37.733	Shots Fired	2000 Block S 11TH ST	x	
2020-07-16 20:03:11.280	Shots Fired	5800 JEFFERSON COMMONS DR	x	
2020-07-27 22:23:26.587	Shots Fired	CONCORD PLACE DR	x	
2020-07-27 22:55:38.457	Shots Fired	CONCORD PLACE DR	x	
2020-07-28 23:13:28.663	Shots Fired	5200 CROYDEN AVE	x	
2020-07-31 23:02:11.177	Shots Fired	5000 Block CODDINGTON LN	x	
2020-08-03 22:55:23.157	Shots Fired	300 Block S DRAKE RD	x	
2020-08-12 17:20:46.157	Shots Fired	6900 Block ASHER TRL	x	
2020-08-18 23:19:16.010	Shots Fired	BRONSON WAY	x	
2020-08-22 04:23:41.200	Shots Fired	300 Block S DRAKE RD	x	
2020-08-25 21:45:27.240	Shots Fired	300 Block S DRAKE RD, Apt. C8	x	
2020-09-04 22:02:27.000	Shots Fired	1800 Block S 11TH ST	x	
2020-09-05 00:20:48.000	Shots Fired	JEFFERSON COMMONS DR	x	
2020-09-05 03:11:33.000	Shots Fired	2900 Block CRYSTAL LN	x	

2020-09-05 13:31:49.000	Shots Fired	2900 Block CRYSTAL LN	x	
2020-09-06 15:08:02.000	Shots Fired	7000 Block W KL AVE		
2020-09-11 02:11:23.000	Shots Fired	1000 Block SUMMER RIDGE DR	x	
2020-09-11 02:12:42.000	Shots Fired	5200 CROYDEN AVE	x	
2020-09-11 22:07:26.000	Shots Fired	300 Block S DRAKE RD	x	
2020-09-22 20:14:06.000	Shots Fired	1314 CONCORD PLACE DR	x	
2020-09-24 01:29:18.000	Shots Fired	5900 COPPER BEECH BLVD	x	
2020-09-26 21:06:13.000	Shots Fired	5946 COPPER BEECH BLVD	x	
2020-10-01 21:38:16.000	Shots Fired	5800 JEFFERSON COMMONS DR	x	
2020-10-10 11:03:36.000	Shots Fired	6000 Block BUCKHAM WOOD DR		x
2020-10-14 18:21:08.000	Shots Fired	3000 Block CRYSTAL LN	x	
2020-10-14 18:21:15.000	Shots Fired	5800 Block MANORWOOD DR	x	
2020-10-15 17:34:01.000	Shots Fired	DRAGONFLY RD (Canterbury Apts)	x	
2020-10-25 03:31:08.000	Shots Fired	5000 Block BECKLEY DR	x	
2020-10-28 04:28:58.000	Shots Fired	CODDINGTON LN / S 11TH ST	x	
2020-10-30 18:34:23.000	Shots Fired	S 11TH ST / CODDINGTON LN	x	
2020-10-31 22:38:01.000	Shots Fired	5000 Block DRIFTWOOD AVE	x	
2020-11-02 18:41:10.000	Shots Fired	DRAGONFLY RD (Canterbury Apts)	x	
2020-11-02 20:12:00.000	Shots Fired	DRAGONFLY RD (Canterbury Apts)	x	
2020-11-03 23:13:15.000	Shots Fired	1000 Block MOUNT ROYAL DR 3B	x	
2020-11-06 15:39:39.000	Shots Fired	4000 Block FOUNTAIN SQUARE DR		x
2020-11-14 01:52:30.000	Shots Fired	6000 Block BUCKHAM WOOD DR		x
2020-11-20 14:33:55.000	Shots Fired	10000 Block W L AVE		
2020-11-22 19:21:02.000	Shots Fired	DRAGONFLY RD (Canterbury Apts)	x	
2020-12-05 06:08:44.000	Shots Fired	2000 Block N 3RD ST		
2020-12-05 23:47:17.000	Shots Fired	2900 Block CRYSTAL LN	x	
2020-12-08 19:09:12.000	Shots Fired	1000 Block MOUNT ROYAL DR	x	
2020-12-14 23:16:36.000	Shots Fired	700 Block S DRAKE RD	x	
2020-12-27 23:04:28.000	Shots Fired	DRAGONFLY RD (Canterbury Apts)	x	
2020-12-29 19:48:14.000	Shots Fired	5800 WEST JEFFERSON COMMONS CIR	x	
2020-12-29 20:19:46.000	Shots Fired	5800 JEFFERSON COMMONS CIR	x	
2020-12-31 18:31:22.000	Shots Fired	CONCORD PLACE DR	x	
2021-01-01 00:04:44.000	Shots Fired	DRAGONFLY RD (Canterbury Apts)	x	
2021-01-02 22:01:12.000	Shots Fired	1800 Block S 11TH ST	x	
2021-01-03 01:54:34.000	Shots Fired	BUTTERFLY RD (Canterbury Apts)	x	
2021-01-09 02:55:46.000	Shots Fired	DRAGONFLY RD (Canterbury Apts)	x	
2021-01-15 22:31:45.000	Shots Fired	5000 Block CODDINGTON LN	x	
2021-01-16 02:50:57.000	Shots Fired	5200 CROYDEN AVE	x	
2021-01-21 04:59:05.000	Shots Fired	CONCORD PLACE DR	x	
2021-01-21 16:49:13.000	Shots Fired	5900 Block COPPER BEECH BLVD	x	
2021-01-26 18:21:54.000	Shots Fired	BUTTERFLY RD (Canterbury Apts)	x	
2021-01-29 06:23:11.000	Shots Fired	CONCORD PLACE DR	x	

OSHTEMO BOARDS (formal)

*Bold Font Indicates Proposed Changes. Others are Elected or Continuing

Effective February 9th, 2021

TITLE	Members	Dates	Term/End Date
Board of Review	Fred Gould	<i>March, July, & December</i>	12.31.2020
<i>Two Year Term, Start Jan 1, Odd Years</i>	Kitty Gelling		12.31.2020
	Neil Sikora		12.31.2020
	Kim Bourner (1st Alternate)		12.31.2020
	Fred Antosz (2nd Alternate)		12.31.2020
	Libby Heiny-Cogswell		
	Kristine Biddle (Staff)		
CCTA (Public Transit)	Dusty Farmer		
Corridor Improvement Authority (SoDA)	Galen Rike (Resident)	<i>June & December, noon</i>	12.31.2023
<i>5 to 9 members</i>	Vacancy		12.31.2023
<i>Majority with ownership or bus int</i>	Joe Gesmundo, AVB (Developer)		12.31.2024
<i>At least 1 resident (w/in 1/2 mile)</i>	Veronica McKissack (County Rep)	<i>(appointed by County per agreemnt)</i>	12.31.2022
<i>Four year term staggered terms</i>	Corey Ashley, Grp. Mktg. Cvcs., (Business Rep)		12.31.2021
	Kelly Bringman, Nottingham Apts. (Mgr)		12.31.2021
	Dennis Patzer, At Large (School Admin)		12.31.2022
	Theresa Spurr, (Spurr Dental)		12.31.2022
	Libby Heiny-Cogswell (TB Liason)		
	Iris Lubbert (Staff)		
Dangerous Building Hearing Officer	Dave Breytone	<i>Supervisor appointment</i>	
DDA (9-13 Members)	Jack Siegel (Interest)	<i>3rd Thurs, every other</i>	12.31.2021
<i>9-13 Members</i>	Bruce Betzler (At Large)	<i>month, starting Jan, noon</i>	12.31.2021
<i>Majority with ownership or bus int</i>	Grant Taylor (At Large)		12.31.2021
<i>At least 1 resident (w/in 1/2 mile)</i>	Dick Skalski (At Large)		12.31.2024
<i>Four year term staggered terms</i>	Vacancy (Resident within DDA Boundary)		12.31.2024
	Themi Corakis (Interest)		12.31.2023
	Rich MacDonald (Interest)		12.31.2023
	Ryan Wieber (KPL Rep; Interest)		12.31.2022
	Bill Cekola (Interest)		12.31.2022
	Libby Heiny-Cogswell (Twp Supervisor)	12	
	Iris Lubbert (Staff)		
Environmental Board	Chad Hughson	<i>As needed</i>	12.31.2023
<i>Three Year Terms</i>	Druba Bhattari		12.31.2022
	Neil Sikora		12.31.2021

TITLE	Members	Dates	Term/End Date
Oshtemo Election Commission	Dusty Farmer	<i>As needed</i>	12.8.2020 to
	Clare Buszka (Treasurer)		
	Zak Ford		
Friends of the Parks	David Walsh	<i>Monthly, 2nd Thursday, 1 pm</i>	12.31.2022
<i>Two Year Term</i>	Bruce Dannenhauer		12.31.2021
	Jan Gibes		12.31.2021
	Deb Everett		12.31.2022
	Dennis Patzer		12.31.2021
	Libby Heiny-Cogswell (TB Liason)		12.31.2022
	Cheri Bell (TB Liason)		12.31.2022
Records Management	Dusty Farmer, Chair		
	Marc Elliott		
	Libby Heiny-Cogswell		
	Mark Barnes		
	Greg McComb (as needed)		
	Yvonne Rummery		
	Ric Keinbaum (Staff)		
	Karen High (Staff, as needed)		
Joint Boards Meetings	Township Board	<i>3rd Tuesday, 6 pm, Twice Annually</i>	
	Zoning Board of Appeals		
	DDA & SoDA		
	Friends of the Parks		
	Iris Lubbert (Staff)		
SMBA (Southwest Michigan Building Authority)	Cheri Bell		
Supervisor, Clerk, Treasurer	Dusty Farmer		
KATS Policy (Kalamazoo Area	Libby Heiny-Cogswell (Primary)	<i>Monthly, 4th Wed, 9 am</i>	
Transportation Study (2 votes)	Dusty Farmer (Alternate)		
KATS Technical (2 votes)	Iris Lubbert or Colten Hutson (Planning Staff)	<i>Monthly, 2nd Thursday, 9 am</i>	
	Marc Elliott or Anna Horner (Public Works Staff)		
Kalamazoo Regional Water	Libby Heiny-Cogswell, Regional Chair		
& Wastewater Commission	Dusty Farmer (Alternate)		
	Jim Porter (Staff)		

*Bold Font Indicates Proposed Changes. Others are Continuing

TITLE	Members	Dates	Term/End Date
Board & Committee	Libby Heiny-Cogswell	<i>As needed</i>	
Appointments	Cheri Bell		
	Dusty Farmer		
Buildings and Grounds	Libby Heiny-Cogswell	<i>Quarterly @ 8:00 a.m.</i>	
	Dusty Farmer, TB		
	Carl Benson (Resident)		
	Mark Barnes (Staff)		
	Rick Everett (Staff)		
Capital Improvement (CIC)	Zak Ford, TB	<i>Quarterly, Jan, Apr, July, Oct</i>	
	Libby Heiny-Cogswell, TB	<i>3rd Tues. @ 1pm</i>	
	Clare Buszka (TB)		
	Tim Mallett (Resident)		
	Dick Hertzell (Resident)		
	Bernie Mein		
	Anna Horner (Staff)		
	Marc Elliott (Staff)		
HARC (Hardship Advisory Review Committee); 3 year, staggered terms	Fred Gould (BOR)		12/31/2021
	Jeff Parson (Resident-at-large)		12/31/2022
	Neil Sikora (BOR)		12/31/2023
	Clare Buszka (TB Treasurer)		TermofOffice
	Libby Heiny-Cogswell (TB Supervisor)		TermofOffice
IT Committee	Dusty Farmer (TB)	<i>Monthly</i>	
	Libby Heiny-Cogswell (TB Supervisor)		
	Vacancy (Resident)		
	Marc Elliott (Staff)		
	Scott Fuller (Staff)		
	Josh Owens (Staff)		
	Ric Kienbaum (Staff)		

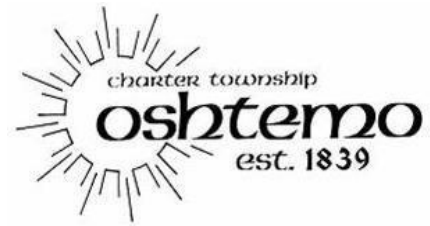
*Bold Font Indicates Proposed Changes. Others are Continuing

TITLE	Members	Dates	Term/End Date
"Legislative Breakfast"	Open to Entire Board	<i>Quarterly</i>	
(Southwest Michigan First)		<i>8am - 9am</i>	
Kalamazoo Brownfield Authority	Iris Lubbert (Staff)	<i>4th Thursday of each Month @ 4:00pm</i>	
Kalamazoo County Transit Authority	Dusty Farmer, Attendee	<i>2nd & 4th Monday, 5:30 p.m.</i>	
HR (Human Resources)	Libby Heiny-Cogswell, TB, Personnel Director	<i>As Needed</i>	
<i>Board Group</i>	Dusty Farmer, TB		
	Cheri Bell, TB		
	Sara Fiester (HR)		
Parks	Libby Heiny-Cogswell, TB	<i>3rd Thursday @ 7:30 a.m.</i>	
	Cheri Bell, TB		
	Kizzy Bradford, TB		
	Deb Everett, Resident		
	Paul Sotherland (At Large)		
	Karen High (Staff)		
Police	Libby Heiny-Cogswell, TB	<i>Quarterly as needed</i>	
	Kristin Cole, TB		
	Zak Ford, TB		
	Mark Barnes (Staff Fire Chief)		
	Jack Shepperly (Staff Police Specialist)		
	Jim Sterenberg (Resident)		
	Malcolm Blair (Resident)		
	Jim Taylor (Resident)		
	Deb Everett (Resident)		
	Josh Owens (Staff)		
	Jim Porter (Staff Attorney)		
Safety	Mark Barnes (Staff)	<i>As needed</i>	
	Kristine Biddle (Staff)		
	Rick Everett (Staff)		
	Linda Potok (Staff)		

*Bold Font Indicates Proposed Changes. Others are Continuing

TITLE	Members	Dates	Term/End Date
Sole Source Waste Hauler Research	Kizzy Bradford (Trustee)	<i>As needed</i>	
	Cheri Bell (Trustee)		
	Libby Heiny-Cogswell (Supervisor; Ex Officio)		
	Harry Jachym (Resident)		
	Fred Antosz (Resident)		
	Vacancy (Resident)		
	Vacancy (Resident)		
	Josh Owens (Staff)		
Sunshine	Cheryl Moeslin		
<i>Manage voluntary contributions from staff to recognize employee life events</i>	Linda Potok		
	Sara Feister (Staff)		
Wellhead Protection Team	Iris Lubbert/Colten Hutson (Staff)	<i>Quarterly (approx)</i>	

Memorandum



Date: 9 February 2021
To: Township Board
From: Sara Feister, Human Resources
Subject: Paid on Call Firefighter Compensation Policy

OBJECTIVE

Seeking Board approval to document the practice for the Paid on Call compensation policy.

BACKGROUND

In December 2020, the Paid on Call Firefighter pay scale was revised to match hours of experience rather than years of service. Below is the new pay scale. Please see the policy for implementation rules and tracking requirements.

	Trainee Rate	Step 1	Step 2	Step 3	Step 4
Hours Worked	\$9.50	0 - 2,911 Hours	2,912 - 5,823 Hours	5,824 - 8,735 Hours	8,736+ Hours
FF Hourly Rate		\$15.00	\$15.50	\$16.00	\$16.50
DO Hourly Rate		\$16.69	\$17.52	\$18.40	\$19.32
Officer Hourly Rate		\$21.25			

Based on a 56 hour per week schedule....

- Step 1 is the equivalent of 0 - 1 year of full time
- Step 2 is the equivalent of 1 - 2 years of full time
- Step 3 is the equivalent of 2 - 3 years of full time
- Step 4 is the equivalent of 3+ years of full time

Due to this policy change, 50% of non-trainee POC Firefighters will see an increase. This compensation policy recognizes those individuals who are able to work more on the Fire Department. It encourages them to continue to work the hours and gain the needed experience for a successful career as a Firefighter. This also puts all Officers in the same pay category. The overall structure has been warmly welcomed by the POC staff.

CORE VALUE DEMONSTRATED

Professionalism • Hire staff with strong core competencies within their given profession. • Commitment to continuous improvement to government operations. • Dedicated to open communication to improve productivity and effectiveness.

Paid on Call Firefighters Compensation Policy

BACKGROUND:

- In December 2020, the POC pay scale was revised to match hours of experience rather than years of service.

PROCESS FOR CALCULATION OF INITIAL HOURS:

- The number of hours used to place current POC staff into the current step was pulled directly from the BS&A Timesheets program following payroll for November 2020.
- Only the relevant hours worked in the employees' current job position was used to slot them into their pay step.
- Any current POC employee (*except Captains, Lieutenants, Trainees, & Resident Interns*) that was employed before 10/09/17, which is when the BS&A Timesheets program was implemented, will be calculated using yearly average hours in their current position hours prior to 10/09/17., based on the following calculation.
 - Total Years of Service in Current Position x Average Yearly Hours (10/9/17 – 12/14/20)

PROCESS FOR CALCULATION OF ON-GOING HOURS:

- Total reported pay period hours are pulled from the BS&A Timesheets program after payroll is run every month.
- The hours tracking spreadsheet will be housed, revised, and reviewed by Human Resources. The hours report is reviewed monthly by Human Resources, which is aligned with the POC pay frequency.

PAY RATE EFFECTIVE DATE:

- If an employee has passed the hours requirement to move to the next step, their raise will be applied to the following pay period.

PROCESS FOR RESIDENT INTERNS:

- If Resident Interns are hired on as POC staff after their period as an intern, they will be granted 2,912 hours of service and immediately move to Step 2 upon hire.

INFORMATION REGARDING CURRENT POC FIREFIGHTERS/DRIVER OPERATORS AS OF 12/14/20:

- Current POC staff that did not meet the hours requirement for the pay rate that they were paid prior to 12/14/20 will be "red-circled" at their current pay rate until they reach the next step. Current POC staff employed as of 12/14/20 will not receive a pay rate decrease. They are grandfathered into their rate.

Paid on Call Firefighters Compensation Policy

PAY SCALE EFFECTIVE 12/14/20:

	Trainee Rate	Step 1	Step 2	Step 3	Step 4
Hours Worked	\$9.50	0 - 2,911 Hours	2,912 - 5,823 Hours	5,824 - 8,735 Hours	8,736+ Hours
FF Hourly Rate		\$15.00	\$15.50	\$16.00	\$16.50
DO Hourly Rate		\$16.69	\$17.52	\$18.40	\$19.32
Officer Hourly Rate		\$21.25			

Based on a 56 hour per week schedule....

- Step 1 is the equivalent of 0 - 1 year of full time
- Step 2 is the equivalent of 1 - 2 years of full time
- Step 3 is the equivalent of 2 - 3 years of full time
- Step 4 is the equivalent of 3+ years of full time

Memorandum

To: Township Board
CC: Mark Barnes

From: James Porter

Date: January 19, 2021

Subject: Summary of proposed Amendments to Section 3 and 4, Ordinance No. 415- False Alarm Ordinance

OBJECTIVE:

To revise Sections 3 and 4 of the Township False Alarm Ordinance 415 to update the Ordinance to reflect current circumstances and procedures, simplify the fine structure and violation period to improve record keeping and fair enforcement, and ensure the Ordinance is clear to the Township's property owners.

Specifically, to revise Section 3 of the Ordinance to (1) the creation of the Kalamazoo Consolidated Dispatch Authority; (2) eliminate the "rolling" nature of the calendar year used for calculating offense occurrences (to simplify record keeping and enforcement); (3) realities of the false/nuisance alarm billing process to remove references to the "Municipal Ordinance Violations Bureau" and simplify to this to "Oshtemo Charter Township" as the Ordinance Enforcement Department has not been issuing these notices, and payments have not been addressed to them; (4) reliance on Township records for property owner information, rather than "last known address"; (5) reasonable method of service for notices ("written violation notice" rather than service via certified mail); and (6) correct/update some areas for internal consistency and grammar.

To revise Section 4 of the Ordinance to (1) remove the minimum/maximum fine, in favor of a simplified fine structure; (2) revise the "rolling" year (for internal consistency with Section 3) to be per calendar year to simplify calculation of offenses; (3) correct/update some areas for internal consistency and grammar; (4) remove the \$500 costs limitation for billing (as personnel and equipment costs incurred by the Fire Department regularly exceed the current \$500 limit), and provide that billed costs will not exceed "actual costs incurred" for each violation; (4) clarify when an alarm is charge an offense fine; and (5) remove the reference to negligent/improper alarm

maintenance as confusing and to make the ordinance more comprehensible to Township property owners.

BACKGROUND:

Ordinance 415 was initially adopted on February 26, 2002, and revised on December 21, 2004 (Ord. No. 456) and March 8, 2011 (Ord. No. 516).

INFORMATION PROVIDED:

I have provided a redline document showing the proposed changes to Sections 3 and 4 of Ordinance 415.

STATEMENT OF REQUESTED BOARD ACTION:

It is my recommendation that the Board adopt these changes to Ordinance 415 to update the False Alarms Ordinance to reflect current circumstances and procedures, simplify the fine structure and violation period to improve record keeping and fair enforcement, and ensure the Ordinance is clear to the Township's property owners.

Core Values Demonstrated

PROFESSIONALISM - •Hire staff with strong core competencies within their given profession. •Commitment to continuous improvement to government operations. •Dedicated to open communication to improve productivity and effectiveness.

FISCAL STEWARDSHIP - •Ensure that tax payer investments are spent wisely, effectively and efficiently.

OSHTEMO CHARTER TOWNSHIP ORDINANCE NO. _____

Adopted: _____

Effective: _____

OSHTEMO CHARTER TOWNSHIP ORDINANCE

This Ordinance amends Ordinance No. 415, being the Oshtemo Charter Township False Alarms Ordinance, adopted on February 26, 2002, as amended, to revise Section III Charges, Section IV Sanctions, and repeals all Ordinances or parts of Ordinances in conflict.

THE CHARTER TOWNSHIP OF OSHTEMO
KALAMAZOO COUNTY, MICHIGAN
ORDAINS:

SECTION I. AMENDMENT OF SECTION III CHARGES. Paragraph A of Section III entitled "Charges" shall be amended to read as follows:

SECTION III

CHARGES

- A. *False Alarms, Nuisance Alarms, Negligence, Repetitious Alarms.* In the event that more than two (2) false alarms or nuisance alarms are received in any given year, to which a response thereto is dispatched by the Kalamazoo County Consolidated Dispatch Authority, for a particular lot, parcel, site or premises, the owner, and/or any lessee of the lot, parcel, site or premises, shall be liable for a municipal civil infraction as defined by Michigan statute, which shall be punishable as set forth below. Oshtemo Charter Township shall issue a written violation notice to the Township's record owner or occupant of the property. The same shall be paid to Oshtemo Charter Township, and if not paid within thirty (30) days from the date of billing by the Township, a citation may be filed with the District Court pursuant to the provisions of Chapter 87 of the Revised Judicature Act.

The owner and/or any lessee may appeal a determination of a false alarm or

nuisance alarm by requesting a hearing before the Oshtemo Charter Township Board in writing received by the Township within fourteen (14) days of the mailing of the notice. The owner and/or any lessee may appeal from the decision of the Township Board to District Court or other court of competent jurisdiction pursuant to the rules and procedures set forth in Michigan law.

SECTION II. AMENDMENT OF SECTION IV SANCTIONS. Section IV entitled “Sanctions” shall be amended to read as follows:

SECTION IV

SANCTIONS

Any person, firm, association, partnership, corporation, or governmental entity who violates any of the provisions of this Ordinance shall be deemed to be responsible for a municipal civil infraction as defined by Michigan statute which shall be punishable by a civil fine determined in accordance with the following schedule:

	Fine
1 st Offense within the calendar year*	\$75.00
2 nd Offense within the calendar year*	\$150.00
3 rd Offense within the calendar year*	\$325.00
4th or More Offense within the calendar year*	\$500.00
* Calendar year refers to January 1 st through December 31 st .	

Additionally, the owner and/or any lessee shall pay costs which may include all expenses, direct and indirect, to which Oshtemo Charter Township has been put in connection with the municipal civil infraction. In no case, however, shall the Township bill for costs of less than \$9.00 nor more than the actual costs incurred. In addition, the Township shall have the right to proceed in any court of competent jurisdiction for the purpose of obtaining an injunction, restraining order, or other appropriate remedy to compel compliance with this Ordinance. Each violation shall constitute a separate offense.

SECTION III.

This Ordinance shall take effect after publication in accordance with State law. All Ordinances or part of Ordinances in conflict herewith are hereby repealed.

**DUSTY FARMER, CLERK
OSHTEMO CHARTER TOWNSHIP**



January 29, 2021

Mtg Date: February 9, 2021
To: Oshtemo Charter Township Board
From: Iris Lubbert, AICP, Planning Director
Subject: Second Reading: Pools on Corner Lots (front yard setback)

Objective:

Consideration of the Pools on Corner Lots (front yard setback) ordinance language for Second Reading and adoption. The first reading of the proposed ordinance occurred on January 26, 2021 at which the Township Board approved the first reading and moved for second reading unanimously.

Background:

On November 17th the Zoning Board of Appeals reviewed a variance request to permit an in-ground pool to protrude 20 feet into the required 30-foot front yard setback. The property in question, 5359 Sweet Briar Drive, is a small corner lot located within Rose Arbor Plat No. 2. After review and discussion, the Zoning Board of Appeals approved the request. A copy of the staff report and draft meeting Minutes are attached. This was not the first variance approved to allow an in-ground pool to protrude into a corner lot's front yard. However, it should be noted that this variance was the first of its type approved under the current setback code adopted in 2011. As a result of this meeting, the Zoning Board of Appeals requested that a request be sent to the Planning Commission to consider an update to the code that provides some flexibility to in ground pools on corner lots.

The current setbacks for pools are outlined in section 50.60 Setback Provisions of the code. In this section, pools are given a side yard setback of 10 feet and a rear yard setback of 15 feet. As the code sets forth a side and rear setback for pools but does not mention a front setback, the generally accepted interpretation is that no pools are permitted in front of a house. However, corner lots, as they have frontage on two streets, have two front yards. Assuming the house is built up to the two 30-foot front yard setbacks, this means that, a 30-foot front setback is required for a potential pool along each street frontage (at minimum to line up with the house). This is a larger setback area than is required of properties not located on a corner, where only a 10 foot side yard setback is required; meaning that usable rear yard space is reduced at least by approximately 20 feet along the corner lots' side with street frontage. The Zoning Board of Appeals felt that this unique hardship of corner lots should be taken into consideration and in-ground pools should be treated differently than the standard primary or accessory structure. It should be noted that only public comments in support of the variance request were received.

A proposed code amendment that addresses the Zoning Board of Appeals request was introduced to the Planning Commission at their regular December 10th, 2020 meeting. After discussion the Commission unanimously approved forwarding the proposed text to a Public Hearing. A Public Hearing was held on January 14, 2021 - no public comment was received either for or against the proposed amendment. The Planning Commission unanimously motioned to forward the proposed amendment to the Township Board for consideration with a recommendation of approval.

Proposal:

Based on input from the Zoning Board of Appeals and past precedence of approved pools within Oshtemo Township, the Planning Commission, planning staff and legal counsel are recommending a code amendment that would provide additional guidance and flexibility for pools on corner lots. The amendment includes adding a definition of a corner lot, differentiating between what is considered a corner lot's front and side street frontage, and allowing a 10 foot front yard setback for in-ground pools on corner lots in subdivisions or site condominiums if it is along the 'Side Street Frontage' of the lot, provides the required fencing, and is

screened from the road with landscaping. This proposed amendment also clearly notes that any other pools are not permitted in a front yard.

Attached: Proposed Pools on Corner Lots (front yard setback) Text Amendment Document - proposed changes shown in red; 5359 Sweet Briar Drive Variance Staff Report; Images of existing pools on corner lots that encroach into the front yard; November 17th ZBA DRAFT Meeting Minutes

Article 2 – Construction of Language and Definitions

2.20 Definitions

Corner Lot: A Lot located at the intersection of two or more streets.

FRONTAGE, FRONT STREET. A corner Lot has a Front Street and a Side Street Frontage, with the Front Street Frontage being the frontage onto which the front of the building faces.

FRONTAGE, SIDE STREET. A corner Lot has a Front Street and a Side Street Frontage, with the Side Street Frontage being the frontage onto which the side of the building faces.

Article 50 – Schedule of Regulations:

50.60 Setback Provisions:

...

B. Agricultural and Residence Districts, which shall include the “AG” Agricultural District, “RR” Rural Residential District, “R-1” Residence District, “R-2” Residence District, “R-3” Residence District, “R-5” Residence District, “R-C” Residential, Conservation District and buildings having two stories or less in “R-4” Residence District.

1. Front yard setbacks for primary structures.

- a. A setback of 30-feet shall be required from all street rights-of-way and outlots and/or planned future public street extensions unless a larger setback is otherwise required.
- b. If a new primary structure is constructed within 300 feet of a building existing on the effective date of this Ordinance (December 24, 1966) which is closer than the 30-foot setback requirement, the setback may be decreased according to the schedule set forth in Section 50.60.A.
- c. If a new primary structure is constructed within 100 feet of a building existing on the effective date of this Ordinance which is further than the 30-foot setback requirement, the minimum setback requirement shall be equal to the average of the closest existing buildings on either side of the new building.
- d. On corner lots in subdivisions or site condominiums inground pools are permitted to have a ten-foot front yard setback along the Side Street Frontage of the lot. In addition to the required fencing, these pools shall be screened from the road with landscaping. Pools are otherwise not allowed in the front yard.

2. Interior side and rear yard setbacks for primary structures.

- a. "AG" Agricultural District, "RR" Rural Residential District, "R-1" Residence District, "R-2" Residence District, "R-3" Residence District, and "R-C" Residential, Conservation District:
 1. i. The minimum setback distance between any primary structure, pool, or associated decks whether attached or detached and any interior side property shall be ten feet unless a larger setback is otherwise required in the Township Zoning Ordinance.
 2. ii. The minimum setback distance between any primary structure, pool, or associated decks whether attached or detached and any rear property shall be 15 feet unless a larger setback is otherwise required in the Township Zoning Ordinance.
- b. "R- 5" Residence District, and buildings having two stories or less in "R-4" Residence District:

1. i. The minimum setback distance between any building and any rear or interior side property line shall be ten feet or the height of the abutting side of the building at its highest point as measured from the grade of the property line, whichever is greater.
- c. The setbacks for buildings exceeding two stories in the "R-4" Residence District are set forth in Section 50.60.C.
- d. The rear and interior side property line setbacks for nonresidential buildings in the above zoning districts shall satisfy the requirements of Section 50.60.C.

November 4th, 2020



Mtg Date: November 17th, 2020

To: Zoning Board of Appeals

From: Karen High, Zoning Administrator

Applicant: Frank H. and M. Jamie Jeremy
Owner: Frank H. and M. Jamie Jeremy

Property: 5359 Sweet Briar Drive, parcel number 05-36-475-010

Zoning: R2: Residence District

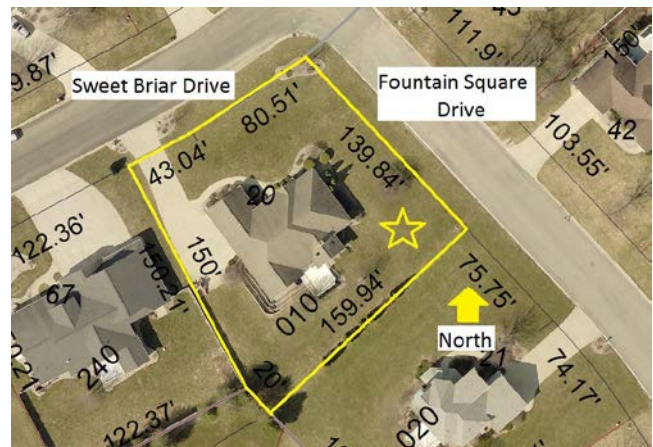
Request: A variance to permit a pool which will protrude 20 feet into the required 30-foot front yard setback

OVERVIEW:

The applicant is requesting relief from Section 50.60 of the Zoning Ordinance which governs setbacks for structures in residential zoning districts in order to construct an 18 foot x 36 foot in-ground pool and associated concrete decking in the required front yard.

Section 50.60 of the Zoning Ordinance requires that all primary structures located within the R-2 district have a 30 foot front yard setback. Required side setback is 10 feet and required rear setback is 15 feet.

5359 Sweet Briar Drive is a 0.50-acre corner lot in Rose Arbor plat No. 2. The lot is approximately 150 feet wide by 150 feet long and also fronts Fountain Square Drive. Though the required front setbacks are 30 feet, the house, built in 2002, is approximately 44 feet from each right of way line. The side and rear yards are somewhat narrow, at approximately 35 foot and 40 foot wide respectively. The lot is outlined in yellow in the aerial photo to the right. Approximate location of the proposed pool is starred.



The applicant has submitted a property sketch showing the proposed layout in more detail. (See attachments.) Though not shown on the plan, they state that required fencing will meet all ordinance requirements. The applicant has provided the following rational for this variance request:

- The entire pool structure will be built below grade, with nothing above ground to impede the character of the neighborhood except enhanced landscape and plantings.

- A 10 foot side and 15 foot rear setback is provided. This shows a good faith effort to meet the side and rear setback requirements for lots not located on a corner.
- There is no other practical or safe location for a conventional pool on the property.
- A house in the neighborhood, also on a corner lot, was permitted to have a pool in the front yard.
- Several houses in the neighborhood have pools in the side and rear yards. Many of these pools would not be permitted if on our corner lot.

Public input was received from six residents of the neighborhood. There were no objections to the variance request. Copies of their statements are attached.

STANDARDS OF REVIEW - STAFF ANALYSIS

The Michigan courts have applied the following principles for a dimensional variance, which collectively amount to demonstrating a practical difficulty, as follows:

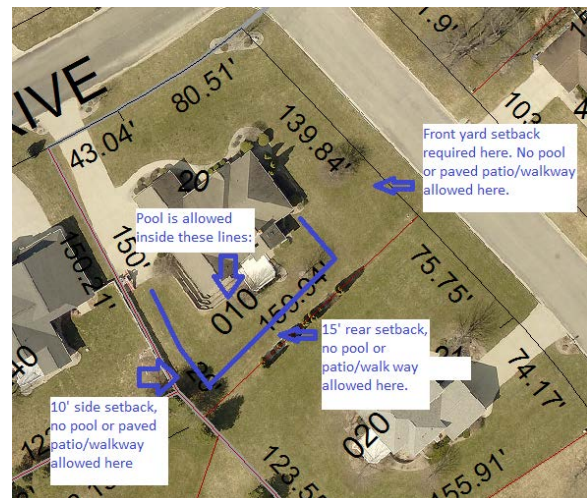
- Special or unique physical conditions and circumstances exist which are peculiar to the property involved and which are not generally applicable to other properties in the same district.
- Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use; or would render conformity to the ordinance unnecessarily burdensome.
- The variance is the minimum necessary to provide substantial justice to the landowner and neighbors.
- The problem is not self-created.

Staff has analyzed the request against these principles and offer the following information to the Zoning Board of Appeals.

Standards of Approval of a Nonuse Variance (practical difficulty):

Standard: *Unique Physical Circumstances*
Are there unique physical limitations or conditions which prevent compliance?

Comment: The topography around this site is flat. Because it is located on a corner, a 30 foot front setback is required along each street frontage. This is a larger setback than is required of properties not located on a corner, where a 10 foot side yard setback is required on each side. Usable yard space is reduced by approximately 20 feet' along the Fountain Square Drive street frontage.



Standard: *Conformance Unnecessarily Burdensome*
Are reasonable options for compliance available?
Does reasonable use of the property exist with denial of the variance?

Comment: It is the applicant's desire for a pool that triggered this variance request. A pool is not a required nor necessary amenity. A smaller or differently shaped pool might fit on the property without the need for a variance.

*Standard: Minimum Necessary for Substantial Justice
Applied to both applicant as well as to other property owners in district.
Review past decisions of the ZBA for consistency (precedence).*

Comment: In researching past Zoning Board of Appeals decisions regarding setback relief for a pool in a front yard setback, Planning Department staff identified one comparable case. Further research revealed that interpretation of required setbacks for pools has varied over time. In a cursory review of the Township using aerial photos, staff found two inground pools in front yards. In addition, it should be noted that the zoning ordinance was amended in 2011 to require a setback for pools in the side and rear yard. These findings are described below.

1. Latoskewski, 405 Clubview, 10/20/1997: The applicant sought relief from the Zoning Board of Appeals to allow for the construction of a 17 foot x 35 foot pool in the required 40 foot front setback of Shadywood Drive. Located on a corner lot, the property also fronted Club View Drive. The Zoning Board of Appeals approved the variance request of 40 feet based on the following reasons: that conformance was unnecessarily burdensome in that the pool could not be located in compliance with all setbacks, that substantial justice would be served by the variance, and that the spirit and intent of the Ordinance would be met because the pool would be below ground and included no pool house or other structure. (See meeting minutes and aerial photo attached.)
2. 4970 Fountain Square, 10/9/01: A building permit for an inground pool in the required front yard was approved with no setback. This property is also on a corner lot. A letter in the file from Planning Department staff indicated that "placement of an inground pool is not subject to setbacks from the abutting streets." The letter and an aerial photo are attached to this staff report. This is consistent with statements in meeting minutes from that time period that 'buildings' were required to meet setback requirements but 'structures' were not.
3. 6488 Killington Drive, 2008: A building permit was issued for an inground pool at this address, also on a corner lot. The pool is located approximately 15 feet from the right of way line. Planning Department staff approved the building permit application. (See aerial photo attached.)
4. Zoning Code text amendment to Section 64 – Setback and Side Line Spacing, 2/24/2011: The zoning ordinance was amended to require a minimum front yard setback of 30 feet rather than 40 feet. Minimum rear yard setback, formerly 10 feet, was increased to 15 feet. In addition, text was added requiring that pools and decks (attached or detached) conform to applicable rear and interior side setbacks. According to the staff report, reasoning was that "this will prevent decks and pools from being too close to property lines." Added text for pools and decks follows in bold:
 - a. "The minimum setback distance between any building and any interior side property line in the "AG" Agricultural Districts, "RR" Residence Districts, "R-

1" Residence Districts, "R-2" Residence Districts, and "R-3" Residence Districts shall be ten feet for all buildings, **pools, and associated decks whether attached or detached** unless a larger setback is otherwise required in the Township Zoning Ordinance.

- b. The minimum setback distance between any building, **pools, and associated decks whether attached or detached** and any rear property line in the "AG" Agricultural Districts, "RR" Residence Districts, "R-1" Residence Districts, "R-2" Residence Districts, and "R-3" Residence Districts shall be not less than 15 feet unless a larger setback is otherwise required in the Township Zoning Ordinance."

Text adopted in 2011 for front yard setbacks was as follows: "there shall be a setback from all street right of way lines and outlots and/or planned future public street extensions of not less than 30 feet for all buildings unless a larger setback is otherwise required."

This is essentially the same as language in the current ordinance, which states "front yard setbacks for primary structures: a setback of 30-feet shall be required from all street rights-of-way and outlots and/or planned future public street extensions." Because the code sets forth a side and rear setback for pools but does not mention a front setback, the generally accepted interpretation is that no pools are permitted in front of a house.

Standard: Self-Created Hardship
Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?

Comment: The home at 5359 Sweet Briar Drive was built near the center of the property. The lot lines and setbacks for the property have not changed since its construction. There may be room in the rear yard for a much smaller or irregularly shaped pool that meets setback requirements. It is the applicant's desire for a pool that has triggered this variance request. A pool is not a required or necessary amenity.

POSSIBLE ACTIONS

The Zoning Board of Appeals may take the following possible actions:

- Motion to approve as requested (conditions may be attached)
- Motion to approve with an alternate variance relief (conditions may be attached)
- Motion to deny

The motion should include the findings of fact relevant to the requested variance. Based on the staff analysis, the following findings of fact are presented:

- Support of variance approval
 - The corner lot places additional restrictions on this property – is a unique physical circumstance.
 - A variance was approved for a similar request in 1997.

- Pools were previously allowed to be constructed in the Township with no required front setback.
- Support of variance denial
 - Without relief, the property can still accommodate a single-family home, as allowed per the Zoning Ordinance. A pool is not a required nor a necessary amenity.
 - The variance request for this 18' x 36' pool is a self-created hardship, as a smaller pool could be built.

Possible motions for the Zoning Board of Appeals to consider include:

1. Applicant's Request

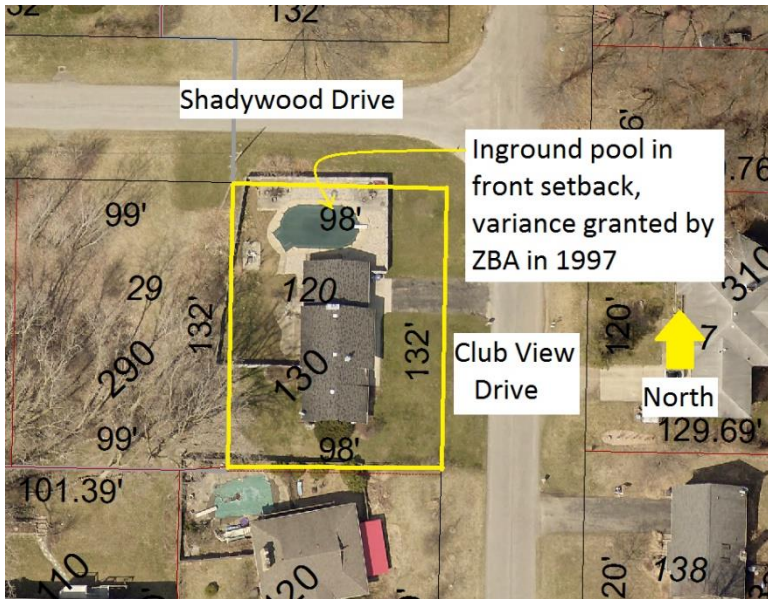
Based on past precedence presented in this memo, motion to approve the variance request, allowing the applicant to construct an 18 foot x 36 foot in ground pool with a 10-foot front yard setback.

If the Zoning Board of Appeals chooses this motion, staff request that a condition be attached requiring the property owner to complete the building permit process via the Southwest Michigan Building Authority.

If the Zoning Board of Appeals chooses this motion, staff also requests that a request be sent to the Planning Commission to consider an update to the code that provides some flexibility to pools on corner lots.

2. Motion to deny the requested variance based on the findings of fact presented under 'Support of variance denial' in this memo.

Attachments: Application, Letter from Applicant, Property sketch, Public input received as of 11/9/2020, 10/09/2001 Planning Dept letter, 10/20/1997 ZBA minutes, Aerial photos of existing inground pools in front setback.



**Aerial photo of
405 Club Drive**



**Aerial photo of
4970 Fountain Square Drive**



**Aerial photo of
6488 Killington Drive**

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

DRAFT MINUTES OF A VIRTUAL MEETING HELD NOVEMBER 17, 2020

Agenda

VARIANCE: JEREMY, 5359 SWEET BRIAR DRIVE

FRANK H. AND M. JAMIE JEREMY REQUESTED RELIEF FROM SECTION 50.60 OF THE ZONING ORDINANCE WHICH GOVERNS SETBACKS FOR STRUCTURES IN RESIDENTIAL ZONING DISTRICTS IN ORDER TO CONSTRUCT AN 18 FOOT X 36 FOOT IN-GROUND POOL AND ASSOCIATED CONCRETE DECKING IN THE REQUIRED FRONT YARD.

A virtual meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, November 17, 2020, called to order at approximately 3:02 p.m.

PRESENT: Neil Sikora, Chair
Fred Antosz
Cheri Bell
Fred Gould
Anita Smith, Vice Chair

ABSENT: Ollie Chambers
Micki Maxwell

Also present were Iris Lubbert, Planning Director, Karen High, Zoning Administrator, James Porter, Township Attorney and Martha Coash, Meeting Transcriptionist.

One guest, applicant M. Jamie Jeremy was present.

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Chairperson Sikora called the meeting to order and invited those present to join in reciting the "Pledge of Allegiance."

APPROVAL OF AGENDA

Chairperson asked if there were changes to the agenda. Hearing none, he asked for a motion.

Ms. Smith **made a motion** to approve the agenda as presented. Mr. Gould **seconded the motion. The motion was approved unanimously.**

APPROVAL OF THE MINUTES OF AUGUST 25, 2020

The Chair asked if there were any additions, deletions or corrections to the minutes of August 25, 2020. Hearing none, Chairperson Sikora asked for a motion.

Ms. Bell **made a motion** to approve the Minutes of August 25, 2020 as presented. Ms. Smith **seconded the motion**. **The motion was approved unanimously.**

Chairperson Sikora moved to the next agenda item and asked Ms. Lubbert for her presentation. Ms. Lubbert indicated Ms. Karen High, Zoning Administrator would be presenting to the Board.

VARIANCE: JEREMY, 5359 SWEET BRIAR DRIVE FRANK H. AND M. JAMIE JEREMY REQUESTED RELIEF FROM SECTION 50.60 OF THE ZONING ORDINANCE WHICH GOVERNS SETBACKS FOR STRUCTURES IN RESIDENTIAL ZONING DISTRICTS IN ORDER TO CONSTRUCT AN 18 FOOT X 36 FOOT IN-GROUND POOL AND ASSOCIATED CONCRETE DECKING IN THE REQUIRED FRONT YARD.

Ms. High indicated the applicant was requesting relief from Section 50.60 of the Zoning Ordinance which governs setbacks for structures in residential zoning districts in order to construct an 18 foot x 36 foot in-ground pool and associated concrete decking in the required front yard.

Section 50.60 of the Zoning Ordinance requires that all primary structures located within the R-2 district have a 30 foot front yard setback. Required side setback is 10 feet and required rear setback is 15 feet.

She explained 5359 Sweet Briar Drive is a 0.50-acre corner lot in Rose Arbor plat No. 2. The lot is approximately 150 feet wide by 150 feet long and also fronts Fountain Square Drive. Though the required front setbacks are 30 feet, the house, built in 2002, is approximately 44 feet from each right of way line. The side and rear yards are somewhat narrow, at approximately 35 foot and 40 feet wide respectively.

The applicant submitted a property sketch showing the proposed layout in more detail. Though not shown on the plan, they state that required fencing will meet all ordinance and building code requirements. The applicant provided the following rationale for this variance request:

- The entire pool structure will be built below grade, surrounded by a fence with nothing above ground to impede the character of the neighborhood except enhanced landscaping and plantings. The pool will not be readily visible to anyone driving by; it will appear to be a fenced-in yard.

- A 10 foot side and 15 foot rear setback is provided, which shows a good faith effort to meet the side and rear setback requirements for lots not located on a corner.
- There is no other practical or safe location for a conventional pool on the property.
- A house in the neighborhood, also on a corner lot, was permitted to have a pool in the front yard.
- Several houses in the neighborhood have pools in the side and rear yards. Many of these pools would not be permitted if on our corner lot.

Ms. High indicated public input was received from six residents of the neighborhood, none of which objected to the variance request. Copies of their statements are attached to these minutes.

She urged the board to consider the larger picture. Does the Township wish to allow in-ground pools within required front yard setbacks? Should corner lots be considered differently? Should other structures be allowed as well? This is the first case of this nature under the current ordinance. By approving this case, a precedent would be set allowing in-ground pools or structures in a front yard, which could have negative impacts if not properly justified.

STANDARDS OF REVIEW - STAFF ANALYSIS

Ms. High noted the Michigan courts have applied the following principles for a dimensional variance, which collectively amount to demonstrating a practical difficulty:

- Special or unique physical conditions and circumstances exist which are peculiar to the property involved and which are not generally applicable to other properties in the same district.
- Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use; or would render conformity to the ordinance unnecessarily burdensome.
- The variance is the minimum necessary to provide substantial justice to the landowner and neighbors.
- The problem is not self-created.

Staff analyzed the request against these principles and Ms. High offered the following comments.

Standards of Approval of a Nonuse Variance (practical difficulty):

*Standard: Unique Physical Circumstances
Are there unique physical limitations or conditions which prevent compliance?*

Comment: The topography around this site is flat. Because it is located on a corner, a 30 foot front setback is required along each street frontage. This is a

larger setback than is required of properties not located on a corner, where a 10 foot side yard setback is required on each side. Usable yard space is reduced by approximately 20 feet' along the Fountain Square Drive street frontage.

*Standard: Conformance Unnecessarily Burdensome
Are reasonable options for compliance available?
Does reasonable use of the property exist with denial of the variance?*

Comment: It is the applicant's desire for a pool that triggered this variance request. A pool is not a required or necessary amenity. A smaller or differently shaped pool might fit on the property without the need for a variance.

*Standard: Minimum Necessary for Substantial Justice
Applied to both applicant as well as to other property owners in district.
Review past decisions of the ZBA for consistency (precedence).*

Comment: In researching past Zoning Board of Appeals decisions regarding setback relief for a pool in a front yard setback, Planning Department staff identified one comparable case. Further research revealed that interpretation of required setbacks for pools has varied over time. In a cursory review of the Township using aerial photos, staff found two in-ground pools in front yards. In addition, it should be noted that the zoning ordinance was amended in 2011 to require a setback for pools in the side and rear yard. These findings are described below.

1. Latoskewski, 405 Clubview, 10/20/1997: The applicant sought relief from the Zoning Board of Appeals to allow construction of a 17 foot x 35 foot pool in the required 40 foot front setback of Shadywood Drive. Located on a corner lot, the property also fronted Club View Drive. The Zoning Board of Appeals approved the variance request of 40 feet based on the following reasons: that conformance was unnecessarily burdensome in that the pool could not be located in compliance with all setbacks, that substantial justice would be served by the variance, and that the spirit and intent of the Ordinance would be met because the pool would be below ground and included no pool house or other structure.
2. 4970 Fountain Square, 10/9/01: A building permit for an in-ground pool in the required front yard was approved with no setback. This property is also on a corner lot. A letter in the file from Planning Department staff indicated that "placement of an in-ground pool is not subject to setbacks from the abutting streets." This is consistent with statements in meeting minutes from that time period that 'buildings' were required to meet setback requirements but 'structures' were not.
3. 6488 Killington Drive, 2008: A building permit was issued for an in-ground pool at this address, also on a corner lot. The pool is located

approximately 15 feet from the right of way line. Planning Department staff approved the building permit application.

4. Zoning Code text amendment to Section 64 – Setback and Side Line Spacing, 2/24/2011: The zoning ordinance was amended to require a minimum front yard setback of 30 feet rather than 40 feet. Minimum rear yard setback, formerly 10 feet, was increased to 15 feet. In addition, text was added requiring that pools and decks (attached or detached) conform to applicable rear and interior side setbacks. According to the staff report, reasoning was that “this will prevent decks and pools from being too close to property lines.” Added text for pools and decks follows in bold:
 - a. “The minimum setback distance between any building and any interior side property line in the "AG" Agricultural Districts, "RR" Residence Districts, "R-1" Residence Districts, "R-2" Residence Districts, and "R-3" Residence Districts shall be ten feet for all buildings, **pools, and associated decks whether attached or detached** unless a larger setback is otherwise required in the Township Zoning Ordinance.
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Text adopted in 2011 for front yard setbacks was as follows: “there shall be a setback from all street right of way lines and outlots and/or planned future public street extensions of not less than 30 feet for all buildings unless a larger setback is otherwise required.”

This is essentially the same as language in the current ordinance, which states “front yard setbacks for primary structures: a setback of 30-feet shall be required from all street rights-of-way and outlots and/or planned future public street extensions.” Because the code sets forth a side and rear setback for pools but does not mention a front setback, the generally accepted interpretation is that no pools are permitted in front of a house.

Standard: Self-Created Hardship
Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?

Comment: The home at 5359 Sweet Briar Drive was built near the center of the property. The lot lines and setbacks for the property have not changed since its construction. There may be room in the rear yard for a much smaller or irregularly shaped pool that meets setback requirements. It is

the applicant's desire for a pool that has triggered this variance request. A pool is not a required or necessary amenity.

Ms. High indicated approving the requested variance would not negatively affect safety and welfare.

She indicated possible motions for consideration:

1. Based on past precedence, **motion to approve** the variance request, allowing the applicant to construct an 18 foot x 36 foot in ground pool with a 10-foot front yard setback.

If the Zoning Board of Appeals were to choose this motion, staff requested a condition be attached requiring the property owner to complete the building permit process via the Southwest Michigan Building Authority. In addition staff also suggested a request be sent to the Planning Commission to consider an update to the code to provide some flexibility to pools on corner lots.

2. **Motion to deny** the requested variance based on the findings of fact presented under 'Support of variance denial.'

Chairperson Sikora thanked Ms. High for her presentation and asked if there were questions from Board Members.

Mr. Sikora asked about required fencing.

Ms. High said a fence is required by building code for all pools. The applicant has stated fencing will meet zoning requirements, with no variance needed.

Hearing no further questions from Board Members, Chairperson Sikora asked if the applicant wished to speak.

Ms. Jamie Jeremy, 5359 Sweet Briar Drive, thanked Township staff for their guidance through the variance request process, ZBA members for their service to the Township and their consideration of the request, and her neighbors for their support.

She said when their house was built in 2003, they never dreamed they would want a pool, and if they had they would have positioned the house differently. Now, 17 years later, they very much want to add a pool. They were unaware of the second "front" yard with much greater setback requirements than for a normal yard. They wish to commit to undertaking a project that will not detract from their or their neighbors' homes. They will follow the example of the landscaping done at 4970 Fountain Square so that you will hardly know there is a pool there.

The Chair thanked Ms. Jeremy for her comments and asked if there were questions for her from Board Members.

Ms. Smith asked why the pool could not be located west of the deck.

Ms. Jeremy said there is a retaining wall there at a 15 foot setback from the property line. A pool would have to be located very close to it. The landscaper who installed the retaining wall said that could impact the integrity of the wall.

Ms. Smith wondered how a pool located west of the deck would impact a retaining wall.

Ms. Jeremy said the retaining wall is dug down underground at the basement level and holds land back from the lower level windows. Another alternative would have to be figured out. She also noted the pool would not be a part of the yard visually off the sun porch and that a traffic pattern from the house to the pool from the deck flows as it is designed. There is no access currently from that part of the yard. The retaining wall is an eight-foot drop and a safety factor. The fence would need to be closer than if dealing with the property lines.

Ms. High noted she measured using the GIS feature and that a pool this size would not meet the setback requirements if located in the rear corner to the west. It might still require a different type of variance.

Hearing no more questions, the Chair asked if there were any comments from the public. He determined there were no members of the public present and moved to Board Deliberations.

The Chair asked why in the summary of review this particular corner lot is considered a “unique physical circumstance?”

Ms. High said all corner lots are constrained because there is less usable space which puts corner lots at a disadvantage.

Chairperson Sikora said the 1997 variance was approved partially because the pool placement was restricted due to drainage and the septic system location.

Ms. High agreed that was one of the factors discussed in 1997.

Chairperson Sikora said this is the first time since the ordinance was changed in 2011 that a variance has been sought for this purpose and wondered if the circumstances are different. Frontage on two streets comes into play for other cases, such as how assessments are determined for two front yards.

Attorney Porter said sewer and water assessments for corner lots (two front streets) are capped so that a corner lot is not penalized. They cannot be taxed at a different rate; assessment is based on fair market value. A corner lot may be seen as

worth more, but there is no disparity in rates between corner and interior lots. That would be improper.

Ms. Bell noted the 1997 variance for a pool at 405 Clubview was granted prior to the ordinance change in 2011. The similar in-ground pools for 4970 Fountain Square in 2001 and for 6488 Killington Drive in 2008 were approved without variance.

Ms. High noted the 1997 variance granted by the ZBA included language suggesting the Planning Commission should look at and consider amending the ordinance regarding front yard setbacks for pools, but she was unable find any evidence that had occurred.

Attorney Porter said that could have happened as an unintended difference in interpretation.

Ms. High noted the same people signed off on the building permits in 2001 and 2008, but that interpretations evolve and change over time and that may be what occurred.

Ms. Smith wondered how much smaller the pool would need to be if built to the west without encroaching on the retaining wall.

Ms. Lubbert did a rough calculation and thought it could be about 12 feet wide by 15 feet, not including the cement apron decking needed.

Mr. Gould said he has been a pool owner for more than 50 years in two locations. He said 18' x 36' is basically the ideal size for a pool for entertaining, especially for children, who jump, run and need enough space on the deck and around the pool for activities. He heard no opposition to the variance request from neighbors. The ZBA has granted 3-4 site exceptions. He would like to see the Jeremys be able to use and enjoy their property to the fullest. His only question would be concern for anyone moving in later and not finding the variance a problem, though he did not see that as a concern. He cited past precedent and neighbor approval as positives for approval of the variance.

Ms. Bell said she appreciates the tough questions posed by Board Members. There is ambiguity regarding the interpretation of what is and what is not a structure, which should go to the Planning Commission for consideration. Variance was allowed for similarly situated pools in the past which would provide substantial justice in this case and there is strong neighborhood support. Once a variance is granted there will be no problem with later owners. This is a unique circumstance as it is a corner lot. She said she could support approval of the variance request.

Chairperson Sikora was not convinced the criteria for setback relief has been met. He did not feel conformance was burdensome, setbacks granted in the past were

under different circumstances, apples were not being compared to apples, substantial justice doesn't apply with a corner lot, and the problem is self-created.

Attorney Porter said the Board must make a motion and decision as a body whether to grant or deny the variance. If it is felt there is inconsistency in the ordinance regarding corner lot definitions of side and front yards and the definition of "structures," the issue can be referred to the Planning Commission for their consideration.

The Chair said he would support suggesting the Planning Commission consider defining front and side yards for corner lots.

Ms. Smith said she feels the request for variance in this case is a self-created hardship, but would also like to have the Planning Commission look at the side/front yard issue for corner lots which would provide a better opportunity to get the pool where it is wanted.

Ms. Bell asked Attorney Porter whether all five criteria need to be met in order to grant the variance.

Attorney Porter said some would say yes, but he does not agree. Courts do not agree nor does the statute. Practical difficulties are not defined; case law is not clear. People view things differently. It comes down to how ZBA members determine the facts. The ZBA is the jury – you determine the facts.

Chairperson Sikora said he was trying to stick to the variance request form. Sending a request to the Planning Commission will take time. He asked Ms. Jeremy what the timeline is for installing the pool.

Ms. Jeremy said they were looking at the spring of 2021.

Chairperson Sikora asked if someone wished to make a motion.

Ms. Bell **made a motion** to approve the variance as requested, based on the fact that the two front lots are a unique physical circumstance, previous decisions have not been treated in the same way – two pools in the front yard were approved without variance, one with variance, substantial justice is met, reasonable use is not available to place a pool in the rear yard, fencing and screening will maintain safety and welfare.

Per Staff request, a condition will be attached requiring the property owner to complete the building permit process via the Southwest Michigan Building Authority.

A request will be sent to the Planning Commission to consider an update to the code that provides some flexibility to pools on corner lots, particularly addressing side vs. front lots for corner properties and the definition of "structures."

Mr. Antosz **seconded the motion. The motion was approved 3-2 by roll call vote, with Chairperson Sikora and Vice Chairperson Smith dissenting.**

Public Comment

Chairperson Sikora determined there were no members of the public present and moved to the next agenda item.

Other Updates and Business

Ms. Lubbert provided a schedule of meeting dates for 2021 consideration.

Zoning Board of Appeals
Fourth Tuesday of every month @ 3:00 p.m.
2021 Meeting Dates

1/26
2/23
3/23
4/27
5/25
6/22
7/27
8/24
9/28
10/26
11/16*
12/14*
1/25/2022

*Dates shifted to avoid holidays or for consistency with the Development Schedule of Applications

Mr. Gould **made a motion** to approve the Zoning Board of Appeals Meeting Date Schedule as presented. Ms. Smith **seconded the motion. The motion was approved unanimously.**

Ms. Lubbert told the Board public meetings will continue to be held virtually through December by order of the governor. It is likely that order will be extended further. She will keep the Board updated as more information is known.

She indicated she expects there to be two site plans for consideration at the December 15 meeting.

Attorney Porter said he felt the variance request discussion was one of the best the Board has had. It included tough questions and members focused on the issues at

hand, debating head to head on the facts, which is exactly what the ZBA should be doing. He said “the facts are what you say they are.”

Ms. Bell said the new Township Board will be sworn in Friday, November 20 at noon and will include two new Trustees and a new Treasurer. She encouraged Board Members to introduce themselves and welcome Trustees as they look forward to getting to work.

Adjournment

Hearing no further comments, Chairperson Sikora noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 4:15 p.m.

Minutes prepared:
November 18, 2020

Minutes approved:
_____, 2020

DRAFT



January 29, 2021

Mtg Date: February 9, 2021
To: Oshtemo Charter Township Board
From: Iris Lubbert, AICP, Planning Director
Subject: Second Reading: Child and Adult Care Centers

Objective:

Consideration of the Child and Adult Care Centers ordinance language for Second Reading and adoption. The first reading of the proposed ordinance occurred on January 26, 2021 at which the Township Board approved the first reading and moved for second reading unanimously.

Background:

Recently the Planning Commission reviewed a conditional rezoning request that asked to rezone a property to a higher intensity in order for the site to have a Child Care Center. Although the rezoning request was denied as it was considered spot zoning, the topic of Child Care Centers piqued both the Planning Commission's and Public's interest. There was a general agreement that child care options are important and more flexibility was needed that would allow for more of this type of service. Planning Staff was asked to review the code and see if there was a way to appropriately allow for more Child Care Centers in Oshtemo.

Coincidentally, around the same time as the rezoning discussion, a site plan for initial discussion was submitted to staff that entailed an Adult Care Center. After reviewing the code, staff found that it was unclear where and if this use was permitted. After discussion with legal counsel it was determined that this use was comparable to a Child Care Center and that a code amendment would be appropriate. For the sake of efficiency, staff has incorporated language to address deficiencies in the code regarding Adult Care Centers with the proposed Child Care Center code amendment discussion.

This proposed code amendment was introduced to the Planning Commission at their regular December 10th, 2020 meeting. After discussion the Commission unanimously approved forwarding the proposed text to a Public Hearing. A Public Hearing was held on January 14, 2021 - no public comment was received either for or against the proposed amendment. The Planning Commission unanimously motioned to forward the proposed amendment to the Township Board for consideration with a recommendation of approval.

Proposal:

Child Care Centers: There are three different intensities of child care uses that are permitted by the code within Oshtemo: Family day care home (allowing up to 6 children), Group day care home (allowing up to 12 children), and Child Care Center (with no defined maximum number of children permitted). All three of these uses provide child care for periods less than 24 hours a day. Family day cares and Group day cares are permitted in all agricultural and residential zoning districts. This is appropriate as they are small in scale, are required to utilize private residential residences, and must preserve the residential character of the area. Child Care Centers are allowed in the R-3, Residence zoning district and higher. This is appropriate as they are more institutional in scale and nature. Child Care Centers are often equated to a commercial/office type use. The current placement of these three types of child care uses is appropriate.

However, the rezoning request that brought this topic to the forefront was unique as the site in question was

a large church that has a private preschool. In this case the facility already has accepted characteristics that stand out from a standard low-density residential area: a large parking area, a large nonresidential building, obvious traffic flow, and the regular presence of children onsite. One of the comments that residents in support of the rezoning kept bringing up was their desire to have one location where they could drop off their children for the day. Parents that had children enrolled in the private preschool elaborated on how being able to also drop off their preschool age child at this same location would be advantageous to them. Given the nature of public and private schools, both the Planning Commission and staff do not see a reason why schools could also not support a Child Care Center. With the scale of schools, their already providing services to children, site design/layout, general appropriateness in residential areas, and already established traffic patterns - allowing Child Care Centers at these sites as an accessory use is logical. The addition of a Child Care Center to a school would have little to no negative impact on the surrounding residences. The attached proposed text amendment would allow all private and public schools in Oshtemo to have Child Care Centers as an accessory use.

Adult Care Centers: Adult Day Care Centers are non-residential facilities, properly registered or licensed with the State, that supports the health, nutritional, social, and daily living needs of adults in a professionally staffed group setting for periods less than 24 hours a day. These facilities typically provide adults with transitional care and short-term rehabilitation following hospital discharge. Currently in the code the only area that lists Adult Care Centers as an allowed use is the - Neighborhood Overlay Zone (Article 37). In this Overlay “Child or Adult day care centers” are a special use. It should be noted that no areas of Oshtemo are currently part of this overlay (staff will do research on this at a later date). Adult Care Centers are comparable to Child Care Centers – the only significant difference is that they are providing care for a different age group. The Planning Commission, Planning Staff and Legal Counsel recommend allowing Adult Care Centers as a primary use in the same zoning districts as Child Care Centers.

Other: In addition to the above code amendments, staff recommends adding and amending some definitions in the code to help clarify what Child Care Centers and Adult Care Centers are. These proposed definitions are included in the attached proposed text amendment document.

Attached: Child and Adult Care Centers Text Amendment document. Proposed changes shown in red.

Article 2 – Construction of Language and Definitions

Adult Care Center: a non-residential facility, properly registered or licensed with the State, that supports the health, nutritional, social, and daily living needs of adults in a professionally staffed group setting for periods less than 24 hours a day. These facilities typically provide adults with transitional care and short-term rehabilitation following hospital discharge.

Child care center - A facility, other than a private residence, properly registered or licensed under 1973 Public Act 116, as amended, receiving one or more ~~preschool or school-age~~ children for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child. Child care center includes a facility that provides care for not less than two consecutive weeks per year. The facility is generally described as a child care center, day care center, day nursery, ~~preschool, nursery school, parent cooperative preschool~~, play group, or drop-in center. Child care center does not include any of the following:

- a. A Sunday school, a vacation bible school, or a religious instruction class that is conducted by a religious organization where children are in attendance for not more than three hours per day for an indefinite period, or not more than eight hours per day for a period not to exceed four weeks during a two-month period.
- b. A facility operated by a religious organization where children are cared for not more than three hours while persons responsible for the children are attending religious services.

School – an educational institution that is properly registered or licensed with the State.

Article 5 – RR, Rural Residential

5.40 SPECIAL USES

- A. Golf courses, parks, and outdoor recreational areas.
- B. Use of existing buildings formerly utilized in the daily operation of a farm (on or before March 12, 2003) on a parcel that is no longer operated as a functioning farm, as defined in the Michigan Right to Farm Act, for a landscaping contractor business or large-item storage subject to a finding by the Building Official that said building is suitable for the proposed use. No outdoor storage of equipment or items such as snow plows, lawn mowers, trailers or boats may occur unless expressly approved during the Special Use and Site Plan review process.
- C. Public and private schools; **may have a Child Care Center as an accessory use.**
- D. Veterinarian clinics.
- E. Kennels, in unplatted areas, for the breeding, raising and/or boarding of dogs or cats.
- F. Shooting ranges and private clubs operating in connection therewith.
- G. Buildings and regulator stations for essential services.
- H. Group day care home.
- I. Temporary outdoor events (lasting more than one day).
- J. Bed and Breakfast Inns.
- K. Communication towers.

- L. Earth removal, quarrying, gravel processing, mining, related mineral extraction businesses, and landfill gas recovery processing facilities.
- M. Wind energy conversion systems.
- N. Agritourism, Category 2
- O. Agritourism, Category 3

Article 7 – R2, Residence District

7.40 SPECIAL USES

- A. Golf courses, parks, and outdoor recreational areas.
- B. Buildings and regulator stations for essential services.
- C. Public and private schools; **may have a Child care center as an accessory use.**
- D. Group day care home.
- E. Temporary outdoor events (lasting more than one day).
- F. Communication towers.
- G. Earth removal, quarrying, gravel processing, mining, related mineral extraction businesses, and landfill gas recovery processing facilities.
- H. Wind energy conversion systems.

Article 8 – R-3, Residence District

8.40 SPECIAL USES

- A. Three or four-family dwellings.
- B. Buildings and regulator stations for essential services.
- C. Golf courses, parks, and outdoor recreational areas.
- D. Office buildings.
- E. Veterinary, small animal clinics.
- F. Banks, credit unions, and savings and loan offices.
- G. Public and private schools.
- H. Child care centers **and Adult care centers.**
- I. Group day care home.
- J. Beauty parlors or barber shops.
- K. Temporary outdoor events (lasting more than one day).
- L. Communication towers.
- M. Earth removal, quarrying, gravel processing, mining, related mineral extraction businesses, and landfill gas recovery processing facilities.
- N. Wind energy conversion systems.
- O. Larger Facilities for Child and Adult Foster Care, including: Child Caring Institutions, Foster Family Group Home, Adult Foster Care Small Group Home, and Adult Foster Care Large Group Home.

Article 9 – R-4, Residence District

9.20 PERMITTED USES

- A. Any permitted use in the "R-2" Residence District.
- B. Child care centers and Adult care centers, ~~nursing, handicapped, convalescent, senior citizens' and foster homes.~~
- C. Funeral homes.
- D. Accessory buildings and uses customarily incidental to the foregoing.
- E. Family day care home.
- F. Adult Foster Care Facility.
- G. Foster Family Home.
- H. ~~Nursing, convalescent, handicapped, or senior citizens' homes.~~

9.40 SPECIAL USES

- A. Private clubs, fraternities, sororities, lodges, except those of which the chief activity is a service customarily carried on as a business.
- B. Buildings and regulator stations for essential services.
- C. Golf courses, parks, and outdoor recreational areas.
- D. Public and private schools.
- E. Group day care home.
- F. Rehabilitation and/or redevelopment of a multiple-family legal nonconforming use where the existing density exceeds the density limitations of Section 48.100. This may not be construed as allowing an increase in density.
- G. Temporary outdoor events (lasting more than one day).
- H. Communication towers.
- I. Earth removal, quarrying, gravel processing, mining, related mineral extraction businesses, and landfill gas recovery processing facilities.
- J. Wind energy conversion systems.
- K. Larger Facilities for Child and Adult Foster Care, including: Child Caring Institutions, Foster Family Group Home, Adult Foster Care Small Group Home, and Adult Foster Care Large Group Home.

Article 11 RC, Residential Conservation District

11.40 SPECIAL USES

- A. Clustered "hamlet" residential development for the purpose of conserving open space, preserving sensitive resources, and reducing impermeable surface area.
- B. Parks, equestrian trails, and outdoor recreational areas.
- C. Public and private schools; ~~libraries~~ may have a Child care center as an accessory use.
- D. Fire stations and other Township buildings.

- E. Buildings and regulator stations for essential services.
- F. Group day care home.
- G. Cemeteries, excluding crematories.
- H. Houses of worship.
- I. Communication towers.
- J. Earth removal, quarrying, gravel processing, mining, related mineral extraction businesses, and landfill gas recovery processing facilities.
- K. Wind energy conversion systems.
- L. **Libraries**

Article 18, C Local Business District

18.40 SPECIAL USES

- A. Assembly and Convention Halls.
- B. Child care centers and **Adult care centers**.
- C. Funeral homes.
- D. Private clubs.
- E. Parks of ten acres or less in size, subject to the conditions and limitations set forth at Section [49.100](#) of this Ordinance.
- F. Nursing, convalescent, handicapped, or senior citizens' homes.
- G. Drive-in service window or drive-through services for businesses.
- H. Retail lumber yards.
- I. New and/or used car sales lots; recreational vehicle sales lots; mobile home sales lots outside of mobile home parks; farm machinery and other equipment sales lots; boat sales lots; and other businesses involving substantial outdoor sales or activities connected with retail sales.
- J. Crematories.
- K. Skating rinks, bowling alleys, indoor recreational facilities and health clubs.
- L. Filling stations, carwashes, public garages or service stations, excluding auto body and auto paint shops.
- M. Drive-in theatres.
- N. Buildings and regulator stations for essential services.
- O. Temporary outdoor events (lasting more than one day).
- P. Brewpub.
- Q. Microbrewery.
- R. Wine Tasting Room.
- S. Craft food and beverage production facility, limited to 8,000 square feet gross floor area.
- T. Communication towers.
- U. Earth removal, quarrying, gravel processing, mining, related mineral extraction businesses, and landfill gas recovery processing facilities.
- V. Private streets.

W. Wind energy conversion systems.

Article 19 – VC, Village Commercial District

19.50 SPECIAL USES

- A. All new construction, additions, conversions of buildings to nonresidential use, and exterior facade changes other than routine maintenance.
- B. Outdoor sales or activities accessory to permitted retail uses.
- C. Filling stations, Mini-Food-Mart Stations, and auto glass repair shops, excluding body and engine repair and service garages.
- D. Pet shops, veterinarians.
- E. Child care centers ~~or adult day care centers~~ and Adult care centers.
- F. Public and Private Schools
- G. Indoor recreational facilities and health clubs.
- H. Drive-in service window or drive-through service for businesses, not to include restaurants.
- I. Other uses which are determined by the Planning Commission to be similar to those uses permitted in Section 19.20 through 19.40.
- J. Mixed uses allowing both residential and nonresidential uses within the same building.
- K. Buildings and regulator stations for essential services.
- L. Temporary outdoor events (lasting more than one day).
- M. Brewpub.
- N. Microbrewery.
- O. Wine tasting room.
- P. Craft food and beverage production facility, less than 8,000 square feet gross floor area.
- Q. Communication towers.
- R. Private streets.
- S. Wind energy conversion systems.

Article 20 – BRP, Business and Research Park

20.40 SPECIAL USES

- A. Printing, lithographic, blueprinting and similar uses.
- B. Child care centers and Adult care centers.
- C. Banks, credit unions, and similar financial institutions with drive-through service windows.
- D. Conference center facilities.
- E. Solar, wind, and other renewable energy systems (refer to Section 49.290 regarding Wind Energy Conversion Systems).
- F. Temporary outdoor events (lasting more than one day).
- G. Drive through service and/or windows.

- H. Communication towers.
- I. Earth removal, quarrying, gravel processing, mining, related mineral extraction businesses, and landfill gas recovery processing facilities.
- J. Private streets.
- K. Wind energy conversion systems.

Article 35 – 9th Street and West Main Overlay Zone

35.40 SPECIAL USES

A. Residential

The following uses may be located within the 9th Street Residential and the West Main Street Residential section of the Overlay District subject to Special Use approval:

1. Group day care home.
2. Residential planned unit development subject to [Article 41](#).
3. Golf courses, parks, and outdoor recreational areas.
4. Buildings and regulator stations for essential services.
5. Public and private schools.
6. Larger Facilities for Child and Adult Foster Care, including: Child Caring Institutions, Foster Family Group Home, Adult Foster Care Small Group Home, and Adult Foster Care Large Group Home.

B. Commercial

The following uses may be located within the 9th Street Commercial and the West Main Street Commercial section of the Overlay District subject to Special Use approval:

1. Assembly and Convention Halls.
2. Brewpub.
3. Buildings and regulator stations for essential services.
4. Child care centers and Adult care centers.
5. Commercial planned unit developments subject to [Article 41](#).
6. Craft food and beverage production facility.
7. Crematories.
8. Drive-in service window or drive-through service for businesses, not to include restaurants.
9. Funeral homes.
10. Golf courses, parks, and outdoor recreational areas.
11. Group day care home.
12. Hotels, motels.
13. Indoor theaters.
14. Microbrewery.
15. Nursing, convalescent, handicapped, assisted living, or senior citizens' homes.
16. Private clubs.

17. Public and private schools.
18. Skating rinks, bowling alleys, indoor recreational facilities and health clubs.
19. Temporary outdoor events.
20. Veterinary clinics.
21. Wine Tasting Room.
22. Temporary outdoor event (lasting more than one day)

OSHTEMO CHARTER TOWNSHIP ORDINANCE NO. ____

Adopted: _____, 2021

Effective: _____, 2021

OSHTEMO CHARTER TOWNSHIP ORDINANCE

An Ordinance to amend the Oshtemo Charter Township Zoning Ordinance, concerning Child Care Centers and Adult Care Centers, and also concerning pools as follows. This Ordinance repeals all Ordinances or parts of Ordinances in conflict.

THE CHARTER TOWNSHIP OF OSHTEMO
KALAMAZOO COUNTY, MICHIGAN
ORDAINS:

SECTION I. AMENDMENT OF ZONING ORDINANCE COMPILED ARTICLE 2: CONSTRUCTION OF LANGUAGE AND DEFINITIONS, SECTION 2.20 DEFINITIONS. Article 2: Construction of Language and Definitions, Section 2.20 is hereby amended to add and amend the following:

ARTICLE 2: CONSTRUCTION OF LANGUAGE AND DEFINITIONS

2.20 DEFINITIONS

Adult Care Center- a non-residential facility, properly registered or licensed with the State, that supports the health, nutritional, social, and daily living needs of adults in a professionally staffed group setting for periods less than 24 hours a day. These facilities typically provide adults with transitional care and short-term rehabilitation following hospital discharge.

Child care center - A facility, other than a private residence, properly registered or licensed under 1973 Public Act 116, as amended, receiving one or more children for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child. Child care center includes a facility that provides care for not less than two consecutive weeks per year. The facility is generally described as a child care center, day care center, day nursery, play group, or drop-in center. Child care center does not include any of the following:

- a. A Sunday school, a vacation bible school, or a religious instruction class that is conducted by a religious organization where children are in attendance for not more than three hours per day for an indefinite period, or not more than eight hours per day for a period not to exceed four weeks during a two-month period.
- b. A facility operated by a religious organization where children are cared for not more than three hours while persons responsible for the children are attending religious services.

School – an educational institution that is properly registered or licensed with the State.

SECTION II. AMENDMENT OF ZONING ORDINANCE COMPILED ARTICLE 5: RR, RURAL RESIDENTIAL DISTRICT, SECTION 5.40 SPECIAL USES. Article 5: RR, Rural Residential District, Section 5.40, Paragraph C is hereby amended as follows:

ARTICLE 5: RR, RURAL RESIDENTIAL DISTRICT

5.40 Special Uses

- C. Public and private schools; may have a child care center as an accessory use.

SECTION III. AMENDMENT OF ZONING ORDINANCE COMPILED ARTICLE 7: R-2, RESIDENCE DISTRICT, SECTION 7.40 SPECIAL USES. Article 7: R-2, Rural Residence District, Section 7.40 Special Uses, Paragraph C is hereby amended as follows:

ARTICLE 7: R-2, RESIDENCE DISTRICT

7.40 Special Uses

- C. Public and private schools; may have a child care center as an accessory use.

SECTION IV. AMENDMENT OF ZONING ORDINANCE COMPILED ARTICLE 8: R-3: RESIDENCE DISTRICT, SECTION 8.40 SPECIAL USES. Article 8: R-3 Residence District, Section 8.40 Special Uses, Paragraph H is hereby amended as follows:

ARTICLE 8: R-3: RESIDENCE DISTRICT

8.40 Special Uses

H. Child care centers and adult care centers.

SECTION V. AMENDMENT OF ZONING ORDINANCE COMPILED ARTICLE 9: R-4: RESIDENCE DISTRICT, SECTION 9.20 PERMITTED USES. Article 9: R-4 Residence District, Section 9.20 Permitted Uses, Paragraph B is hereby amended, and Paragraph H is hereby added to read as follows:

ARTICLE 9: R-4: RESIDENCE DISTRICT

9.20 Permitted Uses

B. Child care centers and adult care centers.

H. Nursing, convalescent, handicapped, or senior citizens' homes.

SECTION VI. AMENDMENT OF ZONING ORDINANCE COMPILED ARTICLE 11: RC RESIDENTIAL CONSERVATION DISTRICT, SECTION 11.40 SPECIAL USES. Article 11: RC RESIDENTIAL CONSERVATION DISTRICT, Section 11.40, Paragraph C to include child care center as an accessory use and move libraries to be Paragraph L are hereby amended and added to read as follows:

ARTICLE 11: RC RESIDENTIAL CONSERVATION DISTRICT

11.40 Special Uses

- C. Public and private schools; may have a child care center as an accessory use.
- L. Libraries.

SECTION VII. AMENDMENT OF ZONING ORDINANCE COMPILED ARTICLE 18: C LOCAL BUSINESS DISTRICT, SECTION 18.40 SPECIAL USES. Article 18: C Local Business District, Section 18.40, Paragraph B is hereby amended as follows:

ARTICLE 18: C LOCAL BUSINESS DISTRICT

18.40 Special Uses

- B. Child care centers and adult care centers.

SECTION VIII. AMENDMENT OF ZONING ORDINANCE COMPILED ARTICLE 19: VC, VILLAGE COMMERCIAL DISTRICT, SECTION 19.50 SPECIAL USES. Article 19: VC, Village Commercial District, Section 19.50 Special Uses, Paragraph E is hereby amended as follows:

ARTICLE 19: VC, VILLAGE COMMERCIAL DISTRICT

19.50 Special Uses

- E. Child care centers and adult care centers.

SECTION IX. AMENDMENT OF ZONING ORDINANCE COMPILED ARTICLE 20: BRP, BUSINESS AND RESEARC PARK, SECTION 20.40 SPECIAL. Article 20: BRP, Business and Research Park, Section 20.40 Special Uses, Paragraph B is hereby amended to read as follows:

ARTICLE 20: BRP, BUSINESS AND RESEARCH PARK

20.40 Special Uses

B. Child care centers and adult care centers.

SECTION X. AMENDMENT OF ZONING ORDINANCE COMPILED ARTICLE 35: 9TH STREET AND WEST MAIN OVERLAY ZONE, SECTION 35.40 SPECIAL, PARAGRAPH B COMMERCIAL. Article 35: 9th Street and West Main Overlay Zone, Section 35.40 Special Uses, Paragraph B Commercial, Sub-paragraph 4 is hereby amended to read as follows:

ARTICLE 35: 9TH STREET AND WEST MAIN OVERLAY ZONE

35.40 Special Uses

B. Commercial

4. Child care centers and adult care centers.

SECTION XI. AMENDMENT OF ZONING ORDINANCE COMPILED ARTICLE 2: CONSTRUCTION OF LANGUAGE AND DEFINITIONS, SECTION 2.20 DEFINITIONS. Article 2: Construction of Language and Definitions, Section 2.20 is hereby amended to add the following:

ARTICLE 2: CONSTRUCTION OF LANGUAGE AND DEFINITIONS

2.20 DEFINITIONS

Corner Lot: A Lot located at the intersection of two or more streets.

FRONTAGE, FRONT STREET. A corner Lot has a Front Street and a Side Street Frontage, with the Front Street Frontage being the frontage onto which the front of the building faces.

FRONTAGE, SIDE STREET. A corner Lot has a Front Street and a Side Street Frontage, with the Side Street Frontage being the frontage onto which the side of the building faces.

SECTION XII. AMENDMENT OF ZONING ORDINANCE COMPILED ARTICLE 50: SCHEDULE OF

REGULATIONS, SECTION 50.60. Article 50 Schedule of Regulations, Section 50.60

Setback Provisions, Paragraph 1 is hereby amended to add Sub-paragraph d to read as

follows:

- d. On corner lots in subdivisions or site condominiums inground pools are permitted to have a ten-foot front yard setback along the Side Street Frontage of the lot. In addition to the required fencing, these pools shall be screened from the road with landscaping. Pools are otherwise not allowed in the front yard.

SECTION XIII. EFFECTIVE DATE AND REPEAL. All Ordinances or parts of Ordinances inconsistent with

this Ordinance are hereby repealed. This Ordinance shall take effect upon publication

after adoption in accordance with State law.

DUSTY FARMER, CLERK
OSHTEMO CHARTER TOWNSHIP

Emergency Action Plan and Fire Prevention Plan

201.1 PURPOSE AND SCOPE

The purpose of this policy is to provide for member and visitor safety in the event of an emergency at any department facility and ensure compliance with the Code of Federal Regulations (CFR) and Michigan law mandating all employers to develop and maintain an Emergency Action Plan (EAP) and a Fire Prevention Plan (FPP).

201.2 POLICY

The Oshtemo Fire and Rescue Department is committed to preparing for natural or human-created emergency incidents and providing for the safety of its members and visitors.

201.3 EMERGENCY ACTION PLAN AND FIRE PREVENTION PLAN

The Administration Deputy Chief in coordination with the Township Facility Maintenance Manager will develop and maintain an EAP and FPP to provide for the safety of department members and visitors in the event of an emergency. The EAP and FPP will address the specific requirements contained in 29 CFR 1910.38 and 29 CFR 1910.39 and will address all buildings, facilities, and regular places of work or visitor access that are controlled by the Department. The plan also will address actions that members of the Department must take to ensure their safety and that of visitors from fire and other emergencies.

- (a) The EAP shall be in writing and its elements shall include but are not limited to (29 CFR 1910.38; MCL 408.1014):
 1. Emergency evacuation procedures, including escape procedures and emergency escape route assignments.
 2. Procedures to be followed by members who remain to conduct critical facility operations before they evacuate.
 3. Procedures to account for all members and visitors after an emergency evacuation has been completed.
 4. Rescue and medical duties.
 5. Means of reporting fires and other emergencies.
 6. Names or job titles of persons or departments that can be contacted for further information or an explanation of duties under the plan.
 7. The alarm system that will be used to notify members and visitors in the event of a fire or other emergency situation.
 8. The types of evacuations to be used in emergency circumstances.
- (b) The FPP shall be in writing and its elements shall include but are not limited to (29 CFR 1910.39; MCL 408.1014):

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Emergency Action Plan and Fire Prevention Plan

1. A list of major fire hazards, handling and storage procedures for hazardous materials, potential ignition sources and their control procedures, and the type of fire equipment necessary to control the hazard.
 2. Maintenance procedures for heat-producing equipment to prevent accidental ignition of combustible materials.
 3. Procedures to control the accumulation of flammable and combustible waste.
 4. Names and job titles of persons responsible for control of fuel source hazards.
 5. Names and job titles of persons responsible for maintaining the equipment to prevent or control sources of ignition or fires.
- (c) The written EAP and FPP shall be kept at each department workplace or facility and shall be made available for member and visitor review.

201.4 TRAINING

The Department will provide training supporting the EAP and FPP to all members and also to those persons who become members at the time they are assigned to the facility, as described in the Emergency Action Plan and Fire Prevention Plan Training Policy (29 CFR 1910.38; 29 CFR 1910.39; MCL 408.1014).

Fire Inspections

400.1 PURPOSE AND SCOPE

This policy provides guidance for the enforcement of the Fire Code through periodic inspection within the Oshtemo Fire and Rescue Department's jurisdiction. Additionally, this policy establishes the minimum standards for inspection frequencies of all buildings in the department's jurisdiction.

400.2 POLICY

The Oshtemo Fire and Rescue Department is committed to improving public safety through the enforcement of building standards relating to fire and public safety as adopted by the State of Michigan and published in the Fire Prevention Code, and any other regulations or ordinances that have been formally adopted by the Michigan Bureau of Fire Services (BFS) or the Oshtemo Charter Township for the prevention of fire or the protection of life and property against fire.

400.3 RESPONSIBILITIES

The Fire Chief or the authorized designee shall develop a periodic inspection program based on the risks to life and property for occupancies within the Oshtemo Fire and Rescue Department's jurisdictional boundaries. The inspection program will comply with the Fire Prevention Code and any local amendments or ordinances specific to the Oshtemo Charter Township. The department fire inspection program will be administered by the Community Risk Reduction Division under the responsibility of the Fire Marshal pursuant to the delegated authority provided by Michigan law (MCL 29.2b). All Oshtemo Fire and Rescue Department fire inspectors shall meet the certification requirements of the BFS.

400.4 INSPECTION PROGRAM GUIDELINES

The Fire Marshal should develop an inspection program based on community risk reduction through education and enforcement. Inspections should be identified by risk, hazard, occupancy, frequency, and required state law and local code or ordinance (MCL 29.2b; MCL 29.3c; MCL 29.3e).

400.5 HAZARDOUS OCCUPANCIES

Facilities that handle, store, or use hazardous materials should be inspected for compliance with applicable provisions of the Fire Code as well as the accuracy of any required hazardous materials facility plan. Facilities that are required to submit a hazardous materials facility plan should be inspected no less frequently than once every three years (Mich. Admin. Code, R29.1652).

400.6 RIGHT OF ENTRY

If a building or premise to be inspected is occupied, the inspector shall present credentials to the occupant and request entry. If the building or premise is unoccupied, the inspector shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premise and request entry.

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If no permission to enter is granted, the inspector should work with legal counsel to secure entry in a manner provided by law, such as obtaining an administrative search warrant (MCL 29.8; Mich. Admin. Code, R 29.1652).

400.7 INSPECTION FEES

The Department may charge any fire inspection fees adopted by the Oshtemo Charter Township. The fee assessed shall not exceed the estimated reasonable cost of providing the service for which the fee is charged.

400.7.1 RE-INSPECTION FEES

If a violation is discovered during an inspection, the follow-up inspection to ensure the corrections have been made should be conducted at no cost to the owner or occupant. Should the owner or occupant fail to comply with inspection requirements on the follow-up visit and an additional visit is required, a fee as adopted by the Oshtemo Charter Township may be assessed.

Fire Investigations

402.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that all fires and explosions responded to by the Oshtemo Fire and Rescue Department and occurring within this jurisdiction are investigated and properly documented in accordance with state and federal laws as well as national standards.

402.2 POLICY

It is the policy of the Oshtemo Fire and Rescue Department to promptly investigate the cause, origin, and circumstances of fires and explosions occurring in this jurisdiction that involve the loss of life or injury to a person, or the destruction of or damage to property.

402.3 RESPONSIBILITIES

The Fire Chief has overall responsibility for fire investigations. The Fire Marshal is responsible for management of the fire investigations program. The Incident Commander (IC) of each incident is responsible for ensuring that each fire is investigated for origin and cause.

402.4 PRELIMINARY INVESTIGATION

The first-in Captain should conduct a preliminary investigation of each fire or explosion to identify the origin, cause, and circumstances. The Captain will notify the IC of the results of the preliminary investigation.

If the origin of a fire or explosion appears to be suspicious, the IC should take immediate charge of all physical evidence relating to the fire or explosion, coordinate with investigators, and contact local law enforcement.

The IC is responsible for determining when fire investigators, fire investigators with arrest authority, or sworn law enforcement investigators, from this or another agency, are appropriate to investigate an incident.

The immediate response of an appropriate investigator should be requested when any of the following circumstances exist:

- (a) Major or unusual fires that exceed the investigative abilities of a Captain
- (b) Any fire resulting in a major injury or death
- (c) Incidents involving special circumstances, such as an especially high dollar loss, extensive damage, political sensitivity, or any other circumstance deemed appropriate by the Captain
- (d) Arson and/or incendiary devices are involved, or the origin of the fire is otherwise suspicious
- (e) There has been an explosion
- (f) There is evidence or suspicion that a crime has occurred in connection with a fire or explosion

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Fire Investigations

- (g) A fire has been started by a juvenile
- (h) Any illegal activity that potentially could cause a fire and/or explosion has occurred

402.4.1 ASSISTANCE FROM STATE FIRE MARSHAL'S OFFICE

The state Fire Marshal's office shall be notified when either of the following circumstances exist:

- (a) The injury or death of an individual who is not a firefighter resulting from a demonstration fire (MCL 29.6).
- (b) There was a fire, explosion, spill, leak, accident, or related occurrence that involves the transportation, storage, handling, sale, use, or processing of hazardous material (MCL 29.5g).

402.4.2 ASSISTANCE FROM DEPARTMENT OF STATE POLICE FIRE INVESTIGATORS

The response of a fire investigator from the Michigan State Police shall be requested when either of the following circumstances exist:

- (a) There was a fire involving a conspiracy to commit arson, a fire that was perpetrated to defraud a person, or any other fire that may involve the act of arson (MCL 28.72).
- (b) The injury or death of a firefighter resulting from a demonstration fire.

402.5 EQUIPMENT

The fire investigator's vehicle should be stocked with at least the following equipment to help investigate fire cause, origin, and circumstance:

- Digital camera
- Spare batteries
- Voice recording device and spare media
- Fire investigator toolbox
- Shovels, rake, broom, and sifter
- Disposable latex evidence collection gloves
- Evidence collection markers and labels for canisters

402.5.1 USE OF PROTECTIVE GEAR

Fire investigators are responsible for using personal protective equipment (PPE) and respiratory protection appropriate for the conditions present at an investigation scene.

When entering any fire scene during the fire, before or during overhaul, or when there is a chance of reignition, fire investigators shall wear full structural PPE and self-contained breathing apparatus (SCBA).

See the Respiratory Protection Program Policy and the Personal Protective Equipment Policy for additional guidance.

Oshtemo Fire and Rescue Department

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Fire Investigations

402.5.2 LOGBOOK

Each investigator should maintain a logbook of field training, continued professional training hours, and investigative experience. The purpose of this log is to assist in establishing the member as an expert witness in court appearances.

402.6 FIRE INVESTIGATORS

Fire investigators assigned to an incident are responsible for pursuing the investigation through its completion and providing complete written documentation.

In cases where a fire investigator reasonably believes that arson or an unlawful act may be involved in a fire, the investigator should consult with the Fire Marshal and request the assistance of an investigator with arrest authority, if appropriate.

402.6.1 FIRE INVESTIGATOR QUALIFICATIONS

Fire investigators shall:

- (a) Meet the job performance requirements of the National Fire Protection Association's (NFPA) standards for fire investigators.
- (b) Comply with all federal and state statutory and constitutional investigatory requirements, including limitations on searches and seizures.

402.7 INCIDENT REPORTS

To ensure department incidents are documented in the National Fire Incident Reporting System (NFIRS), investigators should complete and submit a report to the Fire Marshal for each investigation conducted. All areas of the report are to be filled out, and when an item is not applicable, N/A is to be placed in the box. For additional information, see the National Fire Incident Reporting System (NFIRS) Policy.

The Fire Marshal is responsible for reviewing and approving the investigative reports.

402.8 MICHIGAN BUREAU OF FIRE SERVICES

The Fire Chief or the authorized designee is responsible for ensuring that a complete fire incident report is provided to the Michigan Bureau of Fire Services as soon as practicable for any fire resulting in (MCL 29.4; MCL 29.6):

- (a) A loss of life or property.
- (b) Firefighter hospitalizations, amputations, or losses of an eye from a demonstration fire.

402.9 SECTION TITLE

Patient Care Records

500.1 PURPOSE AND SCOPE

The purpose of this policy is to establish the requirements for documentation of patient responses, and the related document distribution, storage, and disclosure as required by Michigan law, and in a manner or on forms established by the local medical control authority.

500.1.1 DEFINITIONS

Definitions related to this policy include:

Competent - The patient has the capacity to understand the circumstances surrounding his/her illness or impairment and the risks associated with refusing treatment or transport. The patient is alert and his/her judgment is not significantly impaired by illness and/or injury. Mental illness, drugs, alcohol intoxication, or physical/mental impairment may significantly affect a patient's competence. Patients who have attempted suicide or verbalized suicidal intent, or if other factors lead pre-hospital care personnel to suspect intent, should not be regarded as competent.

MI-EMSYS - The Michigan Emergency Medical Services (EMS) Information System available for submitting patient care records electronically.

NEMSIS – The National EMS Information System.

Patient - A person who meets any one of the following criteria:

- Has a chief complaint
- Has obvious symptoms or signs of injury or illness
- Has been involved in an event that the average first responder would believe could cause an injury
- Appears to be disoriented or to have impaired psychiatric function
- Has evidence of suicidal intent
- Is deceased

Patient refusing medical care against medical advice (AMA) - A competent patient who is determined by an Emergency Medical Technician (EMT) or base hospital to have a medical problem that requires the immediate treatment and/or transportation capabilities of the EMS system, but who declines medical care despite being advised of his/her condition and the risks and possible complications of refusing medical care.

PCR - Patient care record. The PCR is the department's NEMSIS Gold Compliant software program.

PCR Field Note - The PCR Field Note is a triplicate copied notepad designed by Kalamazoo County Medical Control Authority designed for quick recording of patient information.

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Patient Care Records

500.2 POLICY

It is the policy of the Oshtemo Fire and Rescue Department to follow the patient documentation and distribution guidelines required by Michigan law and developed by the local medical control authority. This includes using a NEMSIS Gold Compliant system to submit data to MI-EMSIS.

500.3 PROCEDURE

A Patient Care Record (PCR) shall be completed for every patient response (Mich. Admin. Code, R 325.22117). This includes a patient who is released at the scene, meets the criteria for pronouncing death in the field, or is involved in a multi-casualty incident.

A PCR must be completed for all patients who refuse evaluation, treatment, and/or transport.

Contact with persons who do not meet the criteria required for the definition of a patient should be recorded in the department's incident reporting system to document that assistance was offered and declined. The department's reporting requirements concerning personal identification information, including a person's name, age, date of birth, and sex, should be followed.

The PCR should be completed as soon as possible after providing patient care. A brief written or electronic report must be given to the receiving hospital after the patient arrives and a completed PCR must be provided within 24 hours or as otherwise required by the local medical control authority.

An EMS evaluation, performed minimally by a qualified department member, may or may not be required for non-medical requests for assistance, such as "service calls" or "Lift Assist" requests. A PCR shall be completed for any person meeting the patient criteria.

For continuous quality improvement, the shift captains shall review the PCR and discuss any areas of concern.

500.4 DISTRIBUTION OF PCR FIELD NOTE COPIES

- (a) If a patient is transported, refuses care against medical advice, or is declared dead and is not transported, copies should be distributed as follows and in accordance with local medical control authority protocols:
 - 1. Single copy retained by the Department for transferring information to the PCR.
 - 2. Double copy sent with the ambulance service if possible.
- (b) PCR Field Notes shall be destroyed after transferring needed information to the PCR.

500.5 PCR STORAGE

PCRs shall be maintained and secured in a manner consistent with the Patient Medical Record Security and Privacy Policy and Michigan law. Such records shall be maintained for five years or in the case of minors, until the patient reaches 23 years of age (Mich. Admin. Code, R 325.22117).

Personal Communication Devices

701.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the use of mobile telephones and communication devices, whether issued or funded by the Department or personally owned, while on-duty or when used for authorized work-related purposes.

This policy generically refers to all such devices as Personal Communication Devices (PCDs) but is intended to include all mobile telephones, cellphones, personal digital assistants (PDAs) and similar wireless two-way communications and/or portable Internet access devices. PCD use includes, but is not limited to, placing and receiving calls, text messaging, blogging and microblogging, emailing, using video or camera features, playing games and accessing sites or services on the Internet.

701.2 POLICY

The Oshtemo Fire and Rescue Department allows members to utilize department-issued or funded PCDs and to possess personally owned PCDs in the workplace, subject to certain limitations. Any PCD used while on-duty, or used off-duty in any manner reasonably related to the business of the Department, will be subject to monitoring and inspection consistent with the standards set forth in this policy.

The inappropriate use of a PCD while on-duty may impair member safety. Additionally, members are advised and cautioned that the use of a personally owned PCD either on-duty or off-duty for business-related purposes may subject the member and the member's PCD records to civil or criminal discovery or disclosure under the Michigan Freedom of Information Act (FOIA) (MCL 15.231 et seq.).

Members who have questions regarding the application of this policy or the guidelines contained herein are encouraged to seek clarification from supervisory staff.

701.3 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to emails, texts or anything published, shared, transmitted or maintained through file-sharing software or any Internet site that is accessed, transmitted, received or reviewed on any PCD issued by the Department and shall have no expectation of privacy in their location should the device be equipped with location detection capabilities.

The Department reserves the right to access, audit and disclose, for whatever reason, any message, including attachments, and any information accessed, transmitted, received or reviewed over any technology that is issued or maintained by the Department, including any department-issued PCD or personally owned PCD that has been used to conduct department-related business. This includes records of all keystrokes or Web-browsing history made on the PCD. The

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fact that access to a database, service or website requires a username or password will not create an expectation of privacy if it is accessed through department PCDs or networks.

701.4 DEPARTMENT-ISSUED PCD

Depending on a member's assignment and the needs of the position, the Department may, at its discretion, issue or fund a PCD for the member's use to facilitate on-duty performance. Department-issued or funded PCDs may not be used for personal business either on- or off-duty unless authorized by the Fire Chief or the authorized designee. Such devices and the associated telephone number, if any, shall remain the sole property of the Department and shall be subject to inspection or monitoring (including all related records and content) at any time without notice and without cause.

Unless a member is expressly authorized by the Fire Chief or the authorized designee for off-duty use of the PCD, the PCD will either be secured in the workplace at the completion of duty or will be turned off when leaving the workplace.

701.5 PERSONALLY OWNED PCD

Members may carry a personally owned PCD while on-duty, subject to the following conditions and limitations:

- (a) Permission to carry a personally owned PCD may be revoked if it is used contrary to provisions of this policy.
- (b) The Department accepts no responsibility for loss of or damage to a personally owned PCD.
- (c) The PCD and any associated services shall be purchased, used and maintained solely at the member's expense.
- (d) The device should not be used for work-related purposes except in exigent circumstances (e.g., unavailability of radio communications). Members will have a reduced expectation of privacy when using a personally owned PCD in the workplace and have no expectation of privacy with regard to any department business-related communication.
 - 1. Members may use personally owned PCDs on-duty for routine administrative work as authorized by the Fire Chief.
- (e) The device shall not be utilized to record or disclose any department business-related information, including photographs, video or the recording or transmittal of any information or material obtained or made accessible as a result of employment or appointment with the Department, without the express authorization of the Fire Chief or the authorized designee.
- (f) Use of a personally owned PCD while at work or for work-related business constitutes consent for the Department to access the PCD to inspect and copy data to meet the

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needs of the Department, which may include litigation, FOIA retention and release obligations and internal investigations (MCL 15.231 et seq.). If the PCD is carried on-duty, members will provide the Department with the telephone number of the device.

- (g) All work-related documents, emails, photographs, recordings or other public records created or received on a member's personally owned PCD should be transferred to the Oshtemo Fire and Rescue Department no later than the end of the member's shift and deleted from the member's PCD as soon as reasonably practicable.

Except with prior express authorization from their supervisors, members are not obligated or required to carry, access, monitor or respond to electronic communications using a personally owned PCD while off-duty. If a member is in an authorized status that allows for appropriate compensation consistent with policy or existing collective bargaining agreements, or if the member has prior express authorization from his/her supervisor, the member may engage in department business-related communications. Should members engage in such approved off-duty communications or work, members entitled to compensation shall promptly document the time worked and communicate the information to their supervisors to ensure appropriate compensation. Members who independently document off-duty department-related business activities in any manner shall promptly provide the Department with a copy of such records to ensure accurate record keeping.

701.6 USE OF PCD

The following protocols shall apply to all PCDs that are carried while on-duty or used to conduct department business:

- (a) A PCD shall not be carried in a manner that allows it to be visible while in uniform, unless it is in an approved carrier.
- (b) All PCDs in the workplace shall be set to silent or vibrate mode.
- (c) A PCD may not be used to conduct personal business while on-duty, except for brief personal communications (e.g., informing family of extended hours). Members shall endeavor to limit their use of PCDs to authorized break times, unless an emergency exists.
- (d) Members may use a PCD to communicate with other personnel in situations where the use of radio communications is either impracticable or not feasible. PCDs should not be used as a substitute for, as a way to avoid or in lieu of regular radio communications.
- (e) Members are prohibited from taking pictures, audio or video recordings or making copies of any such picture or recording media unless it is directly related to official department business. Disclosure of any such information to any third party through any means, without the express authorization of the Fire Chief or the authorized designee, may result in discipline.
- (f) Members will not access social networking sites for any purpose that is not official department business.

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- (g) Using PCDs to harass, threaten, coerce or otherwise engage in inappropriate conduct with any third party is prohibited. Any member having knowledge of such conduct shall promptly notify a supervisor.

701.7 SUPERVISOR RESPONSIBILITIES

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring that members under their command are provided appropriate training on the use of PCDs consistent with this policy.
- (b) Monitoring, to the extent practicable, PCD use in the workplace and taking prompt corrective action if a member is observed or reported to be improperly using a PCD.
 1. An investigation into improper conduct should be promptly initiated when circumstances warrant.
 2. Before conducting any administrative search of a member's personally owned device, supervisors should consult with the Fire Chief or the authorized designee.

701.8 OFFICIAL USE

Members are reminded that PCDs are not secure devices and conversations may be intercepted or overheard. Caution should be exercised while utilizing PCDs to ensure that sensitive information is not inadvertently transmitted. As soon as reasonably possible, members shall conduct sensitive or private communications on a land-based or other department communications network.

701.9 USE WHILE DRIVING

The use of a PCD while driving can adversely affect safety, cause unnecessary distractions and present a negative image to the public. Firefighters operating emergency vehicles shall restrict the use of these devices to matters of an urgent nature and shall, where practicable, stop the vehicle at an appropriate location to use the PCD.

Except in an emergency, members who are operating vehicles that are not equipped with lights and siren or who are not carrying out their official duties shall not use a PCD while driving (MCL 257.602b).

Michigan Occupational Safety and Health Administration (MIOSHA) Notification of Illness, Injury or Death

902.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the Department to notify the Michigan Occupational Safety and Health Administration (MIOSHA) of employment-related illnesses, injuries or deaths of any department members pursuant to Michigan law (Mich. Admin. Code, R 408.22101 et seq.).

902.2 POLICY

The Department will comply with MIOSHA's reporting requirements in the event of a serious illness, injury or death as noted below (Mich. Admin. Code, R 408.22139).

902.3 MANDATORY NOTIFICATION

MIOSHA shall be notified within eight hours after the death of any employee, and within 24 hours of an inpatient hospitalization of one or more employees, or an amputation or loss of an eye as a result of a work-related incident.

Fatalities must be reported by telephone to the MIOSHA central telephone number. Any inpatient hospitalization, amputation or loss of an eye must be reported to the nearest MIOSHA office, via a MIOSHA central telephone number or through MIOSHA's website. Notification should not be considered complete by leaving a message on a MIOSHA answering machine or by sending a fax (Mich. Admin. Code, R 408.22139).

902.4 REQUIRED INFORMATION

MIOSHA requires the following information, if available, to be submitted with the notification (Mich. Admin. Code, R 408.22139):

- (a) The name of the Department
- (b) The location of the work-related incident
- (c) The time of the work-related incident
- (d) The type of reportable event (e.g., fatality, inpatient hospitalization, amputation or loss of an eye)
- (e) The number of employees who suffered a fatality, inpatient hospitalization, amputation or loss of an eye
- (f) The names of the employees who suffered a fatality, inpatient hospitalization, amputation or loss of an eye
- (g) A department contact person and his/her phone number, normally the Health and Safety Officer

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Michigan Occupational Safety and Health Administration (MIOSHA) Notification of Illness, Injury or Death

- (h) A brief description of the work-related incident

BUDGET AMENDMENT REQUEST

(Requesting funds for a line item in addition to the approved budget)

Date: _____

Department Head Name: _____

Fund Name: _____

Amount

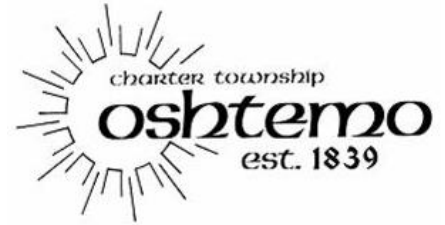
Additional Funds Request for: (description and GL number)	_____	_____
	_____	_____
	_____	_____

Funds requested from: (description and GL number)	_____	_____
	_____	_____
	_____	_____
	_____	_____

Explanation of request:

Supervisor/Clerk/Treasurer Review:
(pending or date reviewed) _____

Board Authorization:
(pending or date authorized) _____



Memorandum

Date: 06 February 2020
To: Township Board
From: Libby Heiny-Cogswell, Supervisor
Subject: Public Water Services Agreement w/Appendices (FINAL)

Objective

Oshtemo Township Board consideration to authorize by resolution the full public water services contract agreement with the City of Kalamazoo.

Background

Following long negotiation with the City of Kalamazoo, the final forty-year Water Agreement with Appendices is provided herein. Since the Oshtemo Board discussion in November, there were minor changes in the document that were necessary to coincide with the adjustment(s) to the Appendices. There have been no substantive changes to the document itself, but as a precaution, approval of the entire document and appendices is requested.

Information Provided

2.4.2021 Water Service Agreement with Appendices A-F (Final)
Resolution Approving Water Services Agreement_020921

WATER SERVICE AGREEMENT

This Water Service Agreement, (“Agreement”), executed this _____ day of _____, 2020, is made by and between the City of Kalamazoo, a Michigan Municipal Corporation (“City”) and the Charter Township of Comstock, Charter Township of Cooper, Charter Township of Kalamazoo, Charter Township of Oshtemo, Township of Pavilion, Township of Richland, Village of Richland, and Charter Township of Texas, each a Michigan Municipal Township or Charter Township, collectively (“Townships”) and individually (“Township”).

RECITALS

- A. The City operates a Public Water Supply System.
- B. The City is authorized to sell treated/potable water outside of its territorial limits and the Townships are authorized to contract for the purchase/sale of treated potable water pursuant to MCL 123.141.
- C. The City previously entered into long-term Water Service Agreements with each Township.
- D. The City and the Townships desire to enter into this Water Service Agreement which shall replace and supersede the previous Water Service Agreements entered into by the City and each Township.
- E. The City and the Townships recognize that the supply of treated/potable water is vital to public health, safety and welfare.
- F. The City and the Townships desire to establish a representative Utility Policy Committee (UPC) with direct input regarding water financial and rate making activities, and the operations, maintenance, repair, and replacement of the Public Water Supply System.
- G. The City and the Townships desire to establish Equivalent Water Rates by Customer Classification, without regard to location (in the City or in the Townships).

Accordingly, the Parties agree as follows:

Article 1 – Definitions

- 1. **City:** The City of Kalamazoo.
- 2. **City Commission:** The legislative body established by Kalamazoo City Charter to exercise all authorized powers related to governance of the City.

3. **City Customers:** Each Customer located within the geographic boundary of the City, the City of Portage, and the City of Parchment.
4. **City Distribution Facilities:** Water Distribution Mains, infrastructure and appurtenances designed and used primarily for the purpose of distributing treated/potable water to the City Customers.
5. **Customer Class:** Each category of customer defined as Residential, Commercial, Industrial, and Other receiving water or water services from the Public Water Supply System as part of this Agreement.
6. **Customer:** A person or entity receiving water or water services from the Public Water Supply System as part of this Agreement.
7. **Direct Contribution:** A contribution of Production, Distribution and/or Transmission Facilities, goods, materials and/or services, or combination thereof, required of Developer(s) or Customer(s) connecting to the Public Water Supply System, designed to reduce the system-wide costs of expanding Production, Distribution and/or Transmission Facilities beyond the Existing Service Area.
8. **Existing Service Area:** The geographic area receiving and scheduled to receive as of December 31, 2019 treated/potable water from the Utility Plant In-Service, as defined in **Appendix A**.
9. **Historical Investment:** The purchase price of the Capital Asset.
10. **Net Book Value:** An asset's Purchase Price less Accumulated Depreciation.
11. **New Customers:** Any Customer added after the execution of this Agreement except City Customers and Township Customers and Customers located within the geographic boundaries of the City and/or the Townships.
12. **Production Facilities:** Water Wells, Pumps, and Treatment Facilities used primarily for the purpose of obtaining and producing treated/potable water for the Customers.
13. **Public Water Supply System:** The assets, liabilities, revenues and expenses necessary to provide treated/potable water to the City Customers and Township Customers.
14. **Public Water Supply System Capital Assets:** Property and property rights of the Public Water Supply System as identified in the Schedule of Public Water System Current Capital Assets, (**Appendix B**).
15. **Rate Year:** An annual period for which rates are being set.

16. **Related Water Services:** Services related to the production, transmission and distribution of water provided to or for the Customers of the Public Water Supply System (**Appendix C**).
17. **Retail Service Assets in the City:** The Utility Plant In-Service Used and Useful only to City Customers as further described in the Schedule of Public Water System Current Capital Assets. (**Appendix B**).
18. **Retail Service Assets in the Townships:** The Utility Plant In-Service Used and Useful only to the Township Customers as further described in the Schedule of Public Water Supply System Current Capital Assets. (**Appendix B**).
19. **System Connection Fee:** A fee assessed to Developer(s) or Customer(s) connecting to the Public Water Supply System designed to defray the system wide costs of expanding Production, Distribution and/or Transmission Facilities beyond the Existing Service Area.
20. **Township Customers:** Each customer located within the geographic boundary of the Township(s).
21. **Townships:** Charter Township of Comstock, Charter Township of Cooper, Charter Township of Kalamazoo, Charter Township of Oshtemo, Township of Pavilion, Township of Richland, Village of Richland, and Charter Township of Texas.
22. **Township Distribution Facilities:** Water Distribution Mains, infrastructure and appurtenances designed and used primarily for the purpose of distributing treated/potable water to the Township Customers.
23. **Transmission Facilities:** Water Transmission Mains, Booster Pumps, infrastructure and appurtenances, designed and used primarily for the purpose of transporting treated/potable water to Customers of the Public Water Supply System, including “City Transmission Facilities” constructed at the expense of the City and “Township Transmission Facilities”, constructed at the expense of the Townships and identified in **Appendix B**.
24. **Utility Plant In-Service:** The land, facilities and equipment currently used to generate, transmit, and/or distribute water and/or water service(s) to the Customers of the Public Water System as identified in the Schedule of Public Water Supply System Current Capital Assets, (**Appendix B**).
25. **Used and Useful:** A test to determine those Assets of the Utility Plant In-Service applicable to the Rate Base. The Utility Plant In-Service which is “in use” (not under construction or standing idle) and “useful” (actively engaged in providing service to Customers).
26. **Wholesale Service Assets:** The Utility Plant In-Service, Used and Useful to both City Customers and Township Customers as further described in the Schedule of Public Water Supply System Current Capital Assets. (**Appendix B**).

Article 2 – Public Water Supply

2.1 - Exclusive Right to Provide Public Water

The Townships grant the City the exclusive right to provide treated/potable water to the Township Customers. Except in the case of breach or violation, inability to perform or termination of this Agreement, no Township shall contract nor grant authority to any other person or entity to supply treated/potable water within the geographic boundaries of the Townships. This exclusivity provision shall not apply to those sections of Pavilion Township provided water by the City of Portage or those sections of Comstock Township provided water by City of Galesburg. Further, upon request from Richland Township, the UPC will decide whether those sections of Richland Township not provided treated/potable water by the City, may be provided treated /potable water by the Gull Lake Sewer and Water Authority. The UPC will make this decision based upon practical considerations which may include, but are not limited to, the cost of infrastructure, cost of providing water services and the overall impact on Water Rates. Further, nothing herein precludes the wholesale/bulk sale of water from the City to the Gull Lake Sewer and Water Authority.

2.2 – Duty to Provide Public Water

The City shall deliver treated/potable water consistent with applicable federal and Michigan standards/regulations to all Customers at substantially similar pressure and quality. The City shall not be liable in damages for any temporary interruption or disruption of service, water quality or pressure. The City and Townships agree that the provision of Water Services under this Agreement is a governmental function and nothing in this Agreement shall be construed as a waiver of any defense at law or equity, common law or statute, including, but not limited to the defense of governmental immunity.

Article 3 – Utility Policy Committee

3.1 – Creation of the Utility Policy Committee

The Parties to this Agreement establish a Utility Policy Committee (UPC) which consists of seven members who shall exercise the authority granted herein. All members and alternate members of the UPC have a duty to act in the best interest of the Public Water Supply System.

3.2 – Appointment

The City shall appoint three members and two alternate members to the Utility Policy Committee. The Townships shall appoint four members and three alternate members to the Utility Policy Committee. The members appointed by the City serve at the pleasure of the City Commission and may only be removed by the City. The members appointed by the Townships serve at the pleasure of the Townships and may only be removed by the Townships. Alternate members may deliberate and vote only in the absence of a member. The City and the Townships shall each appoint at least one individual with background in engineering, utilities management, public works, finance,

accounting, rate making, planning, law or a related field. The City and the Townships shall notify each other of their respective appointments and each subsequent appointment/replacement. The Utility Policy Committee shall meet, organize, and operate in accordance with rules, procedures and bylaws established by vote of the Utility Policy Committee which shall not conflict with the provisions of this Agreement.

3.3 – Voting Rights

Each appointed member, or in their absence a duly appointed alternate, of the Utility Policy Committee shall be assigned one (1) vote. Committee action, approval, and/or recommendations shall require the presence of a quorum consisting of four or more of the appointed Utility Policy Committee members or their alternate and a majority vote (at least 51%) of the Utility Policy Committee members present.

3.4 - Meetings

The Utility Policy Committee shall meet no less than four times per year (once in each quarter). The Committee Chair (who shall be elected by majority vote of the Committee members) may call a special or additional meeting of the Utility Policy Committee. All meetings of the Utility Policy Committee shall be open to the public and conducted in a place available to the general public in the City of Kalamazoo or any Township, which is a party to this Agreement. The regularly scheduled meetings of the Utility Policy Committee shall be posted by the Utility Policy Committee for each calendar year stating the dates, times, and places of each regular meeting for the calendar year. Rescheduled regular meetings and/or special meetings shall be noticed and posted at least eighteen hours before the meeting in a prominent and conspicuous place at the principal office of the City and each Township which is party to this Agreement and by electronic posting on City and Township websites in compliance with the Michigan Open Meetings Act, MCL 15.261 *et seq.*

3.5 – Utility Policy Committee Costs

All costs incurred by the Utility Policy Committee shall be paid by and deemed an operating expense of the Public Water Supply System and allocated to each Customer Class as described in Article 8. Except as otherwise provided in this Agreement, services for the performance of Utility Policy Committee functions, including contracts with consultants retained by the Utility Policy Committee shall be executed and entered by the City and treated as an operating expense of the Public Water Supply System.

3.6 – Utility Policy Committee Function

A. Utility Policy Committee – Regular Meetings with City Officials

The Rate Consultant (unless the City and Utility Policy Committee agree that a Rate Consultant will not be used in a particular Rate Year or the Utility Policy Committee determines that the Rate Consultant shall not appear at any particular meeting), City Manager (or his/her designee), City Management Services Director, City Public Services Director, and other pertinent City Department

Heads and/or other City consultants shall meet, not less than four times per year with the Utility Policy Committee to review, discuss, and confer regarding matters affecting the Public Water Supply System, the Capital Improvement Plan, Operations, Maintenance, Repair and Replacement of Infrastructure, Water Services, Financial Policy, Water Rates, the Components set forth at Section 8.4 and Appendix E, and the following Factors:

1. The Utility Financial Policy
2. The Capital Improvement Plan
3. All Levels of Reserves – Capital Reserves, Capital Replacement Reserves, Operating Reserves and Emergency Reserves
4. Reserve Fund Deposits and Withdrawals
5. The Transfer of Revenues to Specific Sub-Funds to cash finance Capital Improvements
6. The Levels of Debt and Debt Financing of Capital Improvements
7. Cost of Operation, Maintenance, Repair and Replacement Costs, Administrative and Indirect Costs, OPEB and Pension Costs, Depreciation and PILOT
8. The Cost of Service Study and frequency of the Cost of Service Study
9. Water Rate Adjustments and the frequency of Water Rate adjustments

The Rate Consultant (unless the City and UPC agree that a Rate Consultant will not be used in a particular Rate Year), City Manager (or his/her designee), and City Department Heads upon request of the Utility Policy Committee shall provide the Utility Policy Committee with all books, records, plans, documents and supporting data regarding Water Rates and the Components set forth at Section 8.4 and Appendix E, and the Factors set forth in this Section, consistent with Article 10.

B. Utility Policy Committee – Retaining Consultants

Each Rate Year the Utility Policy Committee may, in its discretion, select one or more consultants to review and analyze the Water Rate Making process, the Components set forth at Section 8.4 and Appendix E, and the Factors set forth in Section 3.6A, and provide advice and recommendations to the Utility Policy Committee. The consultant(s) shall report his/her findings and recommendations to the Utility Policy Committee and the City and provide the Utility Policy Committee and the City access to all supporting records and data.

The City will contract with the consultant(s) selected by the Utility Policy Committee to perform the tasks/services directed by the Utility Policy Committee. The consultant(s) fees and costs, which do not exceed \$75,000.00 per Rate Year, adjusted annually by the rate of inflation identified in the June Municipal Cost Index as published by *American City & County*, shall be an Operating Expense of the Public Water Supply System and allocated to each Customer Class as described in Article 8. Any portion of the consultant(s) fees and costs which exceed \$75,000.00 per annum, adjusted annually for inflation, shall be the sole responsibility of the Townships.

The Utility Policy Committee shall select its consultants from a list of pre-qualified contractors maintained by the City's Purchasing Department. Consultants who meet the City's written purchasing standards and guidelines shall be added to the list of pre-qualified contractors.

The consultant(s) shall provide the Utility Policy Committee and the City with a scope of services, applicable fees and costs, prior to contracting with the City.

The consultant(s) shall conduct his/her work in a timely manner to conform with the City's Annual Budget Approval Process and the Rate Making Process for the Rate Year. In no event shall the consultants' work delay the City's Annual Budget or Rate Making Process.

C. Utility Policy Committee – Process Regarding Water Rate Approval

Unless the City and the Utility Policy Committee agree on the proposed Water Rate Schedules for the Rate Year, the Rate Consultant and the Utility Policy Committee, shall meet with the City Manager (or his/her designee), City Management Services Director, City Public Services Director, and other pertinent City department heads at one or more UPC meetings to review and discuss proposed Water Rates and the Factors and Components set forth at Sections 3.6A, 8.4 and Appendix E. Prior to the City Commission taking action to establish the Water Rate Schedules for the Rate Year, the Rate Consultant (unless the City and the UPC agree that a Rate Consultant shall not be used in a particular Rate Year) and the Utility Policy Committee shall appear before the City Commission to present recommendations to the City Commission regarding the Water Rate Schedules and the Factors and Components set forth at Sections 3.6A, 8.4 and Appendix E. The City Manager (or his/her designee) shall forward the Rate Consultant's and Utility Policy Committee's recommendations to the City Commission and any recommendation from the City Administration, with supporting rationale.

Unless the City and the Utility Policy Committee have agreed to Water Rate Schedules in advance of the Rate Year, the Kalamazoo City Commission shall adopt and implement the Rate Consultant's recommended Water Rate Schedules or reject the proposed Water Rate Schedules and direct the Rate Consultant to prepare revised Water Rate Schedules for City Commission consideration after consultation with and input from the Utility Policy Committee.

If the Utility Policy Committee disagrees with the Kalamazoo City Commission's decision regarding the Water Rate Schedules, the Utility Policy Committee may invoke the dispute resolution process set forth Article 20.

D. Utility Policy Committee – Authority

The Utility Policy Committee shall have authority to perform each of the following functions by a majority vote of its Members:

1. Select the Rate Consultant for contract with the City and extend the Rate Consultant's contract in two (2) year increments consistent with Section 7.2.
2. Review and analyze the Rate Consultant's work product, and all data used to formulate the recommended Water Rates.

3. Review and analyze the data, documents, records, plans and materials, regarding the Factors set forth in Section 3.6A and Components set forth in Section 8.4 and Appendix E.
4. Review and analyze the annual reports provided by the City regarding Operation, Maintenance and Repair Costs, Administrative and Indirect Costs, OPEB and Pension Costs, Depreciation Costs, PILOT and the Utility Basis and Cash Basis Revenue Requirements.
5. Meet and consult with the Rate Consultant regarding every aspect of the formulation of recommended Water Rates.
6. Select one or more consultants consistent with Section 3.6B.
7. Conduct a periodic review of Water Services and the Cost of Services and approve the selection of an outside independent consultant, consistent with Section 3.6F.
8. Conduct a periodic review of Billing and Collection Services and the Cost of Billing Services, consistent with Section 3.6F.
9. Establish and determine whether an assessment or surcharge on Water Rates, a System Connection Fee or Direct Contribution is appropriate, consistent with Sections 5.1 and 6.1.
10. Provide approval and consent to proposed revisions to the List of Related Water Services, consistent with Section 4.3.
11. Establish the frequency of the Cost of Service Study and the frequency of Water Rate Adjustments consistent with Section 8.3.
12. Recommend for City Commission and UPC's approval, revisions to or simplifications to the formulation of Water Rates to conform to the intent of this Agreement.
13. Perform all other functions and acts specifically described in this Agreement and necessary thereto.

E. Utility Policy Committee – Input

Prior to taking action affecting any of the following, the City shall consult with and obtain input from the Utility Policy Committee, and the position of the Utility Policy Committee regarding the proposed action shall be communicated to the City Commission:

1. The long-term policies, plans, and goals for the Public Water System.
2. The early retirement of debt for the Public Water Supply System.

3. All Billing and Collection methods employed for the Public Water Supply System.
4. All requests to expand the Public Water Supply System, Production, Transmission and/or Distribution Facilities beyond the geographic boundaries of the City and the Townships.
5. The Michigan Department of Environment, Great Lakes, and Energy required Asset Management Plan, the City's Reliability Study and Capital Improvement Plan.
6. The amendment of the existing Wellhead Protection Program and Ordinance.

F. Utility Policy Committee – Periodic Review of Services and Costs of Services

The Utility Policy Committee may review the services and costs of services provided by the City, including, but not limited to those, described in (1) through (5) below.

1. Operation, Maintenance, Repair and Replacement of the City's and Townships' Distribution Facilities as described in Article 4, § 4.2;
2. Related Water Services as described in Article 4, § 4.3;
3. Water Meter Installation and Replacement as described in Article 4, § 4.4.
4. Water Main and Hydrant Repair and Replacement as described in Article 4, § 4.5.
5. Water Billing and Collection Services as described in Article 9, § 9.1.

Not more frequently than every fourth Rate Year the City, at the request of the Utility Policy Committee, will retain an independent outside consultant, approved by the Utility Policy Committee, to conduct a Benchmark Study regarding the services and costs of service provided by the City, including, but not limited to those described in (a) through (e) above. The study shall compare the cost, quality and efficiency of the services provided by the City to the cost, quality and efficiency of the services provided by other Michigan peer municipalities who own and/or operate a Public Water Supply System serving a population of 50,000 or more. The study shall also examine whether services are equitable, adequately, and properly provided to all Customers of the Water Supply System. If the study demonstrates that services are not equitably, adequately, or properly provided, or that the cost of providing services is not reasonable or reasonably related to the services provided, or that the quality or efficiency of providing the services may be substantially improved, the UPC, in its discretion, may petition the City to remedy the inequity, or inadequacy, to improve the services, to equitably or adequately provide the services, or to reduce the cost of service. If the City disagrees or refuses the UPC's request or fails to remedy the inequity, inadequacy, or efficiency improvement, then the UPC, in its discretion, may determine whether the matter should be submitted to mediation, and, after mediation, then to binding arbitration consistent with the terms of Article 20.

If a matter is submitted to binding arbitration, the arbitrator shall consider, among other factors, the following:

1. The adequacy of the services provided;

2. The adequacy and cost of comparable services provided by a Michigan peer municipality who owns or operates a Public Water Supply System serving a population of 50,000 or more;
3. Whether the services are provided equitably in the City and in the Township(s) in accordance with standard operating procedures;
4. The cost of providing these services;
5. The adequacy and cost of providing comparable services through an outside provider actually providing services to/for a Michigan peer municipality who owns or operates a Public Water Supply System serving a population of 50,000 or more;
6. The City's ability to control or regulate services and the cost and quality of services.

Article 4 – Water Services

4.1 – Operation, Maintenance, Repair and Replacement – Public Water Supply System

- (a) With input provided by the Utility Policy Committee, the City shall operate, maintain, repair, and replace the Public Water Supply System Capital Assets.
- (b) The actual cost incurred by the City to operate, maintain, repair, and replace the Public Water Supply System Capital Assets shall be allocated to each Customer Class as described in Article 8.

4.2 – Operation, Maintenance, Repair and Replacement – Distribution Facilities

- (a) With input provided by the Utility Policy Committee, the City shall operate, maintain, repair and replace the Wholesale Service Assets and Retail Service Assets in the City and Townships. The City shall apply the same standards of operation, maintenance, repair, and replacement for the Wholesale Service Assets and Retail Service Assets in the Townships as applied to the Wholesale Service Assets and Retail Service Assets in the City.
- (b) The actual costs incurred by the City to operate, maintain, repair and replace the Retail Service Assets in the City and Townships shall be allocated to each Customer Class as described in Article 8.

4.3 – Related Water Services

- (a) With input provided by the Utility Policy Committee, the City shall provide all Related Water Services to all Customers, including those Related Water Services identified in **Appendix C**, which may be amended with the approval of the Utility Policy Committee. The City shall provide Related Water Services to all Customers at the same level, frequency, and quality of service.
- (b) The Reimbursable Cost Schedule is set forth in **Appendix D**. The costs set forth in the Reimbursable Cost Schedule shall be recaptured from the Customers benefiting from the services provided and/or their contractors. The Reimbursable Cost Schedule shall

be identical (same type and amount) for all Customers within each Customer Class and may be amended by agreement between the City and the Utility Policy Committee.

- (c) The actual costs incurred by the City providing Related Water Services shall be allocated to each Customer Class as described in Article 8.

4.4 – Water Meters

- (a) With input provided by the Utility Policy Committee, the City will inspect install, repair and replace water meters for all Customers. Water meters will be inspected, maintained, tested, repaired and replaced in accordance with the guidelines established by the American Water Works Association or the then current industry standard unless required sooner. The City shall apply the same standards of installation, repair, and replacement of water meters to all Customers.
- (b) The actual costs incurred by the City to install, repair and replace water meters shall be allocated to each Customer Class as described in Article 8.

4.5 – Water Mains and Hydrants

- (a) With input provided by the Utility Policy Committee, the City shall relocate and/or replace water mains and fire hydrants at the request of each Township and/or the governmental entity having jurisdiction over the roadway or right-of-way in which the water mains and/or fire hydrant is located in accordance with applicable industry standards. The City shall apply the same standard for the maintenance, repair and replacement of water mains and fire hydrants in the Townships as applied in the City.
- (b) The actual costs incurred by the City to relocate and/or replace fire hydrants shall be allocated to each Customer Class as described in Article 8.

Article 5 – Expansion Within the Geographic Boundaries of the City and the Townships

5.1 – Expansion of Distribution Facilities

- (a) The City and the Township(s) may, in its/their discretion, expand the Distribution Facilities within or beyond the City/Township’s Existing Service Area to any area designated as low-, medium-, or high-density, residential; commercial; or industrial land use (or similar comparable classifications should these classifications change) in a manner consistent with the City/Township’s Master Plan, adopted or amended in conjunction with the Michigan Planning Enabling Act, MCL 125.3801 *et seq.* (as amended).

On or before December 31, 2023, each Township shall submit a Public Water Utility Master Plan to the Utility Policy Committee. Each Township shall review and update its plan every seven years thereafter and submit a copy to the UPC.

- (b) The cost of expansion may be recaptured, in whole or in part, for the benefit of all Customers of the Public Water Supply System by one or any combination of any of the following methods:
1. A Direct Contribution of Infrastructure or the assessment of infrastructure costs to or from the developer/proponent of the expansion or the Customer(s) who are provided water or improved water services as a result of the expansion.
 2. A System Connection Fee assessed to the developer/proponent of the expansion or Customer(s) provided water or improved water services as a result of the expansion.
 3. An assessment or surcharge on Water Rates charged to the Customer(s) provided water or improved water services as a result of the expansion.
- (c) The Utility Policy Committee will determine whether a Direct Contribution of Infrastructure, assessment of costs for infrastructure, System Connection Fee, or assessment or surcharge on Water Rates (or some combination thereof) shall be assessed, who shall be assessed and the amount/cost to be assessed to cover or recapture the cost of expansion. The Direct Contribution of Infrastructure or assessment of costs for infrastructure, the System Connection Fee, and the assessment or surcharge on Water Rates shall be reasonable, based on established industry standards, and designed solely to recapture the cost of expanding the Distribution, Production and/or Transmission Facilities which the Utility Policy Committee, determines shall not be allocated to the Rate Base. The remaining costs of expansion (which are not recaptured by Direct Contribution of Infrastructure or assessment of costs for infrastructure, a System Connection Fee, and/or an assessment or surcharge on Water Rates) shall be added to the Rate Base, allocated to the Customer Classes as described in Article 8 and accounted for in the City's Reliability Study and Capital Improvement Plan.
- (d) The City and/or Township(s) in which the expansion is occurring, shall prepare all drawings, plans and specifications for the proposed expansion. The plans shall be prepared by a registered professional engineer. The plans shall be submitted to the City Engineers and the Michigan Department of Environment, Great Lakes and Energy (EGLE)(or its successor regulating agency) for review/inspection and for compliance with the specifications for water main and service installations as required by EGLE (or its successor regulating agency), the "Ten States Standards" and written City Standard Specifications. The City or Township(s) in which the expansion is occurring shall provide as-built drawings to the City Engineers and the City shall make available electronic as-built drawings for all existing Water Mains, Infrastructure, and Appurtenance.

5.2 – Expansion of Production and/or Transmission Facilities

- (a) The City, as required by sound engineering practice, will expand its Production and/or Transmission Facilities to provide new service, increased capacity, and/or to improved reliability/redundancy of water services and will construct production, storage, transmission, booster, and bleeder facilities to accommodate expansion of the City/Township(s)' Distribution Facilities. The cost of expanding the Production and/or

Transmission System to accommodate expansion may be recaptured for the benefit of all Customers of the Public Water Supply System, in whole or in part, by a Direct Contribution of Infrastructure or assessment of costs for the infrastructure, System Connection Fee, and/or an assessment or surcharge on Water Rates, or any combination thereof, if the Utility Policy Committee, determines that a Direct Contribution of Infrastructure or assessment of costs for the infrastructure, a System Connection Fee, or an assessment or surcharge on Water Rates is appropriate. Otherwise, the cost of expanding the Production and/or Transmission System to accommodate expansion (which is not recaptured through a Direct Contribution of Infrastructure or assessment of costs for the infrastructure, a System Connection Fee, or an assessment or surcharge on Water Rates) shall be added to the Rate Base, allocated to the Customer Classes as described in Article 8 and accounted for in the City's Reliability Study and Capital Improvement Plan.

- (b) The City, as required by sound engineering practice, will increase the size/capacity of the other Township(s)' Distribution Facilities to provide transmission services to accommodate expansion of the City/Township(s)' Distribution Facilities or to provide new service, increased capacity, and/or to improve reliability/redundancy of the water services to New Customers created from the expansion. The cost of expanding the City/Township(s)' distribution facilities to provide transmission services for expansion, may be recaptured in whole or in part for the benefit of all Customers of the Public Water Supply System through a Direct Contribution of Infrastructure or assessment of costs for the infrastructure, a System Connection Fee, or an assessment or surcharge on Water Rates, or any combination thereof, if the Utility Policy Committee determines that a Direct Contribution of Infrastructure or assessment of costs for the infrastructure, a System Connection Fee, or an assessment or surcharge on Water Rates is appropriate. Otherwise, the cost of expanding the City/Township(s)' Distribution Facilities to provide transmission services for expansion (which is not recaptured through a Direct Contribution of Infrastructure or assessment of costs for the infrastructure, a System Connection Fee, or an assessment or surcharge on Water Rates) shall be added to the Rate Base, allocated to the Customer Classes as described in Article 8 and accounted for in the City's Reliability Study and Capital Improvement Plan.

Article 6 – Expansion Outside the Geographic Boundaries of the City/Township(s)

6.1 – Expansion of Distribution, Production, and/or Transmission Facilities

- (a) The City, with input and comment from the Utility Policy Committee, may expand the Distribution, Production and/or Transmission Facilities to provide water and water services to New Customers located outside the geographic boundaries of the City and Townships. The cost of acquiring or assuming liability of the New Customers Infrastructure, as well as the cost of expanding Distribution, Production and/or Transmission Facilities to provide water and/or water services to these New Customers, may be recaptured, in whole or in part, for the benefit of all Customers of the Public

Water Supply System by one or any combination of and/or all of the methods set forth in Section 5.1(b).

- (b) The Utility Policy Committee, will determine whether the costs of acquiring or assuming liability of the New Customers Infrastructure and/or expansion of the Distribution, Production and/or Transmission Facilities of the existing system will require a Direct Contribution of Infrastructure, assessment of costs for infrastructure, System Connection Fee, or assessment or surcharge on Water Rates, or some combination thereof, to be assessed, including who shall be assessed and the amount/cost to be assessed. The Direct Contribution of Infrastructure or assessment of costs for infrastructure, the System Connection Fee, and the assessment or surcharge on Water Rates shall be reasonable, based on established industry standards, and designed solely to recapture the cost of acquiring or assuming liability of the New Customers Infrastructure and expanding the Distribution, Production and/or Transmission Facilities which the Utility Policy Committee, determines shall not be allocated to the Rate Base. The remaining costs of expansion (which are not recaptured by Direct Contribution of Infrastructure or assessment of costs for infrastructure, a System Connection Fee, and/or an assessment or surcharge on Water Rates) shall be added to the Rate Base, allocated to the Customer Classes as described in Article 8 and accounted for in the City's Reliability Study and Capital Improvement Plan.

- (c) The City, shall prepare all drawing, plans and specifications for the proposed expansion. The plans shall be prepared by a registered professional engineer. The plans shall be submitted to the City Engineers and the Michigan Department of Environment, Great Lakes and Energy (EGLE)(or its successor regulating agency) for review/inspection and for compliance with the specifications for water main and service installations as required by EGLE (or its successor regulating agency), the "Ten States Standards" and written City Standard Specifications. The City shall provide as-built drawings to the City Engineers and the City shall make available electronic as-built drawings for all existing Water Mains, Infrastructure, and Appurtenance.

6.2 Water Rates for New Customers

New Customers located outside the geographic boundary of the City and/or Township(s) who are provided water and/or water services through expansion, shall be assessed and pay Equivalent Water Rates to those assessed and paid by the then-current Customers of the Public Water Supply System plus any additional Direct Contribution of Infrastructure or assessment of costs for infrastructure, System Connection Fee, and/or an assessment or surcharge on Water Rates as established by the Utility Policy Committee.

Article 7 – Water Rate Consultant

7.1 - Rate Consultant

Except as agreed by the City and the Utility Policy Committee, Water Rates under this Agreement shall be calculated by a Rate Consultant. The Water Rate shall be derived from the “Actual Cost of Service” using the “Utility Basis of Rate Making” as described in Article 8.

7.2 - Selection of Rate Consultant

A. Selection Committee

The retention of a Rate Consultant by the City for purposes of this Agreement will be filled by an advertisement, interview, and selection process. The position shall be advertised nationally in sources applicable to the profession. The advertisement shall identify the minimum qualifications for the position and the proposed/anticipated scope of service. Candidates shall be vetted and interviewed by a “selection committee” made up of three City-appointed members of the Utility Policy Committee or their alternates and four Township-appointed members of the Utility Policy Committee or their alternates. Each member of the selection committee shall rate each candidate using a scale approved by the selection committee based on the candidate’s knowledge of the ratemaking process, knowledge of the Utility Basis of Ratemaking, experience in water ratemaking, knowledge and experience in the scope of services to be provided and the candidate’s anticipated cost of providing services and/or hourly rate and other factors established by agreement of the Selection Committee. The City will contract with the candidate rated highest (in total) by the selection committee in accordance with City purchasing policies and terms for professional service contracts.

B. Contract Term and Renewal

The contract with the Rate Consultant will be for a term of two (2) years with the option of extending the contract for additional two (2) year terms. The Utility Policy Committee shall determine whether the Rate Consultant’s contract shall be extended for additional two (2) year terms. The contract term shall expire in April. The Utility Policy Committee shall make the determination whether to extend the Rate Consultant’s contract within sixty (60) days after the end of the previous two (2) year term. At the termination of the contract, including any extension, the advertisement, interview and selection process set forth in this Article shall be repeated. Nothing in this Article shall be construed to prohibit the City from terminating the contract with the Rate Consultant for a material breach of the terms of the contract prior to the end of its 2-year term or any extension of its term.

7.3 – Rate Consultant’s Fees

The Rate Consultant’s costs and fees shall be treated as an Operating Expense of the Public Water Supply System and allocated to each Customer Class as described in Article 8.

7.4 – Rate Consultant’s Record Maintenance

The Rate Consultant shall maintain complete and accurate records regarding the formulation of Water Rate Schedules, all records and data provided by the City to the Rate Consultant and all records and data which support the Rate Consultants recommendations to the Kalamazoo City

Commission. The Rate Consultant shall provide these records and data to the Utility Policy Committee upon request.

Article 8 – Water Rates

8.1 – General Principle

Water Rates for each Customer Class shall be established based on the “Actual Cost of Service”, applying the ‘Utility Basis of Rate Making”, adjusted to achieve “Rate Equivalence” as defined by the “Rate Making Process” set forth in this Article and Appendix E, and the “Process Regarding Water Rate Approval” set forth in Section 3.6 C.

8.2 – Equivalent Water Rates

A. Rate Equalization

Effective Rate Year 2022, and each Rate Year thereafter, City Customers and Township Customers within each Customer Class shall be assessed the same Water Rates. Water Rates may vary between Customer Classes based on the cost of service for each Customer Class. However, the Customers within each Customer Class shall be assessed the same Water Rates.

B. Phased Equivalence

Water Rates charged to City Customers and to Township Customers in 2021 shall be incrementally adjusted to achieve rate equivalence for Rate Year 2022, pursuant to the methodology established in the 2021 Water Rate Report (Table 19), **Appendix F**.

8.3 – Rate Making Process

A. Cost of Service Study

For each Rate Year beginning January 1, 2022, unless otherwise agreed by the City and the Utility Policy Committee, the Rate Consultant shall conduct a Cost of Service Study identifying the Annual Revenue Requirements of the Public Water Supply System and the cost of service for each Customer Class for the upcoming Rate Year.

The Cost of Service Study shall allocate the Annual Revenue Requirements to each Customer Class in a manner that, as closely as practical, reflects each Customer Classes’ proportional use of the Public Water Supply System. The allocation methodology will follow industry standards for proportional use, including using average water sales, peak (maximum day and hour) water demand, and the number and size of connections to the Public Water Supply System. The allocation methodology will differentiate between Customer Classes not between City Customers and Township Customers within Customer Classes.

For purposes of allocating the Annual Revenue Requirements, the Cost of Service Study will express those revenue requirements on the Utility Basis, as set forth in **Appendix E**.

8.4 – Annual Revenue Requirements - Defined

The Annual Revenue Requirements for the Public Water Supply System recaptured through Water Rates shall be the aggregate sum of each of the following Components, each of which is described herein:

- Direct Operation, Maintenance and Repair Costs;
- Administrative and Indirect Operating Costs;
- Debt Service Principal and Interest Requirements;
- Payment In Lieu Of Taxes (“PILOT”);
- Revenue Financed Capital;
- Reserve Fund Deposits and Withdrawals;
- **Reduced By:** the sum of the Other Water System Revenues

A. Direct Operation, Maintenance and Repair Costs

The direct/actual costs of personnel, materials, utilities, and contractual services for the annual Operation, Maintenance, and Repair of the Public Water Supply System Capital Assets. Operation, Maintenance, and Repair Costs shall not include any other revenue requirement; Administrative and Indirect Costs, Debt Service Principal and Interest, Depreciation, PILOT, Revenue Financed Capital or Reserve Fund Deposits or Withdrawals.

B. Administrative and Indirect Operating Costs

1. Administrative and Indirect Cost Allocations

Every year, a qualified independent Cost Allocation Consultant shall conduct an Indirect Cost Allocation Study specific to the City of Kalamazoo and the Public Water Supply System to determine the appropriate annual Administrative Costs and the Indirect Costs to be allocated to and from the Public Water Supply System. The Study shall be conducted in compliance with the Standards required for Federal Grant Agreements designed to replicate actual costs incurred. The Administrative and Indirect Cost allocation to the Public Water Supply System may also include an appropriate allocation from the City Commission as determined by the Cost Allocation Study, which the City and Township Customers recognize as a cost pool that would not typically be allocable under the Standards for Federal Grant Agreements. Upon agreement between the City and Utility Policy Committee, aggregate departmental cost increases arising out of reorganization or unanticipated expenditures may be allocated in advance of the Cost Allocation Plan.

2. Other Post-Employment Benefits (“OPEB”) and Pension Costs

The annual cash payment made by the City to fund pensions and OPEB shall be allocated to the Public Water Supply System based on the percentage of the present value of future benefits for eligible pension system participants who are employed in or retired from the City's Water Department.

C. Debt Service Principal and Interest Requirement

The Debt Service/Principal and Interest shall consist of the Annual Principal and Interest Payments required on bonds issued to finance Capital Improvements to the Public Water Supply System – consistent with the City's bond ordinances. The City's bond ordinances shall be adopted by the Kalamazoo City Commission consistent with the Utility Financial Policy and the bond coverage requirements. The Debt Service/Principal and Interest requirements may be amended by agreement between the City and the Utility Policy Committee or by the Kalamazoo City Commission upon recommendation from the Rate Consultant and the Utility Policy Committee using the "Process Regarding Water Rate Approval" set forth in 3.6 C.

D. Payment In Lieu Of Taxes ("PILOT")

The City may, in its discretion, assess a Payment In Lieu of Taxes ("PILOT") to the Public Water Supply System. In no case shall the annual PILOT exceed \$300,000.

E. Revenue Financed Capital

The Revenue Financed Capital shall consist of the Annual Revenues assigned to Cash Finance Capital Improvements for the Public Water Supply System. The Annual Revenues assigned to Cash Finance Capital Improvements will be established by agreement between the City and the Utility Policy Committee or by the Kalamazoo City Commission upon recommendation from the Rate Consultant and the Utility Policy Committee using the "Process Regarding Water Rate Approval" set forth in 3.6 C.

F. Reserve Fund Deposits and Withdrawals

The Reserve Fund Deposits and Withdrawals shall consist of the annual sum required to create and maintain Reserve Fund Levels consistent with Bond Covenants requirements and the City Utility Financial Policy. The Annual Reserve Fund Deposits and Withdrawals, and Reserve Fund Levels will be established by agreement between the City and the Utility Policy Committee or by the Kalamazoo City Commission upon recommendation from the Rate Consultant and the Utility Policy Committee using the "Process Regarding Water Rate Approval" set forth in 3.6 C.

G. Other Water System Revenues

The Annual Other Water System Revenues for the Public Water Supply System shall consist of the following:

1. The sale of water and water services to Customers who are not party to this Agreement.

2. System Connection Fees, Assessments and Surcharges on Water Rates and every other fee, charge penalty and assessment which is not a Direct Contribution of Infrastructure;
3. The sale, lease, rental, use or sale of Public Water Supply System assets, facilities, equipment, tools, and/or materials;
4. Non-paid use of Public Water Supply System assets;
5. Refunds, grants and contributions;
6. Investment Income.

8.5 – Annual Revenue Requirements – Tracking

A. Direct Operation, Maintenance, Repair Costs – Tracking

The City shall implement a Work Order and Cost Tracking System which shall track, record, and report the direct/actual costs of personnel, materials, utilities and contractual services expended annual for the Operation, Maintenance and Repair of the Public Water Supply System Capital Assets in the City and in the Townships. The City shall provide an annual report detailing the Actual Cost of Operations, Maintenance and Repair to the Utility Policy Committee.

B. Administrative and Indirect Costs Component – Tracking

The City shall track, document and report all costs allocated to and from the Public Water Supply System and delineate any change in the cost allocation methodology used to allocate the actual costs in an annual report to the Utility Policy Committee.

C. Other Revenue Requirements – Tracking

The City shall track, document and report all Annual Revenue Requirements including OPEB and pension costs, PILOT, Debt Service/Principal and Interest, Revenue Financed Capital, and Reserve Fund Deposits and Withdrawals and provide an annual report to the Utility Policy Committee detailing the actual costs of each component.

8.6 – Revenue – Tracking

A. Revenues from Rates and Charges to Customers – Tracking

The City shall track and record, to the extent practicable, projected and actual Sales of water and water services and all revenues derived therefrom for each Customer Class, and for City Customers and Township Customers and provide an annual report detailing Revenues and the source of Revenues from Rates and Charges to the Utility Policy Committee.

B. Other Water System Revenues – Tracking

The City shall track and record all Other Water System Revenues and provide an annual report detailing Other Water System Revenues to the Utility Policy Committee.

Article 9 - Billing and Collections

9.1 – Water Bills

- (a) The City shall bill each Customer for water and water services directly. Bills shall be sent monthly or quarterly depending on classification and paid on or before the due date. Unpaid bills shall constitute a lien on the property to which water and water services have been provided pursuant to Section 2 of Public Act 178 of 1939, as amended, being MCL 123.161 *et seq.*
- (b) Water bills shall be paid to the City. The City shall make every effort to collect delinquent and unpaid water bills using the same collection practices and collection efforts for unpaid water bills, both inside and outside of the City. The City shall provide each Township a list of delinquent accounts to be placed on the Township(s) tax roll. The Township(s) shall pay the City all delinquent funds which are subsequently collected. The City and/or Townships may discontinue service after failed collection efforts in accordance with the City's ordinance.
- (c) The actual cost of Billing and Collection for water services shall be assessed and allocated to the Customer Classes as a cost of operating the Public Water Supply System as described in Article 8.

Article 10 - Records

10.1 – Record Maintenance

The City of Kalamazoo shall maintain complete and accurate records regarding the formulation of Water Rates and all records which support the recommended Water Rates and the Operation and Maintenance of the Public Water Supply System, consistent with the City's record retention schedule, including all data provided to the Rate Consultant and every internal and external record, report, study and survey (by any name, designation or title) which supports, defines, explains, or clarifies the data, documents, and/or information which provides any basis for the Water Rate Making Methodology or any Component of the Water Rate Making Methodology, Operation and Maintenance Costs, Administrative General Fund Costs, Depreciation Costs, Rate of Return, PILOT and Water Revenue Components described in Article 8 and all records required to perform the Utility Policy Committee Functions defined in Article 3.

10.2 - Availability of Records

The records outlined above shall be maintained by the City of Kalamazoo in a manner which is easily available and transferable to the members of the Utility Policy Committee and each Township.

10.3 – Township Records

Any Township which charges or collects a water surcharge must comply with the requirements of Section 10.1 regarding the sources and detailed uses of the surcharge. The Township shall make such records available to the Utility Policy Committee and City consistent with Section 10.2.

Article 11 – Annual Audit

11.1 – Fiscal Year

The fiscal year for budget and accounting purposes shall be January 1 through December 31 of each year, or as otherwise set by amendment of the Kalamazoo City Charter.

11.2—Audit Records

An audit of the Public Water Supply System shall be conducted annually by a certified public accountant in conjunction with the City’s audit. The City shall make the audit results available to the Utility Policy Committee. If the audit reveals any discrepancy in accounting methods or record keeping, the discrepancy shall be cured immediately.

Article 12 – Restriction/Discontinuance of Water Supply

12.1 – Temporary Discontinuance

If, due to circumstances beyond the control of the City, the capacity of the Public Water Supply System becomes temporarily inadequate to meet demands for short periods of time, then the City may impose restrictions on water use and the Township(s) shall impose and enforce like restrictions on Water Customers.

12.2 – Emergency Discontinuance

The Parties have the right to temporarily discontinue the supply of water to mains or pipes without notice in times of emergency and with notice upon a determination of necessity for purposes of testing, repairing, or replacing water mains, meters, and facilities serving the Water Supply System. No claim for damages during such period of discontinuance shall be made by these Parties as long as the discontinuance is for a proper purpose and the City responds within a reasonable time and with reasonable methods to restore service.

Article 13 – Protection Against Contamination

13.1 – Contamination

For the protection of all consumers of water, the Parties agree to take reasonable efforts to guard against all forms of contamination. Should contamination be detected at any time, the area or areas affected shall immediately be shut off and isolated and remain so until the condition is abated, and

the water has been declared safe and fit for human consumption. The decision of the City in this respect shall be final.

13.2 – Right to Inspect – Cross Connections

The Townships shall allow the City to enforce Kalamazoo’s Cross Connection Program for the Public Water Supply System. The City shall have the right, at any time, deemed necessary, to inspect the water service equipment within the Townships, to review construction and chlorination and protective devices, and to perform all other things necessary to protect the quality of the water supply. The City shall provide, and the Townships shall approve, a written cross-connection inspection program. In the event that any Party detects contamination, it shall promptly notify the other.

13.3 – Wellhead Protection

The City shall establish, and the Townships shall approve, a wellhead protection program and adopt corresponding Wellhead Protection Ordinances subject to Utility Policy Committee input as to form and content.

13.4 – Emergency Contacts

The City and Townships agree to abide by any requirements as established by the state or federal governments in emergency situations. The Townships shall inform the City on an annual basis, or more frequently if changes occur, of appropriate contact information for designated Township emergency management officials. Each Party is responsible for providing and maintaining up to date emergency contact information.

Article 14 – Water Quality

14.1 – Responsibility for Water Quality

The City shall deliver treated/potable water to each Customer of water in conformance with applicable federal and Michigan regulations. The City shall sample and monitor the water quality per applicable federal and Michigan monitoring requirements. The City shall not be liable for temporary water quality or pressure fluctuations.

14.2 – Water from Other Sources

The Parties will not permit water from any other source or supply to mix or comingle with the supply from the City’s Water Treatment facilities, except in cases of emergency where the water from other sources meets all applicable federal and Michigan regulations and the use has been approved by the Michigan Department of Environment, Great Lakes and Energy (EGLE) (or its successor agency) to relieve the emergency. The City’s Emergency Response Plan will take precedence in cases where the emergency impacts the Public Water Supply.

14.3 – Operating Liability

The City will attempt to provide and maintain regular and uninterrupted water service under this Agreement, but shall not be liable for any injuries or damages to any Party or any Customer of water caused by contamination, interruptions, main breaks, water damage, loss of supply or pressure, construction, electrical, or supervisory control and data acquisition (SCADA) malfunctions or any other cause except as provided by law. The Parties agree that the water facilities and services provided under this Agreement are a governmental function, as defined by Public Act No. 170 of 1964, as amended.

Article 15 – Operation of the Public Water Supply System

15.1 – Operation of the Public Water Supply System

During the Term of this Agreement, and any extension therefore, the City shall continue to operate the Public Water Supply System for the benefit of all Customers and continue to have the exclusive right to provide potable water to each Customer. Neither the City nor the Townships shall take any action to impede or harm the delivery of potable water to any Customer.

Article 16 – Other Services

16.1 – Other Services

The City will perform additional services for the Townships as may, from time-to-time, be agreed between the City and The Utility Policy Committee.

16.2 – Water Exploration and Production Services

The City may continue to conduct water exploration and production services, including but not limited to, soil borings, construction of test Wells, use of water level meters, and all other necessary projects to determine the availability of water for the continued and efficient supply of water through the Public Water Supply System. The cost of water exploration and production shall be assessed and allocated to all Customers as described in Article 8. Each Township grants the City consent during the term of this contract to conduct water exploration and production evaluation testing and will permit the City to use its streets, alleys, and public rights of way for these purposes.

Article 17 – Term of Agreement

17.1 – Term of Agreement

This Agreement shall remain in effect for forty (40) years unless terminated earlier by written agreement executed by the City and all of the Townships. At any time prior to twelve months before the termination of the Agreement, the Townships, at their option, may extend the Agreement for an additional 20 years by providing written notice of their intention to exercise this option to the City. If the Townships do not exercise their option to renew for an additional 20 years, this Agreement shall automatically renew in five (5) year increments, unless the City or any Township(s) provide(s) written notice of its/their intent to terminate or amend the Agreement.

Article 18 – Termination and Division of Water System Assets

18.1 - Reserve Funds

Upon termination of this Agreement, the City and the Townships shall discuss a possible amicable division of reserve funds taking into consideration the City Customers' and Township Customers' contributions to the reserve funds as described in Article 8, as well as the City's ownership and operation of the Water Supply System. Any portion of the reserve funds allocated to the City shall be held for the benefit of the City Customers who contributed thereto. Any portion of the reserve funds allocated to the Townships shall be held for the benefit of the Township Customers who contributed thereto.

18.2 - Capital Assets

Upon termination of this Agreement the Retail Service Assets in the City and Parchment shall be the property of the City. The Retail Service Assets in the Townships shall be the property of the Township in which the asset is located. Upon termination of this Agreement the Wholesale Service Assets shall become shared assets of the City and the Townships which shall not be separated or divided but used for the benefit of all Customers unless the City and the Townships agree otherwise by separate agreement. The City and/or Township(s) in which Retail Service Assets are located shall assume all debt directly related to that Retail Service Asset. The City and the Townships shall each assume a portion of the debt associated with the Wholesale Service Assets which become shared Assets of the City and the Townships in a manner that, as closely as practicable reflects the City Customers and Township Customers' proportional use of the Public Water Supply System applying the applicable share of Assets/Costs Methodology defined in Section 8.5 of this Agreement to and between the City Customers and the Township Customers (not to the Customer Classes as described in Section 8.5).

Article 19 – Assignment

19.1 - Assignment

The City and the Township(s) shall not, without prior written consent from the other, assign, transfer, or convey its rights or interests under this Agreement, except that the City and the Township(s) shall each retain the right to assign its/their rights, obligations, and duties under this Agreement by intergovernmental agreement to a water authority or similar entity. If the City or Township(s) are merged into or succeeded by another governmental entity, the successor shall be bound by the terms and conditions of this Agreement.

Article 20 – Remedies

20.1 – Dispute Resolution Process

Any dispute under the terms or conditions of this Agreement, including a challenge to the water rates and/or the assessment or allocation of water charges and/or any action taken by the City, the Township(s) or the Utility Policy Committee shall be resolved by the following methodology: First, the aggrieved party shall serve a written Notice of Dispute on all other parties to this Agreement. The written Notice of Dispute shall contain the following information:

1. The factual basis for the dispute;
2. The term or condition of the Agreement which has been violated;
3. The adverse effect on the aggrieved party.

Second, within thirty (30) days after receipt of the written Notice, the City and the Utility Policy Committee will convene in an attempt to resolve the dispute. If the dispute is not resolved or the party serving written Notice is not satisfied with the recommendation of the City or the Utility Policy Committee, the matter shall be subject to mediation as follows:

1. Within thirty (30) days after the City and Utility Policy Committee have met, the aggrieved party shall provide written Notice seeking mediation.
2. The City and the Utility Policy Committee shall select an independent mediator who shall convene a meeting of the parties within thirty (30) days. The mediator shall attempt to resolve the dispute and to reach a mutual understanding/agreement between the parties.
3. If mediation is successful, the Agreement between the parties shall be reduced to writing. If mediation is unsuccessful, the mediator shall render his recommendation regarding the outcome. However, the recommendation of the mediator is non-binding and each party is free to pursue all other remedies provided by this Agreement, at law, and in equity.

20.2 – Remedies

The Parties to this Agreement retain all rights, remedies and actions as defined under State and Federal law. The Parties may seek to enforce this Agreement in any court of competent jurisdiction and/or by alternative dispute resolution as agreed upon by the Parties hereto. The terms of this Agreement and any dispute resolution provision contained herein shall not be construed as a waiver of any right or remedy available in law and/or equity.

20.3 – Arbitration

The Parties, by agreement, may stipulate to arbitration of the dispute at issue. However, arbitration is not mandatory, except as expressly provided in Article 3.6F of this agreement. If the Parties agree to arbitration, the following process shall be followed:

1. The Parties to the dispute may agree to a single arbitrator. Otherwise, there shall be three arbitrators with each Party to the dispute selecting an arbitrator and the two arbitrators selecting the third.

2. The arbitration shall be conducted no later than sixty (60) days after receipt of written demand for arbitration unless agreed upon otherwise by the Parties. The arbitration hearing shall take place at a mutually agreeable time and place within the County of Kalamazoo. Seven (7) days before arbitration, each Party shall serve the arbitrator and all other Parties with an arbitration brief containing a concise statement of issues to be arbitrated, supporting arguments, and a list of witnesses that each Party intends to call, including experts and the topic or subject matter about which each witness or expert will testify. The arbitration hearing shall be conducted in accordance with the rules and procedures established by the American Arbitration Association.
3. Within fifteen (15) days of completion of arbitration, the arbitrator(s) shall submit a written determination regarding the matter in dispute. The arbitrator's decision shall be conclusive and binding on the Parties to the arbitration. The scope of the arbitrator's review shall be limited to a review of the contractual provisions contained in this contract as applied under law.
4. Each Party to the arbitration shall pay its own costs and attorney fees.

Article 21 – Notices

21.1 – Notices

All written notices and other documents to be delivered or transmitted hereunder shall be addressed to the respective Parties at such address or addresses as shall be specified by the Parties from time to time. Written notices or other documents may be delivered in person, transmitted electronically or by facsimile, or by ordinary or certified mail, properly addressed with sufficient postage.

Article 22 – Miscellaneous

22.1 – Miscellaneous

- (a) Waiver. The waiver by any Party of a breach or violation of any provision of this Agreement shall not be a waiver of any subsequent breach or violation of the same or any other provision of this Agreement.
- (b) Unenforceability. If any paragraph or provision of the Agreement is unenforceable for any reason, the unenforceability thereof shall not impair the remainder of this Agreement, which shall remain in full force and effect.
- (c) Entire Understanding. This Agreement represents the entire understanding and agreement between the Parties hereto.
- (d) Captions. The captions in this Agreement are for convenience only and shall not be considered as part of this Agreement or in any way to amplify or modify the terms and provisions hereof.

- (e) Modification. This Agreement may be changed or modified only by a written document signed by all the Parties.
- (f) Interpretation of Agreement. The Parties acknowledge that each Party has had the opportunity to participate in the drafting of this Agreement. As a result, in the event of any ambiguity in this Agreement, it shall not be interpreted for or against any Party on account of the drafting by any Party.

Article 23 – Effective Date of Agreement

23.1 – Effective Date of Agreement

This Agreement will become effective upon the approval of all of the legislative bodies of the Parties when duly executed by the City Manager and the Supervisor of each Township.

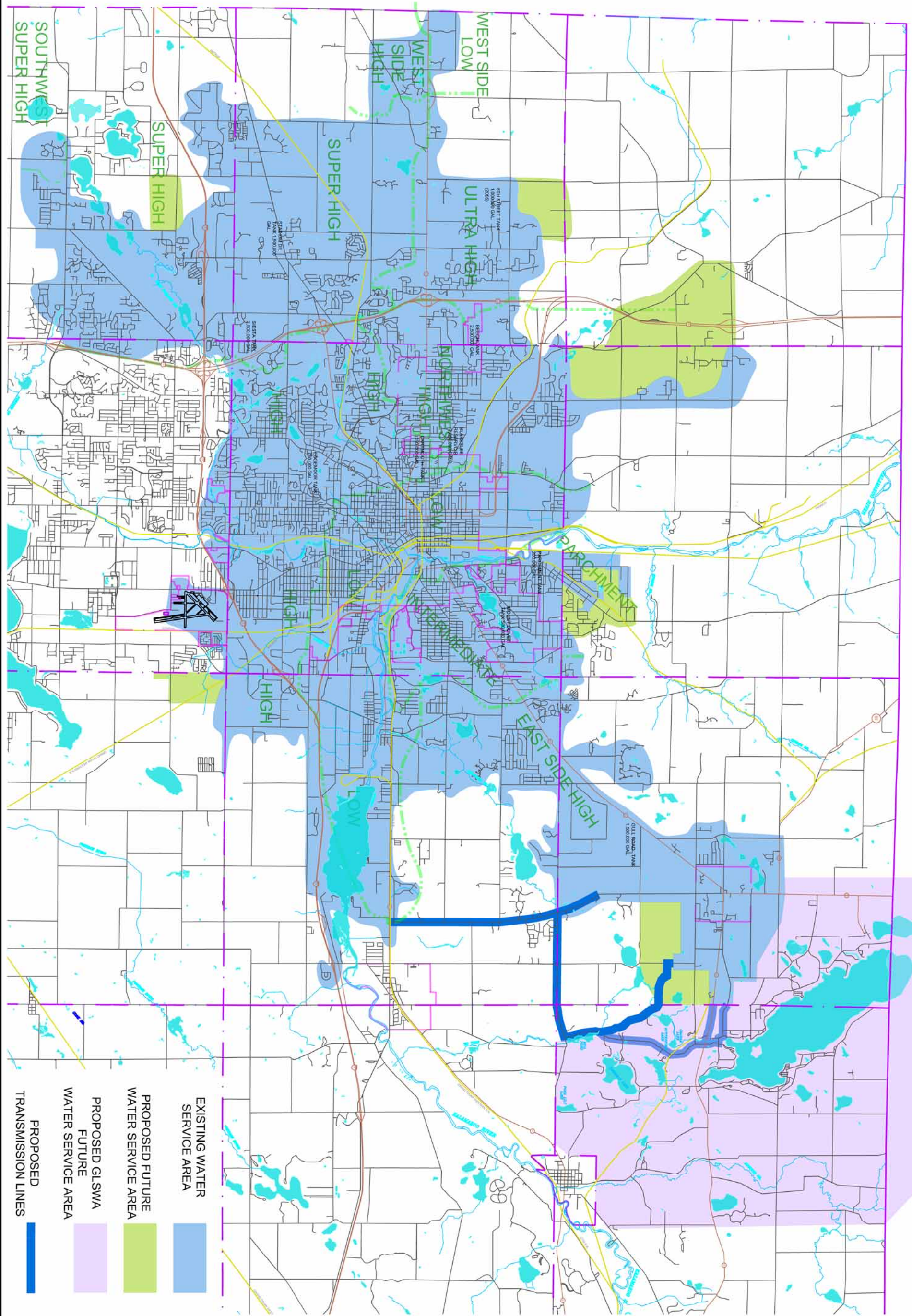
Article 24 – Execution in Counterparts

24.1 – Execution in Counterparts

This Agreement may be executed in several counterparts and when so executed will be considered to be an original.

<p>Dated: _____, 2020</p>	<p style="text-align: center;">CITY OF KALAMAZOO</p> <p>By: _____</p> <p>Its: _____</p>
<p>Dated: _____, 2020</p>	<p style="text-align: center;">TOWNSHIP OF _____</p> <p>By: _____</p> <p>Its: _____</p>

Appendix A



APPENDIX B

Public Water Supply System Capital Assets

The Public Water Supply System Capital Assets are summarized in the attached schedule as Retail Service Assets in the City, Retail Service Assets in the Townships, and Wholesale Service Assets. Further, the attached schedule identifies the Net Book Value of the Public Water Supply System Capital Assets in-service, Used and Useful, as of the 2019 annual audit. The attached schedule shall be amended annually following each annual audit to incorporate the cost of the Capital Improvements made during the audited period, less additional accumulated depreciation, the Net Book Value of Contributed and Grant Funded Capital Assets and capital asset disposals during the audited period. The attached schedule shall also identify the Depreciation Expense on capital assets during the audited period utilizing the straight-line method of depreciation.

The City shall maintain and annually provide the Utility Policy Committee with a detailed Capital Asset List supporting the attached schedule.

Appendix B - Schedule of Public Water System Current Capital Assets

Total Asset Value	6/30/2019 Data			
	<u>Original Cost</u>	<u>Accumulated Depreciation</u>	<u>Net Book Value</u>	<u>Annual Depr Expense</u>
<u>Category</u>				
Water Pumping	39,505,397	22,438,197	17,067,200	801,266
Elevated Storage Tank	8,077,412	3,784,152	4,293,259	194,513
Transmission Mains	11,930,082	4,702,353	7,227,729	228,667
Dist Mains - City	20,979,690	6,811,713	14,167,977	357,595
Dist Mains - Twp	42,464,150	17,272,628	25,191,522	804,875
Service Conn - City	18,472,885	5,784,963	12,687,922	332,538
Service Conn - Twp	26,072,252	9,437,366	16,634,887	473,834
Water Metering Devices	8,886,854	6,354,950	2,531,904	402,309
Hydrants - City	3,513,394	1,133,925	2,379,469	66,435
Hydrants - Twp	6,796,844	2,364,818	4,432,027	132,052
Water General	7,819,876	4,778,150	3,041,726	320,352
Administration	197,592	193,195	4,397	20,539
Total	194,716,429	85,056,410	109,660,019	4,134,975
Wholesale Service Assets	67,530,359	35,896,047	31,634,312	1,565,337
Retail Service Assets - City *	47,409,396	16,908,076	30,501,321	957,723
Retail Service Assets - Twps *	79,776,674	32,252,287	47,524,387	1,611,915
Total	194,716,429	85,056,410	109,660,019	4,134,975

* Assumes a 50/50 split of Water Metering Devices, which are not tracked by location

Contributed Asset Value	6/30/2019 Data			
	<u>Original Cost</u>	<u>Accumulated Depreciation</u>	<u>Net Book Value</u>	<u>Annual Depr Expense</u>
<u>Category</u>				
Water Pumping	1,124,471	667,069	457,402	17,421
Elevated Storage Tank	0	0	0	0
Transmission Mains	7,641,345	2,982,443	4,658,903	146,889
Dist Mains - City	8,884,748	2,845,984	6,038,764	152,651
Dist Mains - Twp	39,060,365	15,874,739	23,185,626	742,477
Service Conn - City	11,127,825	4,412,874	6,714,951	176,112
Service Conn - Twp	24,283,987	9,005,764	15,278,224	439,186
Water Metering Devices	0	0	0	0
Hydrants - City	1,449,363	457,053	992,310	27,476
Hydrants - Twp	6,016,080	2,165,506	3,850,573	115,015
Water General	0	0	0	0
Administration	0	0	0	0
Total	99,588,184	38,411,432	61,176,752	1,817,227
Wholesale Service Assets	8,765,816	3,649,511	5,116,304	164,310
Retail Service Assets - City *	21,461,936	7,715,911	13,746,025	356,239
Retail Service Assets - Twps *	69,360,432	27,046,009	42,314,423	1,296,678
Total	99,588,184	38,411,432	61,176,752	1,817,227

* Assumes a 50/50 split of Water Metering Devices, which are not tracked by location



Appendix B - Schedule of Public Water System Current Capital Assets

Net Local Asset Value	6/30/2019 Data			
	Original Cost	Accumulated Depreciation	Net Book Value	Annual Depr Expense
Category				
Water Pumping	38,380,926	21,771,128	16,609,798	783,845
Elevated Storage Tank	8,077,412	3,784,152	4,293,259	194,513
Transmission Mains	4,288,737	1,719,910	2,568,826	81,778
Dist Mains - City	12,094,942	3,965,729	8,129,213	204,944
Dist Mains - Twp	3,403,785	1,397,890	2,005,896	62,397
Service Conn - City	7,345,060	1,372,089	5,972,971	156,426
Service Conn - Twp	1,788,265	431,602	1,356,663	34,648
Water Metering Devices	8,886,854	6,354,950	2,531,904	402,309
Hydrants - City	2,064,031	676,871	1,387,159	38,959
Hydrants - Twp	780,765	199,311	581,453	17,037
Water General	7,819,876	4,778,150	3,041,726	320,352
Administration	197,592	193,195	4,397	20,539
Total	95,128,246	46,644,978	48,483,267	2,317,748
Wholesale Service Assets	58,764,543	32,246,536	26,518,007	1,401,027
Retail Service Assets - City *	25,947,460	9,192,164	16,755,296	601,484
Retail Service Assets - Twps *	10,416,242	5,206,278	5,209,964	315,237
Total	95,128,246	46,644,978	48,483,267	2,317,748

* Assumes a 50/50 split of Water Metering Devices, which are not tracked by location

APPENDIX C

Related Water Services

In addition to the Direct Operation, Maintenance, Repair and Replacement Services defined in Article 4.1, the Water Meters Services defined in Article 4.4 and the Water Mains and Hydrants Services defined in Article 4.5, the City shall provide the additional Related Water Services described in Article 4.3, including the following:

1. All related engineering services, including but not limited to:
 - a. Infrastructure design
 - b. Construction standards review
 - c. Project implementation and monitoring

2. All related environmental service, including but not limited to:
 - a. Sampling
 - b. Flow measuring
 - c. Cross connection enforcement
 - d. Emergency response
 - e. Lead and copper monitoring
 - f. Well head protection
 - g. Surface and ground water monitoring
 - h. DEQ regulation compliance and reporting

3. All related field services, including but not limited to:
 - a. Emergency response for watermain breaks
 - b. 24 hours response to customer complaints
 - c. Traffic control
 - d. Service line repair
 - e. Stop box repair
 - f. Ms. Dig compliance and monitoring
 - g. Water service installation and tap in services
 - h. Meter installation
 - i. Meter replacement
 - j. Water meter reading
 - k. Valve exercising

4. All related field supply, field distribution and fleet services

APPENDIX D

Reimbursable Cost Schedule

The following Reimbursable Costs for materials and services provided by the City shall be recaptured from the customer requesting the service and/or their contractors as follows:

1. New water service line installations less than two inches will be charged at \$5,500.00 for a “full service-street plus yard connection” and \$2,500.00 for a “partial service-yard connection”.
2. New water service line installation two inches or greater and water main and appurtenance, which the City installs, shall be charged at time and material costs based on actual labor hours and unit pricing. The 2020-unit pricing for materials is set forth below:

2020 Pricing

Tapping Valve and Sleeve			
	DESCRIPTION	PART NO	UNIT
2.00	Block, 24" MH	1004951	\$2.08
Valve Box	Box, CI, BVC 22, LG	1000894	\$130.50
4X4	Sleeve 4X4MJ Tapw/v	0085120	\$1,195.00
6X4	Sleeve 6X4MJ Tapw/v	0085130	\$921.00
6X6	Sleeve 6X6 MJ Tapw/v	0085135	\$1,525.00
8X4	Sleeve 8X4 MJ Tapw/v	0085142	\$903.00
8X6	Sleeve 8X6 MJ Tapw/v	0085154	\$941.00
8X8	Sleeve 8X8 MJ Tapw/v	0085155	\$2,125.00
10X4	Sleeve 10X4 MJ Tapw/v	0085170	\$975.00
10X6	Sleeve 10X6 MJ Tapw/v	0085178	\$1,208.00
10X8	Sleeve 10X8 MJ Tapw/v	0085190	\$1,518.00
10X10	Sleeve 10X10 MJ Tapw/v	0085191	\$3,762.00
12X4	Sleeve 12X4 MJ Tap w/v	0085196	\$2,594.00
12X6	Sleeve 12X6 MJ Tapw/v	0085202	\$2,784.00
12X8	Sleeve 12X8 MJ Tapw/v	0085214	\$3,228.00
12X10	Sleeve 12X10 MJ Tapw/v	1085220	\$4,075.00
12X12	Sleeve 12X12 MJ Tapw/v	0085215	\$4,862.00

16X4	Sleeve 16X4 MJ Tapw/v	0085216	\$6,062.00
16X6	Sleeve 16X6 MJ Tapw/v	0085221	\$6,366.00
16X8	Sleeve 16X8 MJ Tapw/v	0085222	\$6,737.00
16X10	Sleeve 16X10 MJ Tapw/v		

Tapping Valve and Sleeve

	DESCRIPTION	PART NO	UNIT
16X12	Sleeve 16X12 MJ Tapw/v	0085250	\$7,994.00
16X16	Sleeve 16X16 MJ Tapw/v		
20X4	Sleeve 20X4 MJ Tapw/v	0085227	\$7,741.00
20X6	Sleeve 20X6 MJ Tapw/v	0085225	\$7,931.00
20X8	Sleeve 20X8 MJ Tapw/v	1085224	\$8,028.00
20X12	Sleeve 20X12 MJ Tapw/v	1085226	\$9,583.00
24X6	Sleeve 24X6 MJ Tapw/v	1085230	\$9,594.00
24X8	Sleeve 24X8 MJ Tapw/v	1085228	\$10,080.00
24X12	Sleeve 24X12 MJ Tapw/v	1095232	\$11,239.00

Meters

1.00	Meter, 5/8" T10 P/C USG NEPTUNE	1059000	\$0.00
1.00	METER, R900 V4 WALL UNIT M10	1058999	\$0.00

1" SVC off of Fire

	DESCRIPTION	PART NO	UNIT
1.00	Valve, Apollo 1"	0096300	\$11.00
2.00	Connec, 1 Brass Meter	0017968	\$11.25
1.00	METER, 1" T10	1059010	\$0.00
1.00	METER, R900 V4 WALL UNIT M10	1058999	\$0.00

1 1/2" off of Fire

	DESCRIPTION	PART NO	UNIT
1.00	Valve, Ball 1 1/2"	0096333	\$25.80
1.00	Nipple-cpr, 11/2X51/2	0060510	\$17.14
1.00	Flange, Mtr 6m 11/2in	0030920	\$34.84

1.00	METER, 1 1/2" T10 MTR P/C USG*X NEPTUNE	1059015	\$0.00
1.00	METER, R900 V4 WALL UNIT M10	1058999	0.00
1.00	Cplg, 1 1/2" Pack Joint	0020808	60.35
1.00	Bushing, 2X1 1/2	0011140	\$12.01

2" SVC off of Fire			
	DESCRIPTION	PART NO	UNIT
1.00	Valve, Ball 2"	0096400	\$36.50
1.00	Nipple-cpr, 2X51/2	0060687	\$21.98
1.00	Flange, Mtr 7m 2in	0030960	\$46.50
1.00	METER, 2" COMPOUND PROCORDER	1059022	\$0.00
1.00	METER, R900 V4 WALL UNIT M10	1058999	\$0.00
1.00	Cplg, 2 Pack Joint	0018596	\$68.77

2" SVC - Residential in Floor, Basement			
	DESCRIPTION	PART NO	UNIT
1.00	Saddle, 4"X2"	0016086	\$22.15
1.00	Saddle, 6"X2"	0016116	\$26.00
1.00	Saddle, 8"X2"	0016146	\$28.75
1.00	Saddle, 10"X2"	0016176	\$37.90
1.00	Saddle, 12"X2"	0016206	\$45.95
1.00	Saddle, 16"X2"	0016240	\$80.20

2.00	Nipple-cpr, 2X51/2	0060687	\$21.98
1.00	Valve, 2" Curb Stop	0097053	\$180.10
1.00	Box, Valve Complete	1000896	\$130.50

1.00	Valve, Ball 2"	0096400	\$36.50
1.00	Meter, 2" T10 MTR P/C USG*X NEPTUNE	1059020	\$0.00
1.00	METER, R900 V4 WALL UNIT M10	1058999	\$0.00
1.00	Cplg, 2 Pack Joint	0018596	\$68.77

2" SVC - Residential in Pit			
	DESCRIPTION	PART NO	UNIT
1.00	Saddle, 4"X2"	0016086	\$22.15
1.00	Saddle, 6"X2"	0016116	\$26.00
1.00	Saddle, 8"X2"	0016146	\$28.75

2" SVC - Residential in Pit			
	DESCRIPTION	PART NO	UNIT
1.00	Saddle, 10"X2"	0016176	\$37.90
1.00	Saddle, 12"X2"	0016206	\$45.95
1.00	Saddle, 16"X2"	0016240	\$80.20

2.00	Nipple-cpr, 2X51/2	0060687	\$21.98
1.00	Valve, 2" Curb Stop	0097053	\$180.10
1.00	Box, Valve Complete	1000896	\$130.50
1.00	Valve, Ball 2"	0096400	\$36.50
1.00	METER, 2" T10 P/C R900I PIT	1059021	\$0.00
1.00	Cplg, 2 Pack Joint	0018596	\$68.77

2" SVC - Commercial - in Floor, Basement, Pit			
	DESCRIPTION	PART NO	UNIT
1.00	Saddle, 4"X2"	0016086	\$22.15
1.00	Saddle, 6"X2"	0016116	\$26.00
1.00	Saddle, 8"X2"	0016146	\$28.75
1.00	Saddle, 10"X2"	0016176	\$37.90
1.00	Saddle, 12"X2"	0016206	\$45.95
1.00	Saddle, 16"X2"	0016240	\$80.20
2.00	Nipple-cpr, 2X51/2	0060687	\$21.98
1.00	Valve, 2" Curb Stop	0097053	\$180.10
1.00	Box, Valve Complete	1000896	\$130.50

1.00	Valve, Ball 2"	0096400	\$36.50
1.00	METER, 2" COMPOUND PROCODER	1059022	\$0.00
1.00	METER, R900 V4 WALL UNIT M10	1058999	\$0.00
1.00	Cplg, 2 Pack Joint	0018596	\$68.77

1-1/4" SVC		
DESCRIPTION	PART NO	UNIT
Saddle, 4"X1"	0016212	\$12.50
Saddle, 6"X1"	0016218	\$14.50
Saddle, 8"X1"	0016224	\$16.45
Saddle, 10"X1"	0016228	\$19.40
Saddle, 12"X1"	0016244	\$20.85
1"X1-1/4" Corp	0017131	\$61.25
1-1/4" Curb Stop	0017282	\$118.60
94 E Box	0007370	\$70.00

INSIDE		
DESCRIPTION	PART NO	UNIT
Clamp, 2 Ground	0015985	\$6.47
Clamp, 3/4"Ground BLBJ BRNZ	0015972	\$3.81
Connect, 1 Brass Meter	0017968	\$11.25
Valve, Apollo 1"	0096300	\$11.00
METER, 1" T10 MTR P/C 8*X NEPTUNE	1059010	\$0.00
METER, R900 V4 WALL UNIT M10	1058999	

PIT		
1-1/4" Meter Yoke	08400	\$128.90
Meter Tile	8090	\$90.00
Cast Lid	08201	\$112.00
Cast Ring	08285	\$122.00
Cast Frost Lid	08060	\$40.00
Cast Riser	8772	\$90.00
Pipe, Copper, 1-1/4"	0070242	\$4.75
METER, 1" T10 MTR P/C R900I USG PIT NEPTUNE	1059011	\$0.00

3" SVC

3" SVC			
	DESCRIPTION	PART NO	UNIT
1.00	METER, 3" COMPOUND	1059026	\$0.00
1.00	METER, R900 V4 WALL UNIT M10	1058999	\$0.00
1.00	Adaptor, 3" HyMax Flange Cplg	0019854	\$266.41
2.00	Rod5/8Threaded - 36	0078070	\$3.80
1.00	Spool,3"X8 1/2" thru 18"	0086860	\$88.68

3" SVC			
	DESCRIPTION	PART NO	UNIT
1.00	Valve, 3" FLG RW OL w/Wheel	0096640	\$320.00
3.00	1/8"X3" Gasket	0033548	\$1.16
8.00	5/8"X3" Bolts	0006610	\$0.64
16.00	5/8" Nuts	0063240	\$0.17

4" SVC			
	DESCRIPTION	PART NO	UNIT
1.00	METER, 4" COMPOUND	1059031	\$0.00
1.00	METER, R900 V4 WALL UNIT M10	1058999	\$0.00
1.00	Adaptor, 4" HyMax Flange Cplg	0019875	\$330.00
2.00	Rod5/8Threaded - 36	0078070	\$3.80
1.00	Spool, 4"X1'0" FlgXPE DI	0086870	\$108.25
1.00	Valve, 4" FLG Wheel	96442	\$360.00
3.00	1/8"X4" Gasket	0033578	\$1.78
16.00	5/8"X3" Bolts	0006610	\$0.64
24.00	5/8" Nuts	0063240	\$0.17

6" SVC			
	DESCRIPTION	PART NO	UNIT
1.00	METER, 6" COMPOUND	1059036	\$0.00
1.00	METER, R900 V4 WALL UNIT M10	1058999	\$0.00
1.00	Adaptor, 6" Flange Cplg	0019893	\$270.66

2.00	Rod3/4Threaded - 36	0078075	\$6.55
1.00	Spool, 6"X6" FlgXPE DI	0031180	\$278.00
1.00	Valve, 6" FLG Wheel	96754	\$450.00
3.00	1/8"X6" Gasket	0033608	\$3.39
16.00	3/4"X3" Bolts	0006700	\$1.03
24.00	3/4" Nuts	0063243	\$0.30

8" SVC

1.00	METER, 8" HP TURBINE PROCODER NEPTUNE		\$0.00
1.00	METER, R900 V4 WALL UNIT M10	1058999	\$0.00
1.00	FLG &SPGT 8x6'	31224	\$355.87
1.00	CPLG, 8" FLG ADPT	19895	\$364.79
1.00	Valve, 8" FLG Wheel	96756	\$1,117.37
3.00	1/8"X8" Gasket	33638	\$5.72
2.00	Rod3/4Threaded - 36	0078075	\$6.55
16.00	3/4"X3" Bolts	0006700	\$1.03
24.00	3/4" Nuts	0063243	\$0.30

APPENDIX E

Water Rate Making Methodology

E.1 Method

The Annual Revenue Requirements of the Public Water Supply System are reflected within the Water Service Agreement using the Cash Basis. (Article 8.4). To achieve Rate Equalization as defined in Article 8.2A, for Rate Year 2022, and each subsequent Rate Year, the Cash Basis Revenue Requirements identified in Article 8.4 shall be converted to the Utility Basis Revenue Requirements and allocated to each Customer Class as part of the Cost of Service Study identified in Article 8.3A using the methodology set forth in this Appendix.

E.2 Utility Basis Revenue Requirements

The Annual Utility Basis Revenue Requirements shall include the following components, each of which is described herein:

- Direct Operation, Maintenance and Repair Costs;
 - Administrative and Indirect Operating Costs;
 - Payment in Lieu of Taxes (“PILOT”);
 - Depreciation Expense;
 - Return on Rate Base (expressed in dollars).
- a) Direct Operation, Maintenance and Repair Costs – Component (as defined in Article 8.4A)
 - b) Administrative and Indirect Operation Cost – Component (as defined in Article 8.4B)
 - c) Payment in Lieu of Taxes (“PILOT”) – Component (as defined in Article 8.4D)
 - d) Depreciation Expense – Component

A Depreciation Expense shall be charged on the Capital Asset Element of the Rate Base Component in accordance with generally accepted accounting principles utilizing the straight-line method of depreciation. Construction completed prior to the beginning of each Rate Year shall be added to the Capital Asset Element of the Rate Base Component and depreciated according to the assets’ Useful Life. Depreciation on Contributed Capital Assets or Grant Funded Capital Assets shall not be included in the Depreciation Expense Component.
 - e) Return on Rate Base – Component

The Return on Rate Base shall be the aggregate sum of the total Annual Revenue Requirement for the Public Water Supply System as defined in Article 8.4 less the sum of the Utility Basis Revenue Requirement components established in (a) through (d) above.

(Annual Cash Basis Revenue Requirement – Direct Operation, Maintenance and Repair Costs – Administrative and Indirect Operating Costs - PILOT – Depreciation Expense = Return on Rate Base)

E.3 Annual Utility Basis Non-Revenue Requirement – Components

The following Utility Basis Non-Revenue Requirements support the development of the Depreciation Expense Component and the Return of Rate Base Component of the Utility Basis Revenue Requirements:

- Rate Base
- Rate of Return

a) Rate Base – Component

The Rate Base shall be aggregate sum of the Capital Asset Element plus the Working Capital Element.

(Capital Asset Element + Working Capital Element = Rate Base)

1) Capital Asset Element

The Capital Asset Element of the Rate Base shall be the Net Book Value of the Public Water Supply System Capital Assets, In-Service, Used, and Useful, at the end of the most recently audited year as identified in Appendix B, plus the Construction Work-In-Progress at the end of the most recently audited year, plus the projected Cost of the Capital Improvements made subsequent to that date through the end of the Rate Year, less the projected Net Book Value of Contributed and Grant Funded Capital Assets as of the end of the Rate Year.

2) Working Capital Element

The Working Capital Element shall be the stated value of the current Non-Capital Assets of the Public Water Supply System as determined by the annual City Audit including inventories which shall not exceed ninety (90) days of Operating Expenses.

3) Rate of Return

The Rate of Return shall be the product of the Return on Rate Base divided by the Rate Base. Effective Rate Year 2022, and each Rate Year thereafter, the Rate of Return used to allocate Utility Basis Revenue Requirements to all Customers shall be identical.

(Return on Rate Base ÷ Rate Base = Rate of Return)

E.4 Equivalent Water Rates

Effective Rate Year 2022, and each Rate Year thereafter, City customers and Township customers within each Customer Class shall be assessed the same Water Rates based on the same Rate of Return.

E.5 Annual Utility Basis Revenue Requirement – Tracking

a) Depreciation Expense Component – Tracking

The Rate Consultant and the City shall maintain a schedule of Public Water Supply System Current Capital Assets and shall track and report the annual Depreciation Expense related to each Capital Asset in the City and the Townships and provide an annual report regarding the Depreciation Expense to the Utility Policy Committee.

b) Rate Base Component – Tracking

The Rate Consultant and the City shall maintain a Schedule of Public Water Supply System Current Capital Assets (Appendix B). The Schedule shall identify each Public Water Supply System Capital Asset which is Used and Useful to the Customers of the Public Water Supply System (“Utility Plant In-Service”), the Net Book Value and Annual Depreciation Expense of each Capital Asset, the location of each Capital Asset, the date of purchase, the useful life, historical investment and Accumulated Depreciation of each Capital Asset. The Rate Consultant and the City shall annually amend the Schedule to identify, value and categorize newly constructed Capital Assets, and to remove Capital Assets no longer In-Service, Used and Useful, and to add Annual Depreciation to the Accumulated Depreciation of each Capital Asset. The Schedule shall also track Contributed or Grant Funded Capital Assets.

APPENDIX F

This Appendix contains “Table 19-Development of 2021 Water Rates (3) pages” from the City of Kalamazoo “Report on 2021 Water Rates”, dated December 16, 2020.

- Column 1 of Table 19 entitled “Existing Rates” identifies the current Water Rates paid by City Customers per customer class, meter size and device (inside City) and by Township Customers per customer class, meter size and device (outside City).
- Column 2 of Table 19 entitled “Indexed Adjustment for 2021” identifies the proposed rate adjustment from the “Existing Rates” identified in Column 1 of Table 19 for City Customers (inside City) and Township Customers (outside City) to the “Proposed 2021 Rates” identified in Column 3 of Table 19. The same “Indexed Adjustment” is proposed from the “Proposed 2021 Rates” identified in Column 3 of Table 19 to the “Projected Test Year 2022 Rates” identified in Column 4 of Table 19.
- Column 4 of Table 19 entitled “Projected Test Year 2022 Rates” identifies the Projected Equivalent Water Rates proposed for Rate Year 2022 for the City and Township Customers. The “Projected Test Year 2022 Rates” identified in Column 4 are projected Water Rates and the Water Rates adopted may vary from the projected Water Rates.

Regardless, for Rate Year 2022 and each Rate Year thereafter the City and Township Customers shall pay the same Water Rates as described in Article 8.2A.

Table 19
Water Utility
Development of 2021 Water Rates

Line		(1)	(2)	(3)	(4)
<u>No.</u>		<u>Existing Rates</u>	<i>Indexed Adjustment for 2021</i>	<u>Proposed 2021 Rates</u>	<i>Projected Test Year 2022 Rates</i>
		\$/unit	<i>1/2 of Adj from Table 17</i>	\$/unit <i>[1] * (1+[2])</i>	<i>from Table 17</i>
Commodity Charges - \$/cu mtr					
<u>Inside City</u>					
1	Single Family	0.496	24.4%	0.617	0.767
2	Multi Family	0.405	18.9%	0.482	0.573
3	Commercial	0.454	19.1%	0.541	0.644
4	Seasonal	0.741	18.3%	0.877	1.037
<u>Outside City</u>					
5	Single Family	0.660	7.8%	0.711	0.767
6	Multi-Family	0.465	11.0%	0.516	0.573
7	Commercial	0.522	11.1%	0.580	0.644
8	Seasonal	0.988	2.4%	1.012	1.037
<u>Fire Protection Detector Checks</u>					
9	Inside City	0.449	19.9%	0.539	0.646
10	Outside City	0.518	11.7%	0.578	0.646

Table 19
Water Utility
Development of 2021 Water Rates

Line		(1)	(2)	(3)	(4)
		<u>Existing Rates</u>	<i>Indexed Adjustment for 2021</i>	Proposed 2021 Rates	<i>Projected Test Year 2022 Rates</i>
<u>No.</u>		\$/unit	<i>1/2 of Adj from Table 17</i>	\$/unit <i>[1] * (1+[2])</i>	<i>from Table 17</i>
Meter Service Charges - \$/bill					
<u>Inside City - Quarterly</u>					
11	5/8"-3/4"	30.70	15.5%	35.45	40.94
12	1"	41.19	15.3%	47.48	54.73
13	1-1/2"	51.70	15.1%	59.52	68.53
14	2"	80.54	15.0%	92.60	106.46
15	3"	271.86	19.1%	323.86	385.81
16	4"	355.85	17.3%	417.27	489.28
17	6"	531.46	17.3%	623.16	730.69
18	8"	732.14	17.3%	858.47	1,006.59
<u>Inside City - Monthly</u>					
19	5/8"-3/4"	13.18	16.7%	15.38	17.95
20	1"	16.69	16.2%	19.40	22.54
21	1-1/2"	20.19	15.9%	23.41	27.14
22	2"	29.82	15.5%	34.45	39.79
23	3"	100.65	14.9%	115.66	132.90
24	4"	126.89	14.9%	145.74	167.39
25	6"	188.10	14.8%	215.92	247.86
26	8"	258.03	14.8%	296.12	339.83
<u>Outside City - Quarterly</u>					
27	5/8"-3/4"	33.51	10.5%	37.04	40.94
28	1"	45.30	9.9%	49.79	54.73
29	1-1/2"	57.09	9.6%	62.55	68.53
30	2"	89.52	9.1%	97.62	106.46
31	3"	326.53	8.7%	354.93	385.81
32	4"	414.47	8.7%	450.32	489.28
33	6"	619.67	8.6%	672.89	730.69
34	8"	854.18	8.6%	927.26	1,006.59
<u>Outside City - Monthly</u>					
35	5/8"-3/4"	13.86	13.8%	15.77	17.95
36	1"	17.79	12.6%	20.02	22.54
37	1-1/2"	21.72	11.8%	24.28	27.14
38	2"	32.53	10.6%	35.98	39.79
39	3"	112.13	8.9%	122.07	132.90
40	4"	141.60	8.7%	153.96	167.39
41	6"	210.38	8.5%	228.35	247.86
42	8"	288.99	8.4%	313.38	339.83

Table 19
Water Utility
Development of 2021 Water Rates

Line		(1)	(2)	(3)	(4)
<u>No.</u>		<u>Existing Rates</u>	<i>Indexed Adjustment for 2021</i>	<u>Proposed 2021 Rates</u>	<i>Projected Test Year 2022 Rates</i>
		\$/unit	<i>1/2 of Adj from Table 17</i>	\$/unit <i>[1] * (1+[2])</i>	<i>from Table 17</i>
Fire Protection					
<u>Quarterly</u> Detector Checks - Service Charges - \$/bill					
43	Inside City				
44	4"	51.76	21.5%	62.87	76.37
45	6"	62.57	27.8%	79.96	102.19
46	8"	88.72	32.7%	117.70	156.14
47	10"	253.70	25.8%	319.19	401.58
	Outside City				
48	4"	64.16	9.1%	70.00	76.37
49	6"	85.45	9.4%	93.45	102.19
50	8"	129.26	9.9%	142.07	156.14
51	10"	328.70	10.5%	363.32	401.58
<u>Monthly</u> Detector Checks - Service Charges - \$/bill					
52	Inside City				
53	4"	34.16	16.7%	39.85	46.49
54	6"	41.64	15.0%	47.90	55.10
55	8"	56.83	13.4%	64.44	73.08
56	10"	120.80	13.2%	136.79	154.89
	Outside City				
57	4"	39.88	8.0%	43.06	46.49
58	6"	48.10	7.0%	51.48	55.10
59	8"	64.71	6.3%	68.77	73.08
60	10"	133.52	7.7%	143.81	154.89
<u>Fire Hydrants - \$/hydrant/year</u>					
61	Public	0.00		0.00	0.00
62	Private	40.00	0.0%	40.00	40.00

Table 19
Water Utility
Development of 2021 Water Rates

Line		(1)	(2)	(3)	(4)
		<u>Existing Rates</u>	<i>Indexed Adjustment for 2021</i>	Proposed 2021 Rates	<i>Projected Test Year 2022 Rates</i>
<u>No.</u>		\$/unit	<i>1/2 of Adj from Table 17</i>	\$/unit <i>[1] * (1+[2])</i>	<i>from Table 17</i>
Fire Protection					
<u>Quarterly</u> Detector Checks - Service Charges - \$/bill					
43	Inside City				
44	4"	51.76	21.5%	62.87	76.37
45	6"	62.57	27.8%	79.96	102.19
46	8"	88.72	32.7%	117.70	156.14
47	10"	253.70	25.8%	319.19	401.58
	Outside City				
48	4"	64.16	9.1%	70.00	76.37
49	6"	85.45	9.4%	93.45	102.19
50	8"	129.26	9.9%	142.07	156.14
51	10"	328.70	10.5%	363.32	401.58
<u>Monthly</u> Detector Checks - Service Charges - \$/bill					
52	Inside City				
53	4"	34.16	16.7%	39.85	46.49
54	6"	41.64	15.0%	47.90	55.10
55	8"	56.83	13.4%	64.44	73.08
56	10"	120.80	13.2%	136.79	154.89
	Outside City				
57	4"	39.88	8.0%	43.06	46.49
58	6"	48.10	7.0%	51.48	55.10
59	8"	64.71	6.3%	68.77	73.08
60	10"	133.52	7.7%	143.81	154.89
<u>Fire Hydrants - \$/hydrant/year</u>					
61	Public	0.00		0.00	0.00
62	Private	40.00	0.0%	40.00	40.00

**OSHTEMO CHARTER TOWNSHIP
KALAMAZOO COUNTY, MICHIGAN**

RESOLUTION APPROVING WATER SERVICES AGREEMENT

Adopted: _____, 2021

Effective: _____, 2021

WHEREAS, the City of Kalamazoo operates a Public Water Supply System and is authorized to contract for the purchase/sale of treated potable water pursuant to MCL 123.141; and

WHEREAS the Kalamazoo Regional Water & Wastewater Commission has negotiated a long-term Water Services Agreement with the City of Kalamazoo for the continued provision of water to the service area which includes the Charter Township of Oshtemo and for other necessary provisions thereto; and

WHEREAS the Oshtemo Charter Township Board has had an opportunity to review the Water Services Agreement and Amended Appendices A-F with its consultants and attorneys; and wishes to approve the same as provided to the Township at its meeting of February 9, 2021, upon recommendation of the Regional Water & Wastewater Commission consultants and attorney.

NOW THEREFORE IT IS HEREBY RESOLVED, that the Charter Township of Oshtemo hereby approves the City of Kalamazoo-Water Services Agreement including amended Appendices A through F.

Motion was made by _____ and seconded by _____, to adopt the foregoing Resolution.

Upon roll call vote the following voted "aye":

The following voted "nay":

The following were absent:

The Supervisor declared the motion carried, and the resolution duly adopted.

Dusty Farmer, Clerk
Oshtemo Charter Township

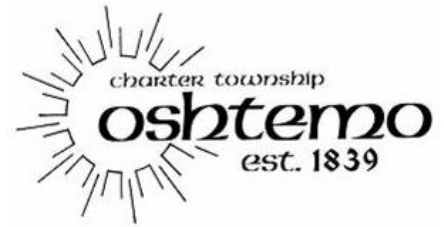
CERTIFICATE

I hereby certify that the foregoing constitutes a true and complete copy of a Resolution adopted at a regular meeting of the Oshtemo Charter Township Board held via permitted ZOOM video conference during COVID-19 public health crises as authorized by PA 228 of 2020 on February 9, 2021 which meeting was preceded by required notices under the Michigan Open Meetings Act, being 1976 PA 267; that a quorum of the Board was present and voted in favor of said Resolution; and that minutes of said meeting were kept and will be or have been made available as required by said Open Meetings Act.

Dusty Farmer, Clerk
Oshtemo Charter Township

Attest:

Libby Heiny-Cogswell, Supervisor



Memorandum

Date: 5 February 2021
To: Township Board
From: Kristine Biddle, Township Assessor
Subject: MCL 211.7u Public Act 253 of 2020 Poverty Exemption

Objective

To provide additional information to the Board about the new Poverty Exemption Act, and to ask the Board to discuss toward consensus on direction.

Background Information

The Board discussed the poverty exemption program at their meeting on January 26th and requested additional information to continue their discussion February 9th. Subsequently the State Tax Commission (STC) issued draft Bulletin 3. As of this writing the Bulletin is draft only and not yet adopted. The State Assessor training on Feb 4th therefore did not discuss the program given its preliminary status. No guidelines or bulletin is drafted to explain the rules of the required audit program.

In recap, the State Legislature passed Public Act 253 of 2020 on December 23, 2020. The Act makes several changes to the Poverty Exemption statute including a requirement that the local unit's policy guidelines and applications are made available on the Township's website. Oshtemo is compliant with the website postings. NOTE: Oshtemo is providing notice of the poverty exemption program on the assessment notices February 8th mailing, including the criteria and link to applications to apply for the poverty exemptions.

Oshtemo granted six poverty exemptions in 2020 and nine in 2019. Of these, two are repeat applicants, and two no longer own homes in Oshtemo. Following past practice given upcoming deadlines, the Assessing Department sent applications in mid-January to the 2020 grantees for 2021 Board of Review consideration.

Per previous discussion, a local unit has the authority to adopt a Resolution that allows an exemption granted in 2019, 2020, or 2021 to be carried forward automatically for several years. However, the Oshtemo Assessor recommends the Board not do this, and to

revisit again when the full details of the program are ironed out, including the audit requirements. The Oshtemo Assessor's recommendation is to wait until the State audit provisions are written and adopted, to make sure we are not required to duplicate our work.

The Bulletin 3 Guidelines, if adopted, require that "income is from fixed income solely from public assistance that is not subject to significant annual increases." The 2021 Board of Review, in their review of 2021 applications, could identify the applicants who would qualify for the automatic extension, should the Township adopt the resolution at a future public meeting, after the audit program is known. This would expedite notification to those residents going forward.

The Board may wish to not join the program for other reasons, namely because the Board of Review has served as an effective, informal sounding board on guidance to applicants to get help.

Information Provided

Summary of Changes to MCL 211.7u Poverty Exemption in Public Act 253 of 2020
Bulletin 3 of 2021 February 9, 2021 MCL 211.7u Poverty Exemption (Draft)
Resolution on MCL 211.7u (Draft)

Core Value Demonstrated

PUBLIC SERVICE - •Fair treatment to all people. •Each customer is welcomed and that their input is wanted. •Difficult questions are not marginalized. •Allow residents to interact directly with the township staff and officials. •Decisions are made based on the value to our Township and residents.

\ Summary of Changes to MCL 211.7u Poverty Exemption in Public Act 253 of 2020

Public Act 253 of 2020 was signed into law on December 23, 2020. The Act made several changes to the poverty exemption statute (MCL 211.7u) that will impact how local units, assessors, and boards of review handle the exemption starting with the 2021 tax year:

- Removes the word "supervisor" from statute, making it clear that only the Board of Review can grant/deny poverty exemption
- Clarifies that the federal income levels used are those adopted in the *prior* tax year (2020 federal levels are used for 2021 exemptions)
- Requires the local unit to make the policy, guidelines and application form available on their website
- Removes the ability for Boards of Review to deviate from the adopted policy/guidelines for "substantial and compelling reasons"
- Local units can adopt a resolution that allows an exemption granted in 2019 or 2020 to carry forward to 2021, 2022 and 2023 for those persons who receive a fixed income solely from public assistance that is not subject to significant annual increases (Federal Supplemental Security Income, Social Security disability or retirement benefits). Local units can also adopt a resolution for any new exemptions in 2021, 2022 or 2023 to remain exempt for up to 3 years for persons who receive a fixed income (MCL 211.7u(6))
- Local units can carry a poverty exemption forward that was granted in 2019 or 2020 for the 2021 tax year, without an application or protest to the Board of Review. Local units must adopt a resolution by February 15, 2021 to carry the exemption forward (MCL 211.7u(8))
- If a person meets all eligibility requirements in statute, the Board of Review must grant a full exemption equal to a 100% reduction in taxable value OR a partial exemption equal to a 25% or 50% reduction in taxable value OR any other percentage reduction in taxable value approved by the STC

A person receiving the extended exemption in MCL 211.7u(6) for up to 3 years due to receiving a fixed income is required to file an affidavit rescinding the exemption within 45 days of no longer being eligible for the exemption.

Local units that adopt a resolution to extend the poverty exemption for up to 3 years for those persons who receive a fixed income solely from public assistance **or** local units that carry the 2019/2020 granted poverty exemptions forward to 2021 must implement an audit program and if found ineligible, the person is subject to repayment of the taxes plus interest.

Local units may need to revise their guidelines, policies, etc to implement the changes in statute. This includes revised guidelines that remove any other calculation of the taxable value for approved poverty exemptions, i.e. formulas that take into consideration the homestead tax credit to calculate the property tax liability and revised TV based on that calculated tax liability. The guidelines may only provide for a full exemption equal to a 100% reduction in taxable value (TV of 0) or a partial exemption equal to a 25% reduction or 50% reduction in taxable value, or any other percentage reduction approved by the State Tax Commission.

PA 253 requires the State Tax Commission to issue a bulletin on how to develop and implement the audit program for the extended poverty exemption provisions in MCL 211.7u(6) and (8). The State Tax

Commission will also be working to create the statutorily required poverty application form and other necessary forms and guidance.

Provided by State Tax Commission January 8, 2021



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

GRETCHEN WHITMER
GOVERNOR

RACHAEL EUBANKS
STATE TREASURER

Bulletin 3 of 2021
February 9, 2021
MCL 211.7u Poverty Exemption

TO: Assessors and Equalization Directors
FROM: Michigan State Tax Commission
SUBJECT: MCL 211.7u Poverty Exemption

Bulletin 6 of 2017 is rescinded.

MCL 211.7u provides for a property tax exemption, in whole or part, for the principal residence of persons who, by reason of poverty, are unable to contribute to the public charges. For purposes of the poverty exemption “principal residence” means how principal residence exemption and qualified agricultural property are defined in MCL 211.7dd. The exemption does not apply to property of a corporation. This Bulletin includes updates made to MCL 211.7u by Public Act 253 of 2020.

Local Unit Responsibilities

MCL 211.7u requires local units to adopt guidelines that must include the specific income and asset levels of the applicant and the total household income and assets. If the local unit maintains a website, the local unit is required under the statute to make the policy, guidelines, and the poverty application (Form 5737) available to the public on the local unit’s website. Additional items that the local unit should make available include the statutorily required Form 5739 (which must be filed by the applicant with Form 5737) and Form 4988, *Poverty Exemption Affidavit* (used by applicants who are not required to file federal and state income tax returns).

Income Test

Local units must adopt guidelines which specify the total household income which will be used to approve or deny poverty exemptions. The adopted income levels shall not be set lower than the federal poverty guidelines published in the prior calendar year in the Federal Register by the United States Department of Health and Human Services. For reference, the federal poverty guidelines to be used are published annually by the State Tax Commission.

According to the United States Census Bureau “income” includes, but is not limited to:

- Money, wages, salaries before deductions, regular contributions from persons not living in the residence
- Net receipts from non-farm or farm self-employment (receipts from a person’s own business, professional enterprise, or partnership, after business expense deductions)

- Regular payments from social security, railroad retirement, unemployment, worker's compensation, veteran's payments, public assistance, supplemental security income (SSI)
- Alimony, child support, military family allotments
- Private and governmental retirement and disability pensions, regular insurance, annuity payments
- College or university scholarships, grants, fellowships, assistantships
- Dividends, interest, and net income from rentals, royalties, estates, trusts, gambling or lottery winnings

The Michigan homestead property tax credit **cannot** be considered as income for purposes of the poverty exemption. (*Ferrero v Walton Twp, Court of Appeals No. 302221*).

Asset Test

The local unit guidelines must include an asset test. This asset test **must** clearly state the maximum value of all assets allowable to be eligible for the poverty exemption. This means that the guidelines must state a total dollar amount and the value of all assets cannot exceed that total dollar amount.

The purpose of an asset test is to determine the resources available: cash, fixed assets or other property that could be converted to cash and used to pay property taxes in the year the poverty exemption is filed. The local unit asset test **cannot** include the value of the principal residence (*Robert Taylor v Sherman Twp, MTT Docket No. 236230*).

The local unit should require that applicants provide a list of all assets when applying for a poverty exemption. The State Tax Commission is providing the following list of assets that may be included in the local unit asset test (this is not an exhaustive list and is provided as examples of what may be considered as assets):

- A second home, land, vehicles
- Recreational vehicles such as campers, motor-homes, boats and ATV's
- Buildings other than the residence
- Jewelry, antiques, artworks
- Equipment, other personal property of value
- Bank accounts (over a specified amount), stocks
- Money received from the sale of property, such as, stocks, bonds, a house or car (unless a person is in the specific business of selling such property)
- Withdrawals of bank deposits and borrowed money
- Gifts, loans, lump-sum inheritances and one-time insurance payments
- Food or housing received in lieu of wages and the value of food and fuel produced and consumed on farms
- Federal non-cash benefits programs such as Medicare, Medicaid, food stamps and school lunches

The local unit policy may provide for an applicant to own possessions in addition to the principal residence and still receive a poverty exemption. Examples may include, but are not limited to:

- Additional vehicles
- More land than a minimum "footprint" for the home

- Equipment or other personal property of value, including recreational vehicles (campers, motor homes, boats, ATV's etc.)
- Bank account(s) (a maximum amount should be specified)

Full or Partial Poverty Exemptions

PA 253 of 2020 made changes related to granting full or partial poverty exemptions. MCL 211.7u(5) states that if a person claiming the poverty exemption meets all eligibility requirements, the Board of Review shall grant the poverty exemption, in whole or in part, as follows:

1. A full exemption equal to a 100% reduction in taxable value for the year in which the exemption is granted; or
2. A partial exemption equal to a 50% reduction in taxable value for the year in which the exemption is granted; or
3. A partial exemption equal to a 25% reduction in taxable value for the year in which the exemption is granted.

No other method of calculating taxable value may be utilized, except for those percentage reductions specifically authorized in statute, or any other percentage reduction approved by the State Tax Commission. Local assessing units wishing to use any other percentage reduction than what is stated in MCL 211.7u(5) must obtain permission for use of such percentage reduction(s) by filing Form 5738, *Request For Approval of Percentage Reduction in Taxable Value For Poverty Exemptions Under MCL 211.7u* with the State Tax Commission. The State Tax Commission has adopted a Policy Regarding Requests For Percentage Reductions In Taxable Value For Poverty Exemptions Under MCL 211.7u that details how these requests will be processed. The policy and Form 5738 are available on the State Tax Commission's website at <https://www.michigan.gov/statetaxcommission>.

The State Tax Commission recommends that local assessing units include within their guidelines language and criteria for granting partial exemptions and/or minimum or maximum exemptions.

Extension Of Poverty Exemptions

PA 253 of 2020 adds two provisions in which the local assessing unit can adopt a resolution that would allow a taxpayer to continue to receive a poverty exemption without having to file a new Form 5737 and other required documents each year. Local units **must** adopt resolutions to utilize these provisions and the requirements in the statute must be met.

MCL 211.7u(6): Extension For Those Persons Receiving A Fixed Income From Public Assistance

Local units can adopt a resolution that allows an exemption granted in 2019 or 2020 to carry forward to 2021, 2022 and 2023 for those persons who receive a fixed income solely from public assistance that is not subject to significant annual increases (Federal Supplemental Security Income, Social Security disability or retirement benefits).

Local units can also adopt a resolution for any new exemptions in 2021, 2022 or 2023 to remain exempt for up to 3 years for persons who receive a fixed income solely from public assistance that is not subject to significant annual increases.

A person that receives an extended exemption under MCL 211.7u(6) must file an affidavit rescinding the exemption with the local assessing unit within 45 days after: 1) ceasing to own and occupy the

property as a principal residence; or 2) a change in household assets or income that defeats eligibility for the poverty exemption. If the person fails to file the required rescission and the property is later determined to be ineligible for the exemption, the person is subject to repayment of any additional taxes with interest as provided in MCL 211.7u(6)(b).

MCL 211.7u(8): Extension Applicable to the 2021 Tax Year Only

If the assessor determines that a person is still eligible for the poverty exemption in 2021 and the person received a poverty exemption for the property in tax year 2019 or 2020, or both, local assessing units can carry the poverty exemption forward for the 2021 tax year, without an application or protest to the Board of Review in 2021. **Local units must adopt a resolution by February 15, 2021 to carry the exemption forward.** If an exemption is carried forward to 2021 no Form 5737 or other documentation is required from the taxpayer and they do not have to protest to a Board of Review. However, the statute provides that the local assessing unit *may* require that the person affirm ownership, poverty, and occupancy status in writing by filing Form 5739.

Local Unit Audit Program Requirement

Local units that adopt a resolution to extend the poverty exemption under MCL 211.7u(6) for up to 3 years for those persons who receive a fixed income solely from public assistance or local units that carry the 2019 and 2020 granted poverty exemptions forward to 2021 under MCL 211.7u(8) must implement an audit program. If found ineligible, the taxpayer is subject to repayment of the taxes plus interest as provided in MCL 211.7u(6)(b). The State Tax Commission's guidance on the required local unit audit program will be published in a separate bulletin.

How To Apply For The Poverty Exemption

To request a poverty exemption, a taxpayer must file:

1. Form 5737 *Application for MCL 211.7u Poverty Exemption*
2. Form 5739 *Affirmation of Ownership and Occupancy to Remain Exempt by Reason of Poverty*
3. All required additional documentation (such as federal/state income tax returns)

Forms 5737 and 5739, along with any additional documentation, must be filed with the local assessing unit where the property is located. **Do not file these forms with the Department of Treasury or the State Tax Commission.** The forms may be submitted to the local assessing unit on or after January 1 but before the day prior to the last day of the December Board of Review during the year in which the exemption is requested.

Taxpayers should contact the local assessing unit directly to verify deadline dates for submission of the forms to ensure the application gets reviewed by a Board of Review during that calendar year.

In addition to filing Forms 5737 and 5739 and any supporting documentation, a taxpayer must do all the following to be eligible for the poverty exemption:

1. Own and occupy the property as a principal residence.
2. Provide federal and state income tax returns for the current or immediately preceding year, including any property tax credits, for all persons **residing in the principal residence** (disclosure of the income of an owner who is not residing in the principal residence is not

required). Federal and state income tax returns are not required for a person residing in the principal residence if that person was not required to file a federal or state income tax return. Instead, Form 4988, *Poverty Exemption Affidavit* may be filed for all persons residing in the residence who were not required to file federal or state income tax returns in the current or immediately preceding year.

3. Produce a valid driver license or other form of identification, if requested.
4. Produce a deed, land contract, or other evidence of ownership of the property, if requested.
5. Meet the federal poverty guidelines published in the prior calendar year in the Federal Register by the United States Department of Health and Human Services **or** alternative guidelines adopted by the local assessing unit. The alternative guidelines cannot provide income eligibility requirements less than the federal guidelines.
6. Meet the asset level test adopted by the local assessing unit.

Board of Review Responsibilities

The Board of Review shall approve or deny the request for the poverty exemption. The Board of Review is required to follow the policy and guidelines adopted by the local assessing unit in granting or denying a poverty exemption. The Board of Review is not permitted to deviate from the adopted policy and guidelines.

Poverty exemption applications can be heard at the March, July, or December Board of Review. However, there can only be **one** Board of Review decision for a specific calendar year; a subsequent Board of Review cannot reconsider a decision already made that year. For example: if an application is denied at the March Board of Review, it may not be reheard by the July or December Board of Review during the same calendar year. The taxpayer must file an appeal of the March Board of Review decision to the Michigan Tax Tribunal.

As a reminder, a person who files a claim for the poverty exemption is not prohibited from also appealing the assessment on the same property in the same year.

Appeal Rights

An appeal of a decision of the March Board of Review is made by completing and submitting a petition to the Michigan Tax Tribunal no later than July 31 of the same year. A decision of the July or December Board of Review may be appealed by completing and submitting a petition to the Michigan Tax Tribunal within 35 days of the July or December Board of Review's decision. More information on how to file an appeal is available by contacting the Michigan Tax Tribunal. Information can also be viewed on the Michigan Tax Tribunal's website at <https://www.michigan.gov/taxtribunal>.

**OSHTEMO CHARTER TOWNSHIP
COUNTY OF KALAMAZOO, MICHIGAN**

RESOLUTION TO CARRY POVERTY EXEMPTIONS FORWARD

Adopted: February 9, 2021

Effective: _____

WHEREAS, the Township Board has adopted Poverty Exemption Guidelines for those unable to contribute to the public charges pursuant to Public Act 390 of 1994 (M.C.L. 211.7u); and

WHEREAS, pursuant to Public Act 253 of 2020 (M.L.C. 211.7u, as amended) the Michigan Poverty Exemption guidelines were amended to allow a local assessing unit to permit by resolution a principal exemption for collection of taxes under the poverty exemption guidelines to be carried forward without reapplication for tax years 2021, 2022, and 2023;

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Oshtemo Charter Township Board adopts the following provisions regarding carrying poverty exemptions forward:

1. The principal residence exempt from tax collection for taxes in 2019 or 2020 may remain exempt for 2021, 2022, and 2023 without subsequent reapplication provided there has not been a change in ownership, occupancy, or a change in household assets or income that defeat eligibility; and,

2. A principal residence exempt for the first time in 2021, 2022, or 2023 may remain exempt for up to three (3) additional years after the initial year of exemption without re-application provided that the individual receives a fixed income solely from public assistance that is not subject to significant annual increases beyond the rate of inflation and the individual continues to own or occupy the home, and the individual does not experience a change in household assets or income that defeats eligibility.

All those for whom an exemption has been allowed to carry forward, pursuant to this Resolution, shall be required to file an affidavit rescinding the exemption within forty-five (45) days after either of the following occur: (1) the individual ceases to own or occupy the principal residence, or (2) the individual experiences a change in household assets or income that defeats eligibility.

Motion was made by _____ and seconded by _____, to adopt the foregoing Resolution.

Upon roll call vote the following voted "Aye":

The following voted "Nay":

The following were Absent:

The following Abstained:

The Supervisor declared the motion carried and the Resolution duly adopted.

Dusty Farmer, Clerk
Charter Township of Oshtemo

CERTIFICATE

STATE OF MICHIGAN)
) ss.
COUNTY OF KALAMAZOO)

I, Dusty Farmer, the duly appointed and acting Clerk of the Township of Oshtemo, certify that the foregoing constitutes a true and complete copy of a Resolution adopted at a regular meeting of the Oshtemo Charter Township Board held, via permitted ZOOM video conference during COVID-19 public health crises as authorized by PA 228 of 2020, on February 9, 2021, which meeting was preceded by required notices under the Michigan Open Meetings Act, being 1976 PA 267; that a quorum of the Board was present and voted in favor of said Resolution; and that minutes of said meeting were kept and will be or have been made available as required by said Open Meetings Act.

IN WITNESS WHEREOF, I have hereto affixed my official signature on this ___ day of _____, 2021.

Dusty Farmer, Clerk
Charter Township of Oshtemo

Attest:

Libby Heiny-Cogswell, Supervisor