

**MARION TOWNSHIP PLANNING COMMISSION
AGENDA**

**REGULAR MEETING
November 28, 2023
7:30 PM**

Virtual access instructions to participate in the meeting are posted on www.mariontownship.com

Call to Order:

Pledge of Allegiance:

Introduction of Members:

Approval of Agenda for: November 28, 2023 Regular Meeting

Approval of Minutes from: October 24, 2023 Regular Meeting

Call for Public Comment:

Public Hearing:

- 1) TXT#2-23 Wellhead protection public hearing

Unfinished Business:

- 1) TXT#02-23 Wellhead protection ordinance and map review
- 2) TXT#01-23 Data Processing (LCPD comments)

New Business:

- 1) Memo from Supervisor
- 2) Discuss 2024 work plan goals.

Special Orders:

- 1) Discuss role commissioners are expecting from Zach
- 2) Election of officer's and annual requirements

Announcements:

Call for Public Comment:

Adjournment:

*Approved by: _____
Larry Grunn - Chairperson

Date: _____

**MARION TOWNSHIP
PLANNING COMMISSION
REGULAR MEETING
OCTOBER 24, 2023 / 7:30PM**

PC MEMBERS PRESENT: LARRY GRUNN – CHAIRPERSON
JIM ANDERSON - VICE CHAIRPERSON
CHERYL RANGE - SECRETARY
BOB HANVEY
BRUCE POWELSON

PC MEMBERS ABSENT: NONE

OTHERS PRESENT: DAVID HAMANN - MARION TWP. ZONING ADMINISTRATOR
ZACH MICHELS – TOWNSHIP PLANNER

CALL TO ORDER

Larry Grunn called the meeting to order at 7:30 pm.

APPROVAL OF AGENDA

Bruce Powelson made a motion to approve the October 24, 2023 agenda as presented. Jim Anderson seconded.

MOTION CARRIED

APPROVAL OF MINUTES

Bruce Powelson made a motion to approve the September 26, 2023 Planning Commission minutes as presented. Larry Grunn seconded. **MOTION CARRIED**

CALL TO PUBLIC

None.

UNFINISHED BUSINESS:

SUP# 01-23 MITCH HARRIS REZONING PARCEL ID #'s 4710-02-400-014, 016, 017, 018

John Gormley stated that he had some concerns with the property if it were to be re-zoned. Zach Michels explained that the reason it was sent back to the Planning Commission was because the Board needs to see the reasons why the request was approved and also was the Commissioners to explain the conditions on which the approval was given.

The following conditions were voluntarily offered by the applicant:

CONDITIONS:

- A) *The property being rezoned will not use a general private or public roadway connection through the existing Meadows Condominium project along Spirea Lane; and*
- B) *If a connection through Spirea Lane is required by the governing fire authority, it will be set up with a gate that is controlled by the fire authority and will not be open for the use of the general public; and*

Anthony Longoria resides at 3724 Pinckney Road. Anthony spoke on this agenda item and stated some of his concerns with this rezoning approval of this rezoning application.

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The commissioners made the requested that Zach Michels make the following changes to their resolution.

- 100) *WHEREAS, the following conditions HAVE changed, which JUSTIFY the proposed conditional zoning map amendment:*
- A) *There is less general demand for commercial land than anticipated in previous Master Plans;*
 - B) *Confirmation from MDOT prohibiting access to the site from the limited access ramp and D-19;*
 - C) *More affordable housing and multiple-family housing are needed in the Township;*
 - D) *More people are working and shopping from home;*
 - E) *Commercial space is no longer in high demand in the county, and there are plenty of vacant commercial properties in the county; and*
- 110) *WHEREAS, the requested zoning map amendment WOULD NOT impact the ability of the Township and other governmental agencies to provide adequate public services and facilities, and/or programs reasonably required in the future if the proposed zoning map amendment is approved, because:*
- A) *Permitted uses in the requested zoning district are likely to create a similar or lesser demand on roads, water, sanitary sewer, stormwater sewer, police, and fire;*
 - B) *Site plan review provides the Township with the ability to mitigate potential infrastructure demands from development of the site, such as stormwater management, traffic management, and density; and*
 - C) *There is adequate capacity in the school system; and*
- 120) *WHEREAS, the requested conditional zoning map amendment DOES NOT adversely affect environmental conditions because:*
- A) *The potential number of commercial uses that could impact the environmental conditions would be significantly reduced;*
 - B) *The potential residential development is likely to generate similar or lesser environmental impacts than commercial development or use of the properties;*
 - C) *Due to less hard surfaces in residential development, there would be less stormwater to manage; and*
 - D) *Less potential impact from contamination from chemicals, fuel, hazardous materials, air noise, and light pollution; and*
- 130) *WHEREAS, the requested conditional zoning map amendment DOES NOT adversely affect the value of surrounding property because:*
- A) *Development of the site for residential uses with the conditional zoning map amendment is likely to have less impact on the value of surrounding properties than if the site were developed for commercial uses in the current district;*
 - B) *Commercial development of the site would result in commercial traffic through Pleavy and residential areas, which would impact the value of those residential properties, because there is no direct access from D-19, as confirmed by MDOT; and*
 - C) *Adjacent residential areas are more likely to be impacted by permitted uses in the Highway Service (HS) district; and*
- 140) *WHEREAS, the petitioned conditional zoning map amendment DOES NOT generally comply with the adopted Master Plan because:*
- A) *Although it represents a deviation from the Future Land Use Map, the greater intensity of use within the Urban Residential (UR) district is consistent with the goal of locating more-intensive uses closer to the City of Howell;*

DRAFT

- B) *City services are more available in the northern portion of the township, such as water, sewer, police, and fire; and*
- C) *The Master Plan assumed access for the site would be available from D-19, which is no longer available; and*

150) *WHEREAS, the property in question CANNOT be put to a reasonable economic use in the Highway Service (HS) zoning district, because:*

- A) *Access to the site from D-19 is not allowed, as confirmed by MDOT; and*
- B) *All commercial traffic from commercial development of the site would be sent through residential areas; and*
- C) *Alternate access to the site is already congested, including Peavy Road, the Peavy and Mason intersection, the Mason Road and Michigan Avenue intersection, the Peavy Road and Kedde Road intersection, and the D-19 and Interstate-96 intersection; and*

160) *WHEREAS, the applicant has provided information confirming that MDOT would not allow a direct connection to the limited access ramp, which limits commercial viability of the site; and*

165) *WHEREAS, the conditions offered voluntarily by the applicant address concerns raised by neighboring property owners and the Township;*

170) *NOW, THEREFORE, BE IT RESOLVED, the Marion Planning Commission, by a majority vote at a regularly-scheduled and duly-noticed meeting, held this 24th day of October 2023, adopts this finding of facts recommending APPROVAL of the Zoning Map Amendment petition RNZ 01-23 Mitch Harris Building Company, Section 2 of Marion Township, (10-02-400-014/016/017/018), to Mitch Harris Building Company, for a conditional zoning map amendment from Highway Service (HS) and Suburban Residential (SR) to Urban Residential (UR) for an area measuring roughly 74.4 acres; and*

180) *BE IT FURTHER RESOLVED, the Planning Commission directs the Zoning Administrator to forward this Resolution/Findings-of-Facts, a summary of comments received at the public hearing, and its FAVORABLE RECOMMENDATION to the Township Board within sixty (60) days; and*

190) *BE IT FURTHER RESOLVED, that the applicant shall provide a statement of conditions as described in §20.06 Conditional Rezoning of the Zoning Ordinance, to be reviewed by the Township Attorney and approved by the Township Board; and*

200) *BE IT FURTHER RESOLVED, that the use shall be established within thirty-six (36) months of the effective date of the Zoning Ordinance amendment, unless an extension is granted by the Township Board, as outlined in §20.06 Conditional Rezoning of the Zoning Ordinance;*

Jim Andersen motioned to adopt a resolution to recommend approval of SUP# 01-23 Mitch Harris rezoning parcel ID#'s 4710-02-400-014, 016, 017, 018, incorporating all the conditions previously discussed. Bruce Powelson seconded.

RESOLUTION PASSED 4-1

ROLL CALL VOTE: Anderson-YES, Grunn-NO, Hanvey-YES, Powelson- YES, Range-YES

TXT #01-23 CRYPTO ORDINANCE DATA PROCESSING INDUSTRIAL DISTRICT

Zach Michels gave his blessing to the Commissioners to send this language to the Livingston County Planning Commission for comment and review.

DRAFT

Dave Hamann asked the Commissioners which draft was to be sent to the County. The Commissioners agreed to send the draft language with the changes discussed at the 08/22/2023 Planning Commission meeting.

Cheryl Range made a motion to send the 08/22/2023 draft language for TXT #01-23 Crypto ordinance to the Livingston County Planning Commission for review and comment. Bruce Powelson seconded. **MOTION CARRIED**

WELLHEAD PROTECTION ORDINANCE AND MAP

Zach Michels agreed to have some draft language to Dave Hamann by November 12th.

Cheryl Range made a motion to set a public hearing for November 28, 2023 for the Wellhead Protection Ordinance. Jim Anderson seconded. **MOTION CARRIED**

SPECIAL ORDERS

CIVIL INFRACTION

John Gormley explained the best route for Marion Township would be to hire an enforcement office to help take care of some of the violations throughout the Township.

DEVELOPMENT STANDARDS

John Gormley explained that it is always safer to keep the development standards in your Zoning Ordinance, versus having them in a separate document.

Jim Anderson made a motion to extend the meeting past 9:30 pm. Cheryl Range seconded.

COMMUNITY SOLAR

Jim Anderson asked if the Township should have protection language for community solar? John Gormley said yes and the Commissioners should start working on this now.

NATURAL GAS STATIONS

Cheryl Range asked if we should create language for Natural Gas Stations. Zach Michels does not think it is necessary at this time.

GAMPS

Dave asked if we should change our current zoning language to align with the new GAMPS. Zach said that we should wait until after January 2024 to start working on that.

CALL FOR PUBLIC COMMENT

Les Andersen resides at 4500 Jewell Road. Les asked who actually serves the resident with the enforcement ticket. John Gormley stated that usually an enforcement officer and a Sheriff will personally serve the resident with the violation. Zach Michels stated that to cover all bases, he recommends sending the violation ticket by regular mail, certified mail, post/red-stake it at the road and also tape it to the resident's front door.

ADJOURNMENT

Jim Anderson made a motion to adjourn the Planning Commission meeting at 10:05pm. Bruce Powelson seconded. **MOTION CARRIED**

Zoning Text Amendment for Marion Township Planning Commission

INTRODUCTION

Petition Number	TXT 02-23
Applicant	Marion Township
Request	Zoning Text Amendment

PETITION SUMMARY

Marion Township, in coordination with several surrounding communities, has prepared a draft text amendment for wellhead protection. The draft text would replace the current §6.27 Wellhead Protection and Hazardous Substance Overlay Zone in its entirety.

The wellhead protection overlay would establish areas around public wells within which certain uses that are more likely to impact those wells would be prohibited or allowed with more rigorous review and stricter conditions.

The draft text before the Planning Commission has been revised to make it more consistent with the Zoning Ordinance. The redline draft shows changes from the previous draft; the clean draft shows revised text with changes made.

BRIEF SUMMARY OF REVISIONS

The majority of revisions to the draft text focus on making it more consistent with the structure of and terms used in the Zoning Ordinance.

Numbering and title conventions have been revised to reflect the proposed location as §6.27.

Definitions have been relocated to §3.02 Definitions with the rest of the definitions used in the Zoning Ordinance.

Creation of Overlay District Boundaries has been deleted. §7.01 Establishment of Districts already establishes a Wellhead Protection Area and §7.02 Zoning District Map establishes district boundaries.

Site Plan Review Required has been revised to reflect the limitations of including standards within a zoning ordinance. General law ordinances may require nonconforming situations to be remediated or extinguished after a reasonable period. Zoning ordinances must allow legal nonconformities to continue to exist.

Materials to be Submitted for Site Plan Review has been revised to be consistent with the site plan review article and to delete information that is already required for site plan review.

Uses Permitted by Right and Uses Permitted by Special Use Permit have been revised to be consistent with uses as they are already described in the Zoning Ordinance and for consistent structure.

Basis for Determination has been revised for consistency with other decision sections in the Zoning Ordinance.

Performance Standards has been revised to be more consistent with current practices.

AREAS FOR DISCUSSION AND GUIDANCE

The process of incorporating this text into the Zoning Ordinance raises several important considerations and areas where guidance is needed for future revisions. The items below have been highlighted for discussion by the Planning Commission.

Location of Wellhead Overlay Language

The current wellhead standards are in §6.27, grouped with many other general provisions. The new language could remain in this location, or it could be located within a more prominent location, such as the currently unused Article XII, which would be consistent with Article XIII Planned Unit Development Overlay District.

Intent and Purpose

The current section includes additional reasons for establishing wellhead protection. It would be preferable to incorporate some of these back into the draft language to provide clearer guidance and better establish the compelling governmental purpose for these standards.

Description of Uses

The current structure could create conflicts with the underlying zoning districts in a manner that does not further the general purpose of protecting public wells.

For example, there are many 'residential uses,' such as family day care homes, that are not explicitly listed as a permitted use. A preferred approach might be to focus on listing prohibited uses and uses that are permitted by right with special use permit approval within the overlay district.

Enforcement and Administration

There are many sections (*enforcement, variance/appeal rights, abatement/remedial activities by the Township, injunctive relief, violations deemed a public nuisance, criminal prosecution, remedies not exclusive*) that are already addressed elsewhere in the Zoning Ordinance.

If there is a desire to deviate from those provisions that generally apply to the Zoning Ordinance for areas for the wellhead protection areas, they should be included here. If there is a desire to default to how these items are otherwise addressed in the Zoning Ordinance, they should be removed from this language.

PETITION TIMELINE

The proposed zoning text amendment has been reviewed by the Planning Commission at its August 22, 2023, and September 26, 2023, meetings.

The public hearing before the Planning Commission is scheduled for its November 27, 2023, meeting.

TXT 02-23 Wellhead Protection Overlay District
Zoning Text Amendment Review
November 20, 2023

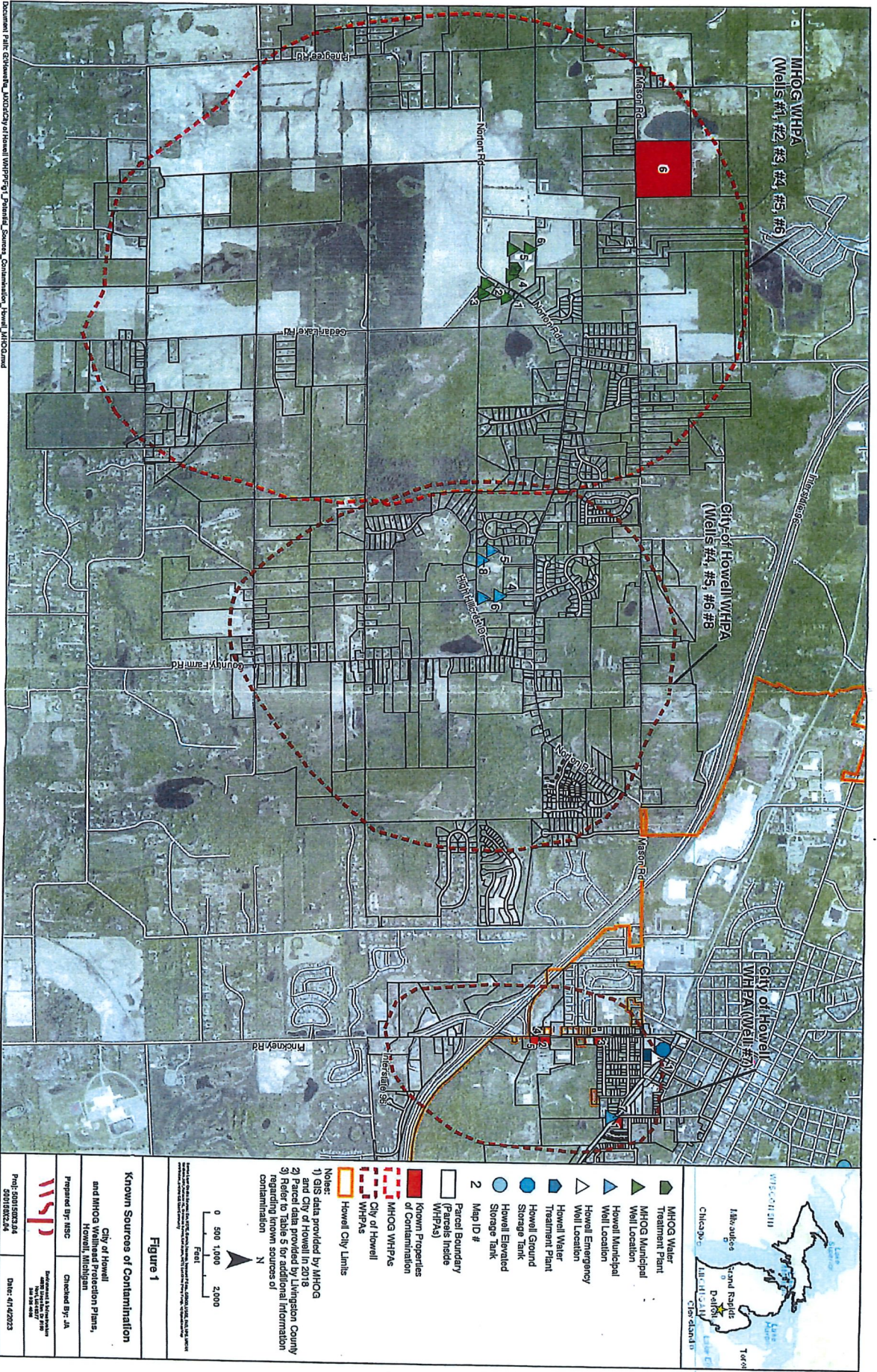
Following Planning Commission consideration, the proposed zoning text amendment is forwarded to the Livingston County Planning Commission for review and comment and to the Township Board for action.

Because of the scope of potential changes, it may be necessary for the Planning Commission to conduct an additional review before taking action.

-Zach Michels

Quality Zoning

Dexter, MI



Document Path: C:\Users\Public\Documents\Accuracy of Howell WaterSupply_Parcels_Sources_Contribution_Howell_MHOG.mxd

Legend

- MHOG Water Treatment Plant
- MHOG Municipal Well Location
- Howell Municipal Well Location
- Howell Emergency Well Location
- Howell Water Treatment Plant
- Howell Ground Storage Tank
- Howell Elevated Storage Tank

2

- Parcel Boundary (WHPAs)
- Known Properties of Contamination (MHOG WHPAs)
- City of Howell WHPAs
- Howell City Limits

Notes:

- 1) GIS data provided by MHOG and City of Howell in 2018
- 2) Parcel data provided by Livingston County
- 3) Refer to Table 5 for additional information regarding known sources of contamination

N

0 500 1,000 2,000 Feet

Figure 1

Known Sources of Contamination

City of Howell and MHOG Wastewater Treatment Plants, Howell, Michigan

Prepared by: HSC Checked by: JA

MSP Date: 4/14/2023

Project: 2023020204 Date: 4/14/2023

WELLHEAD PROTECTION OVERLAY DISTRICT

Marion Township Zoning Ordinance Livingston County, Michigan

Draft 11-11-2023

[ADD THE FOLLOWING DEFINITIONS TO §3.02 DEFINITIONS]

Section 3.02 Definitions

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

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

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

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

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

[REPLACE THE CURRENT §6.27 WELLHEAD PROTECTION AND HAZARDOUS SUBSTANCE OVERLAY ZONE WITH THE FOLLOWING:]

Section 6.27

WELLHEAD PROTECTION OVERLAY DISTRICT

A. Intent and Purpose

The purpose of the Wellhead Protection Overlay District is to provide supplemental developmental regulations in the designated wellhead protection zone so as to protect and preserve the surface and

groundwater resources of the Township and the region from any use of land or buildings that may reduce the quality or quantity of water resources. This Wellhead Protection Overlay District has been created in coordination with the Marion, Howell, Oceola, and Genoa Sewer and Water Authority's (MHOG) **Wellhead Protection Plans** drafted by Wood Environment and Infrastructure Solutions. This Wellhead Protection Overlay District was also created in conjunction with the City of Howell and Howell Township.

B. Scope of Regulation

The Wellhead Protection Overlay District is an overlay zoning district that imposes a set of requirements in addition to those of the underlying zoning district. In an area where an overlay district is established, the property is located simultaneously in the two (2) districts, and the property may be developed only under the applicable conditions and requirements of both districts. In the event there is a conflict between the requirements of the two (2) districts, the requirements of the Wellhead Protection Overlay District shall prevail.

C. District Delineation

1. The Wellhead Protection Overlay District includes all lands within the Marion, Howell, Oceola, and Genoa Sewer and Water Authority's Wellhead Protection Areas, including recharge areas of groundwater aquifers and watershed areas that lie within the wellhead protection area that now or may in the future provide public water supply. If the wellhead protection area includes a portion of the lot, the entire lot shall be considered to be within the Wellhead Protection Overlay District.
2. Where the boundaries delineated are in doubt or in dispute, the burden of proof shall be upon the owner of the land in question to show whether the property should be located in the District. At the request of the owner, the Township may engage the services of a qualified professional to determine more accurately the location and extent of an aquifer within the wellhead protection area. The Township shall charge the owner for all or a part of the investigation.

D. Site Plan Review Required

All proposed new or expanded structures or uses within in the Wellhead Protection Overlay District, except single family uses, shall be subject to site plan review, pursuant to Article XVIII Site Plan Requirements.

E. Materials to be Submitted for Site Plan Review

In addition to the data requirements of Article XVIII Site Plan Requirements, each application for site plan review within the Wellhead Protection Overlay District shall be accompanied by, at a minimum, the following:

1. **List of Regulated Substances.** A complete list of chemicals, pesticides, fuels, and other Regulated Substances to be used or stored on the premises. Businesses that use or store such Regulated Substances shall file a management plan with the Fire Chief. The management plan shall include the following, at minimum:
 - a. Provisions to protect against the discharge of Regulated Substances or wastes to the environment due to spillage, accidental damage, corrosion, leakage or vandalism, including spill containment and clean-up procedures;
 - b. Provisions for indoor, secured storage of Regulated Substances and wastes with impervious floor surfaces;
 - c. Evidence of compliance with the rules and regulations of the Michigan Department of Environmental Quality;
 - d. Drainage recharge features and provisions to prevent loss of recharge; and
 - e. Provisions to control soil erosion and sedimentation, soil compaction, and to prevent seepage from sewer pipes.
2. **Service Facilities and Structures.** Location of existing and proposed service facilities and structures, above and below ground, including:
 - a. General location of the site within the Wellhead Protection Overlay District;
 - b. Areas to be used for the storage, loading/unloading, recycling, or disposal of Regulated Substances, including interior and exterior areas;
 - c. Underground storage tank locations; and
 - d. Location of exterior drains, dry wells, catch basins, retention/detention areas, sumps, and other facilities designed to collect, store, or transport storm water or wastewater. The point of discharge for all drains and pipes shall be specified on the site plan.
3. **Water Resources.** Location of existing wetlands and watercourses, including ponds and streams, on or within a quarter mile of the site.
4. **Existing Contamination.** Delineation of areas on the site that are known or suspected to be contaminated, together with a report on the status of site clean-up.
5. **MDEQ Checklist.** Completion of a Michigan Department of Environmental Quality checklist, indicating the types of environmental permits and approvals that may be needed for the project.
6. **Additional Information.** Any additional information determined necessary by the Zoning Administrator, Planning Commission, or Township Board to determine compliance with this Ordinance.

F. Uses Permitted By Right:

A. Single-family dwellings.

[Family child care homes. Adult foster care family homes...]

B. Residential accessory uses, including garages, driveways, private roads, utility rights-of-way, and on-site wastewater disposal systems (i.e., septic systems).

C. Agricultural uses such as farming, grazing, and horticulture.

D. Forestry and nursery uses.

[Nursery operation of retail sales of nursery stock grown on the site.]

E. Outdoor recreation uses, including fishing, boating, and play areas.

F. Conservation of water, plants, and wildlife, including wildlife management areas.

G. Uses Permitted by Special Use Permit

1. Commercial, industrial, governmental, or education uses that are allowed in the underlying district and are not prohibited in Section 6.27 I Prohibited Uses.
2. Any enlargement, intensification, alteration, or change of use of an existing commercial, industrial, governmental, or education use.
3. The rendering impervious of more than fifteen (15) percent or 2,500 square feet of any lot, whichever is less, provided that a system for artificial recharge of precipitation to groundwater is developed, which shall not result in degradation of the groundwater.
4. The mining or excavation for removal of earth, loam, sand, gravel, or other soils or mineral resources, provided that such excavation shall not extend closer than five (5) feet above the historical high groundwater table, as determined from on-site monitoring wells and historical water fluctuation data compiled by the United States Geological Survey. One (1) or more monitoring wells shall be installed by the property owner to verify groundwater elevations. This sub-section shall not apply to excavations incidental to permitted uses, including but not limited to installation or maintenance of structural foundations, freshwater ponds, utility conduits or on-site sewage disposal.
 - a. Upon completion of earth removal operations, all altered areas shall be restored with topsoil and vegetative plantings suitable to control erosion on the site.
 - b. All fine materials, such as clays and silts, removed as part of the earth removal operation and leftover as by-products, shall be disposed of off-site to prevent damage to aquifer recharge characteristics.
5. The storage of sodium chloride, calcium chloride, chemically treated abrasives, or other chemicals used for removal of ice and snow on roads, provided such chemicals are covered and

located on a paved surface with berms, or within a structure designed to prevent the generation and escape of contaminated run-off.

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

H. Basis for Determination.

Both the Planning Commission and the Board of Trustees shall employ and be guided by the standards that shall be consistent and promote the intent and purpose of this Ordinance and this Section, and ensure that the land use or activity authorized shall be compatible with the Wellhead Protection Overlay District and shall comply with the following additional standards. Approval shall only be made upon a finding that the petitioner's application includes sufficiently detailed, definite, and credible information to support findings.

1. In no way, during construction or thereafter, shall a project adversely affect the quality or quantity of water that is available in the Wellhead Protection Overlay District.
2. The project shall be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and water-related natural characteristics of the site.

I. Prohibited Uses

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

1. Business or industrial uses that generate, use, treat, process, store, or dispose of Regulated Substances, including, but not limited to, metal plating, chemical manufacturing, wood preserving, or dry cleaning factory, except for the following:
 - a. Generators of a very small quantity of Regulated Substances (less than 20 kilograms or six (6) gallons per month), subject to Special Use Permit review.
 - b. Municipally-operated or sanctioned household waste collection stations.
 - c. Waste oil retention facilities.
 - d. Treatment works designed for the treatment of contaminated ground or surface waters, provided the facilities have been approved by the Michigan Department of Environmental Quality.

2. Business or industrial uses that dispose of process wastewater on-site.
3. Solid waste landfills, dumps, landfilling, spreading or storage of sludge or septage, with the exception of disposal of brush or stumps.
4. Storage of liquid petroleum products of any kind, except for the following:
 1. Storage that is incidental to:
 - a. Normal household use and outdoor maintenance or the heating of a structure.
 - b. Use of emergency generators.
 - c. Treatment works designed for the treatment of contaminated ground or surface waters, provided the facilities has been approved by the Michigan Department of Environmental Quality.
 2. Replacement of storage tanks and systems for the keeping, dispensing or storing of gasoline, which existed at the time of adoption of this Section, provided that:
 - a. All such replacement storage tanks or systems shall be located underground as required by the Michigan Department of Environmental Quality.
 - b. All such storage systems shall be protected by a secondary containment system as specified by the Michigan Department of Environmental Quality.
 - c. The Fire Chief may deny an application for tank replacement, or approve it subject to conditions upon determination that it would constitute a danger to public or private water supplies.
5. Outdoor storage of salt, de-icing materials, pesticides, or herbicides.
6. Dumping or disposal on the ground, in water bodies, or in residential septic systems of any toxic chemical, including, but not limited, to septic systems cleaners that contain toxic chemicals, such as methylene chloride and 1-1-1 trichlorethane, or other household Regulated Substances.
7. Stockpiling or disposal of snow or ice removed from highways and streets located outside of the Wellhead Protection Overlay District that contains sodium chloride, calcium chloride, chemically treated abrasives, or other chemicals used for snow or ice removal.
8. Sewage disposal systems that are designed to receive more than one hundred ten (110) gallons of sewage per quarter acre per day or four hundred forty (440) gallons of sewage per acre per day, whichever is greater, provided that:
 1. The replacement or repair of an existing system shall be exempted if it does not result in an increase in design capacity above the original design.
 2. In calculating the maximum sewage disposal system density, it shall be assumed that each single-family-residential home will generate two hundred eighty (280) gallons of sewage per day.

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

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

J. Performance Standards

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

1. **Drainage.** For commercial and industrial uses, run-off from impervious surfaces shall not be discharged directly to drains, streams, ponds, or other surface water bodies. Oil, grease, and sediment traps shall be used to facilitate removal of contamination. Forebays/sediment basins and other requirements shall be adhered to per the Township Engineering Design Standards.
2. **Discharge of Regulated Substances.** The property owner shall prevent the discharge of regulated substances.
 - a. Upon discovery of a discharge within the Wellhead Protection Area, the owner of the property on which a discharge occurred, as well as the person responsible for the discharge, if they are not the same, shall take appropriate reasonable actions to mitigate the potential impact of the discharge on the groundwater and remediate the discharge. Remediation shall be conducted in a timely manner and in accordance with applicable law. Wastes generated during remediation of a Regulated Substance discharge must be handled in accordance with all applicable legal requirements. Storage of these materials for a period of greater than ninety (90) days must be reported to, and approved obtained from, the Zoning Administrator.
 - b. All discharges shall be documented in writing and mailed to the Zoning Administrator within ten (10) business days of said incident. Initial discharge notification shall include, at a minimum, the following:
 - i. Location of the discharge (name, address, and phone);
 - ii. Reporting party's name, address, and phone (if different from above);
 - iii. Emergency contact and phone;
 - iv. Description of the nature of the incident, including date, time, location, and cause of the incident; type, concentration, and volume of substance(s) discharged;
 - v. Map showing exact discharge location, and relevant site features (i.e. paved area, storm sewer catch basins/inlets, water features, etc.), scale, and north arrow;

- vi. All measures taken to clean up the discharge; and
 - vii. All measures proposed to be taken to reduce and prevent any future discharge.
- c. The Zoning Administrator shall determine if and where any additional investigative work needs to be completed to assess the potential impact of the discharge. The owner or operator shall retain a copy of the written notice for at least three years.

K. Section 13 – ENFORCEMENT

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

L. Section 14 – VARIANCE/APPEAL RIGHTS

1. If an owner of property within a Wellhead Protection Area believes the requirements of this ordinance impose an unreasonable burden on the use of the owner's property, the owner may seek a variance from the Marion Township Zoning Board of Appeals ("ZBA") in any appeal to the ZBA, the Township Consulting Engineer shall assist the ZBA for purposes of a variance request or of appeal rights. Such a request must be in writing with enough detail to allow the Township Consulting Engineer shall assist the ZBA for purposes of a variance request or of appeal rights, to understand the situation and proposed variance. If the Township Consulting Engineer determines that additional information is needed, the request for additional information shall be made within 15 days of the owner's request. Within 30 days of the receipt of such additional information, or, if no such request is made, within 30 days of the owner's request a hearing in front of the ZBA. The ZBA shall grant, deny, or partially grant the request. A grant, partial or complete, may relieve the property owner from strict compliance of this Ordinance. Reasonable conditions may be imposed by the ZBA as part of such a grant. The ZBA shall be guided by the primary goal of protecting the Township's Wellhead Protection Area without creating undue hardship upon the property owners affected.
2. Any person receiving a notice of violation may appeal the determination by submitting a written notice of appeal to the Marion Township Zoning Board of Appeals. The notice of appeal must be received by the Zoning Board of Appeals within 30 days from the date of the notice of violation, with enough detail to allow the Township's Consulting Engineer, as a staff representative to the ZBA to understand the situation. Within 30 days of the receipt of such an appeal, the Township Consulting Engineer shall issue a written response to the appeal to the applicant and to the ZBA unless the Township Consulting Engineer has requested additional information, in which case the Township Consulting Engineer's response shall be issued within 30 days of receipt of the information. The Zoning Board of Appeals shall affirm, reverse or modify the notice of violation being appealed.
3. If the person who has made a variance request or an appeal of a notice of violation does not agree with the decision of the ZBA, said person may appeal the matter by filing an action in the Livingston County Circuit Court, which may affirm, reverse or modify the decision being

appealed. Such an appeal must be filed within 30 days of the decision of the ZBA or within the time period required by Michigan General Court Rules, whichever has the shortest appeal period.

M. Section 15 – ABATEMENT/REMEDIAL ACTIVITIES BY THE TOWNSHIP

1. The Township is authorized to take or contract with others to take reasonable and necessary abatement or remedial activities whenever the Township determines a violation of this Ordinance has occurred and that the responsible party cannot or will not timely correct the violation, or when no known responsible party exists. The responsible party shall reimburse the Township for all expenses thus incurred by the Township.

2. If the Township desires the responsible party to reimburse it for the abatement activity expenses, the Township, shall within 90 days of the completion of such activities mail to that person a notice of claim outlining the expenses incurred, including reasonable administrative costs, and the amounts thereof. The person billed shall pay said sum in full within 30 days of receipt of the claim. If the person billed desires to object to all or some of the amount sought by the Township, said person may file, within the same 30-day period, a written objection so stating. The Township shall, within 30 days of its receipt of the objection, provide an opportunity for the objecting party to present facts or arguments supporting said objection. If the Township determines that some or the entire amount originally billed is appropriate, the person shall pay said sum within 30 days of receipt of that determination. If the amount due is not timely paid, the Township may cause the charges to become a special assessment against the property and shall constitute a lien on the property. In the alternative, the Township may attempt collection of the sum due by filing a civil lawsuit.

N. Section 16 – INJUNCTIVE RELIEF

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

O. Section 17 – VIOLATIONS DEEMED A PUBLIC NUISANCE

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

P. Section 18 – CRIMINAL PROSECUTION

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

Q. Section 19 – REMEDIES NOT EXCLUSIVE

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

WELLHEAD PROTECTION OVERLAY DISTRICT

Marion Township Zoning Ordinance Livingston County, Michigan

Draft 11-11-2023

[ADD THE FOLLOWING DEFINITIONS TO §3.02 DEFINITIONS]

Section 3.02 Definitions

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

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

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

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

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

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

[REPLACE THE CURRENT §6.27 WELLHEAD PROTECTION AND HAZARDOUS SUBSTANCE OVERLAY ZONE WITH THE FOLLOWING:]

ARTICLE XXXXSection 6.27

WELLHEAD PROTECTION OVERLAY DISTRICT

Section 1—STATEMENT OF PURPOSE

A. Intent and Purpose

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

Section 2 — DEFINITIONS

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

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

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

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

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

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

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

Section 3 — SCOPE OF AUTHORITY

B. Scope of Regulation

The Wellhead Protection Overlay District is an ~~mapped overlay~~ zoning district that imposes a set of requirements in addition to those of the underlying zoning district. In an area where an overlay district is established, the property is ~~placed located~~ simultaneously in the two (2) districts, and the property may be developed only under the applicable conditions and requirements of both districts. In the event there is a conflict between the requirements of the two (2) districts, the requirements of the Wellhead Protection Overlay District shall prevail.

Section 4—CREATION OF OVERLAY DISTRICT BOUNDARIES

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

Section 5—DISTRICT DELINEATION

C. District Delineation

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

Section 6—SITE PLAN REVIEW REQUIREMENTS

D. Site Plan Review Required

~~**New or Expanded Uses and Structures.**~~ All proposed new or expanded structures or uses within in the Wellhead Protection Overlay District, except single family uses, shall be subject to site plan review, pursuant to Article ~~WWWXVIII~~ Site Plan Requirements.

~~**A. Existing Uses and Structures.**~~ All land uses and activities existing prior to approval the Wellhead Protection Overlay District must conform to the site plan review standards in this Article within 365 days after adoption of the Wellhead Protection Overlay Ordinance.

Section 7—DATA REQUIREMENTS

E. Materials to be Submitted for Site Plan Review

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

In addition to the data requirements of Article XVIII Site Plan Requirements, each application for site plan review within the Wellhead Protection Overlay District shall be accompanied by, at a minimum, the following:

1. **List of Regulated Substances.** A complete list of chemicals, pesticides, fuels, and other Regulated Substances to be used or stored on the premises. Businesses that use or store such Regulated Substances shall file a management plan with the Fire Chief. The management plan shall include the following, at minimum:
 - a. Provisions to protect against the discharge of Regulated Substances or wastes to the environment due to spillage, accidental damage, corrosion, leakage or vandalism, including spill containment and clean-up procedures;
 - b. Provisions for indoor, secured storage of Regulated Substances and wastes with impervious floor surfaces;
 - c. Evidence of compliance with the rules and regulations of the Michigan Department of Environmental Quality;
 - d. Drainage recharge features and provisions to prevent loss of recharge; and
 - e. Provisions to control soil erosion and sedimentation, soil compaction, and to prevent seepage from sewer pipes.
2. **Service Facilities and Structures.** Location of existing and proposed service facilities and structures, above and below ground, including:
 - a. General location of the site within the Wellhead Protection Overlay District;
 - b. Areas to be used for the storage, loading/unloading, recycling, or disposal of Regulated Substances, including interior and exterior areas;
 - c. Underground storage tank locations; and
 - d. Location of exterior drains, dry wells, catch basins, retention/detention areas, sumps, and other facilities designed to collect, store, or transport storm water or wastewater. The point of discharge for all drains and pipes shall be specified on the site plan.
3. **Water Resources.** Location of existing wetlands and watercourses, including ponds and streams, on or within a quarter mile of the site.
- ~~4. **Soils.** Soil characteristics of the site, at least to the detail provided by the Natural Resources Conservation Service.~~
- ~~5. **Topography.** Existing topography of the site, with a maximum contour interval of two (2) feet.~~
- 6.4. **Existing Contamination.** Delineation of areas on the site that are known or suspected to be contaminated, together with a report on the status of site clean-up.

5. MDEQ Checklist. Completion of a Michigan Department of Environmental Quality (~~MDEQ~~) checklist, indicating the types of environmental permits and approvals that may be needed for the project.

~~7.6. Additional Information. Any additional information determined necessary by the Zoning Administrator, Planning Commission, or Township Board to determine compliance with this Ordinance.~~

Section 8 — PERMITTED PRINCIPAL USES

F. Uses Permitted By Right:

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

A. Single-family ~~residential uses/dwellings.~~

~~[Family child care homes. Adult foster care family homes...]~~

B. Residential accessory uses, including garages, driveways, private roads, utility rights-of-way, and on-site wastewater disposal systems (i.e., septic systems).

C. Agricultural uses such as farming, grazing, and horticulture.

D. Forestry and nursery uses.

~~[Nursery operation of retail sales of nursery stock grown on the site.]~~

E. Outdoor recreation uses, including fishing, boating, and play areas.

F. Conservation of water, plants, and wildlife, including wildlife management areas.

Section 9 — CONDITIONAL USES

B.G. Uses Permitted by Special Use Permit

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

1. Commercial, industrial, governmental, or education uses ~~which that~~ are allowed in the underlying district, and ~~which~~ are not prohibited in Section ~~46.27 I Prohibited Uses.~~

2. Any enlargement, intensification, alteration, or change of use of an existing commercial, industrial, governmental, or education use.

3. The rendering impervious of more than fifteen (15) percent (15%) or 2,500 sq. ft. square feet of any ~~parcel/lot~~, whichever is less, provided that a system for artificial recharge of precipitation to groundwater is developed, which shall not result in degradation of the groundwater.

4. The mining or excavation for removal of earth, loam, sand, gravel ~~and or~~ other soils or mineral resources, provided that such excavation shall not extend closer than five (5) feet above the historical high groundwater table ~~(as determined from on-site monitoring wells and historical water fluctuation data compiled by the United States Geological Survey)~~. One (1) or more monitoring wells shall be installed by the property owner to verify groundwater elevations. This sub-section shall not apply to excavations incidental to permitted uses, including but not limited to installation or maintenance of structural foundations, freshwater ponds, utility conduits or on-site sewage disposal.
 - a. Upon completion of earth removal operations, all altered areas shall be restored with topsoil and vegetative plantings suitable to control erosion on the site.
 - b. All fine materials, such as clays and silts, removed as part of the earth removal operation and leftover as by-products, shall be disposed of off-site to prevent damage to aquifer recharge characteristics.
5. The storage of sodium chloride, calcium chloride, chemically treated abrasives, or other chemicals used for removal of ice and snow on roads, provided such chemicals are covered and located on a paved surface with berms, or within a structure designed to prevent the generation and escape of contaminated run-off.
6. Fertilizers, pesticides, herbicides, lawn care chemicals, or other leachable materials, provided that such materials are stored in accordance with the manufacturer's label instructions approved by the United States Environmental Protection Agency or the Michigan Department of Agriculture and that they are used in routine agricultural operations and applied under the "Generally Accepted Agricultural Management Practices" and all other necessary precautions are taken to minimize adverse impact on surface and groundwater.
7. The storage of commercial fertilizers ~~and or~~ soil conditioners, provided such storage shall be within structures designed to prevent the generation and escape of contaminated run-off or leachate.
8. All liquid Regulated Substances, provided such materials must be stored either in a freestanding container within a building, or in a freestanding container above ground level with protection to contain a spill the size of the container's total storage capacity.

~~Section 10~~ CONDITIONS

H. Basis for Determination.

Both the Planning Commission and the Board of Trustees shall employ and be guided by the standards that shall be consistent and promote the intent and purpose of this Ordinance and this Section, and ensure that the land use or activity authorized shall be compatible with the Wellhead Protection Overlay District and shall comply with the following additional standards. Approval shall only be made upon a finding that the petitioner's application includes sufficiently detailed, definite, and credible information to support findings.

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

~~A. The Township Board may grant Conditional Use approval only upon finding that the proposed use meets to the following standards:~~

1. In no way, during construction or thereafter, shall a project adversely affect the quality or quantity of water that is available in the Wellhead Protection Overlay District.
2. The project shall be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and water-related natural characteristics of the site ~~to be developed.~~

~~B. The Township Board shall not approve a Conditional Use under this section unless the petitioner's application materials include, in the Board's opinion, sufficiently detailed, definite and credible information to support positive findings in relation to the standards of this section.~~

Section 11 — PROHIBITED USES

C.1. Prohibited Uses

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

1. Business ~~and or~~ industrial uses that generate, use, treat, process, store, or dispose of Regulated Substances, including, but not limited to, metal plating, chemical manufacturing, wood preserving, ~~and or~~ dry cleaning factory, except for the following:
 - a. Generators of a very small quantity of Regulated Substances (less than 20 kilograms or six (6) gallons per month), subject to Special ~~Land-Use~~ Permit review.
 - b. Municipally-operated or sanctioned household waste collection stations.
 - c. Waste oil retention facilities.
 - d. Treatment works designed for the treatment of contaminated ground or surface waters, provided the facilities have been approved by the Michigan Department of Environmental Quality.
2. Business ~~and or~~ industrial uses that dispose of process wastewater on-site.
3. Solid waste landfills, dumps, landfilling, spreading or storage of sludge or septage, with the exception of disposal of brush or stumps.
4. Storage of liquid petroleum products of any kind, except for the following:
 1. Storage that is incidental to:
 - a. Normal household use and outdoor maintenance or the heating of a structure.
 - b. Use of emergency generators.
 - c. Treatment works designed for the treatment of contaminated ground or surface waters, provided the facilities has been approved by the Michigan Department of Environmental Quality.
 2. Replacement of storage tanks and systems for the keeping, dispensing or storing of gasoline, which existed at the time of adoption of this ~~Article~~Section, provided that:

- a. All such replacement storage tanks or systems shall be located underground as required by the Michigan Department of Environmental Quality.
 - b. All such storage systems shall be protected by a secondary containment system as specified by the Michigan Department of Environmental Quality.
 - c. The Fire Chief may deny an application for tank replacement, or approve it subject to conditions ~~if he/she determines~~upon determination that it would constitute a danger to public or private water supplies.
5. Outdoor storage of salt, de-icing materials, pesticides, or herbicides.
 6. Dumping or disposal on the ground, in water bodies, or in residential septic systems of any toxic chemical, including, but not limited, to septic systems cleaners ~~which that~~ contain toxic chemicals, such as methylene chloride and 1-1-1 trichlorethane, or other household Regulated Substances.
 7. Stockpiling ~~or~~ disposal of snow or ice removed from highways and streets located outside of the Wellhead Protection Overlay District that contains sodium chloride, calcium chloride, chemically treated abrasives, or other chemicals used for snow ~~and or~~ ice removal.
 8. Sewage disposal systems that are designed to receive more than one hundred ten (110) gallons of sewage per quarter acre per day or four hundred forty (440) gallons of sewage per acre per day, whichever is greater, provided that:
 1. The replacement or repair of an existing system shall be exempted if it does not result in an increase in design capacity above the original design.
 2. In calculating the maximum sewage disposal system density, it shall be assumed that each single-family-residential home will generate two hundred eighty (280) gallons of sewage per day.
 3. The maximum sewage disposal system density may computed using the following method:
 - a. On an individual per lot basis (i.e., a single-family home typically generates 280 gallons of sewage per day, creating the need for a minimum lot area of $\frac{3}{4}$ acre.
- ~~In addition to meeting the above standards, all lots shall conform to any applicable minimum lot size requirements specified in Article VVVV of the Zoning Ordinance.~~
9. Wastewater treatment works, except the following:
 1. The replacement or repair of an existing system that will not result in a design capacity greater than the design capacity of the existing system.
 2. The replacement of an existing subsurface sewage disposal system with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system.
 3. Treatment works designed for the treatment of contaminated ~~ground or~~ surface waters or groundwaters.

Section 12 – MISCELLANEOUS REQUIREMENTS

J. Performance Standards

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

1. **Drainage.** For commercial and industrial uses, run-off from impervious surfaces shall not be discharged directly to drains, streams, ponds, or other surface water bodies. Oil, grease, and sediment traps shall be used to facilitate removal of contamination. Forebays/sediment basins and other requirements shall be adhered to per the Township Engineering Design Standards.
2. **Discharge of Regulated Substances.** The property owner shall prevent the discharge of regulated substances.
 - a. Upon discovery of a discharge within the Wellhead Protection Area, the owner of the property on which a discharge occurred, as well as the person responsible for the discharge, if they are not the same, shall take appropriate reasonable actions to mitigate the potential impact of the discharge on the groundwater and remediate the discharge. Remediation shall be conducted in a timely manner and in accordance with applicable law. Wastes generated during remediation of a Regulated Substance discharge must be handled in accordance with all applicable legal requirements. Storage of these materials for a period of greater than ninety (90) days must be reported to, and approved obtained from, the ~~Township Supervisor or his/her designee~~ Zoning Administrator.
 - b. All discharges shall be documented in writing and mailed to the ~~Township Supervisor or his/her designee~~ Zoning Administrator within ten (10) business days of said incident. Initial discharge notification shall include, at a minimum, the following:
 - i. Location of the discharge (name, address, and phone);
 - ii. Reporting party's name, address, and phone (if different from above);
 - iii. Emergency contact and phone;
 - iv. Description of the nature of the incident, including date, time, location, and cause of the incident; type, concentration, and volume of substance(s) discharged;
 - v. Map showing exact discharge location, and relevant site features (i.e. paved area, storm sewer catch basins/inlets, water features, etc.), scale, and north arrow;
 - vi. All measures taken to clean up the discharge; and
 - vii. All measures proposed to be taken to reduce and prevent any future discharge.
 - c. The ~~Township Supervisor or his/her designee~~ Zoning Administrator shall determine if and where any additional investigative work needs to be completed to assess the potential impact of the discharge. The owner or operator shall retain a copy of the written notice for at least three years.

K. Section 13 – ENFORCEMENT

1. Whenever the Township Supervisor or his/her designee determines that a person has violated a provision of this Ordinance, the Township Supervisor or his/her designee may order compliance by issuing a written Notice of Violation to the responsible person/facility.

2. If the Township Supervisor or his/her designee requires abatement of a violation and/or restoration of affected property, the notice shall set forth a deadline by which such action must be completed. Said notice may further advise that, should the violator fail to remediate or restore within the established deadline, the work could be performed by the Township, with the resulting expense thereof charged to the violator and the expenses may be assessed onto the property if the property owner is also the violator.

L. Section 14 – VARIANCE/APPEAL RIGHTS

1. If an owner of property within a Wellhead Protection Area believes the requirements of this ordinance impose an unreasonable burden on the use of the owner's property, the owner may seek a variance from the Marion Township Zoning Board of Appeals ("ZBA") in any appeal to the ZBA, the Township Consulting Engineer shall assist the ZBA for purposes of a variance request or of appeal rights. Such a request must be in writing with enough detail to allow the Township Consulting Engineer shall assist the ZBA for purposes of a variance request or of appeal rights, to understand the situation and proposed variance. If the Township Consulting Engineer determines that additional information is needed, the request for additional information shall be made within 15 days of the owner's request. Within 30 days of the receipt of such additional information, or, if no such request is made, within 30 days of the owner's request a hearing in front of the ZBA. The ZBA shall grant, deny, or partially grant the request. A grant, partial or complete, may relieve the property owner from strict compliance of this Ordinance. Reasonable conditions may be imposed by the ZBA as part of such a grant. The ZBA shall be guided by the primary goal of protecting the Township's Wellhead Protection Area without creating undue hardship upon the property owners affected.

2. Any person receiving a notice of violation may appeal the determination by submitting a written notice of appeal to the Marion Township Zoning Board of Appeals. The notice of appeal must be received by the Zoning Board of Appeals within 30 days from the date of the notice of violation, with enough detail to allow the Township's Consulting Engineer, as a staff representative to the ZBA to understand the situation. Within 30 days of the receipt of such an appeal, the Township Consulting Engineer shall issue a written response to the appeal to the applicant and to the ZBA unless the Township Consulting Engineer has requested additional information, in which case the Township Consulting Engineer's response shall be issued within 30 days of receipt of the information. The Zoning Board of Appeals shall affirm, reverse or modify the notice of violation being appealed.

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

D.M. Section 15 – ABATEMENT/REMEDIAL ACTIVITIES BY THE TOWNSHIP

1. The Township is authorized to take or contract with others to take reasonable and necessary abatement or remedial activities whenever the Township determines a violation of this Ordinance has occurred and that the responsible party cannot or will not timely correct the violation, or when no known responsible party exists. The responsible party shall reimburse the Township for all expenses thus incurred by the Township.
2. If the Township desires the responsible party to reimburse it for the abatement activity expenses, the Township, shall within 90 days of the completion of such activities mail to that person a

notice of claim outlining the expenses incurred, including reasonable administrative costs, and the amounts thereof. The person billed shall pay said sum in full within 30 days of receipt of the claim. If the person billed desires to object to all or some of the amount sought by the Township, said person may file, within the same 30-day period, a written objection so stating. The Township shall, within 30 days of its receipt of the objection, provide an opportunity for the objecting party to present facts or arguments supporting said objection. If the Township determines that some or the entire amount originally billed is appropriate, the person shall pay said sum within 30 days of receipt of that determination. If the amount due is not timely paid, the Township may cause the charges to become a special assessment against the property and shall constitute a lien on the property. In the alternative, the Township may attempt collection of the sum due by filing a civil lawsuit.

E.N. Section 16 – INJUNCTIVE RELIEF

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

F.O. Section 17 – VIOLATIONS DEEMED A PUBLIC NUISANCE

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

G.P. Section 18 – CRIMINAL PROSECUTION

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

H.O. Section 19 – REMEDIES NOT EXCLUSIVE

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



Livingston County Department of Planning

November 16, 2023

Marion Township Board of Trustees
c/o Tammy Beal, Township Clerk
Marion Township Hall - 2877 West Coon Lake Road
Howell, MI 48843

Scott Barb
AICP, PEM
Director

Re: **County Planning Commission Review of Marion Township Zoning Ordinance Text Amendment**

Case Z-37-23: Various Sections related to Data Processing Facilities

Robert A. Stanford
AICP
Principal Planner

Dear Board Members:

Martha Haglund
Principal Planner

The Livingston County Planning Commission met on Wednesday, November 15, 2023, and reviewed the Marion Township Zoning Ordinance Text Amendment request referenced above. The County Planning Commissioners made the following recommendation:

Z-37-23 – Approval.

The proposed amendments related to the regulation of data processing facilities in Marion Township appear to be suitable and reasonable. As regulating this land use activity is very much new territory for many communities, it remains to be seen if the provisions of this proposed ordinance will adequately and effectively govern the use to the complete satisfaction of the township and its residents in the future.

Copies of the staff reviews as well as draft Livingston County Planning Commission meeting minutes are enclosed. Please do not hesitate to contact our office should you have any questions regarding county actions.

Sincerely,

Robert Stanford

Robert Stanford, Principal Planner, AICP

Enclosures

c: Larry Grunn, Chair, Marion Township Planning Commission
Dave Hamann, Zoning Administrator, Marion Township

Additional minutes and agendas are available at: <https://www.livgov.com/plan/Pages/meetings.asp>

Department Information

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DRAFT
LIVINGSTON COUNTY
PLANNING COMMISSION
MEETING MINUTES

November 15, 2023

6:30 p.m.

Hybrid In-Person and Virtual Zoom Meeting

Zoom Virtual Meeting Room Meeting ID: 399-700-0062 / Password: LCBOC
<https://zoom.us/j/3997000062?pwd=SUdLYVFFcmozWnFxbm0vcHRjWkVIZz09>

PLANNING COMMISSION	
COMMISSIONERS PRESENT:	<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> Bill Anderson Dennis Bowdoin Margaret Burkholder </div> <div style="width: 35%;"> Paul Funk Bill Call </div> </div>
COMMISSIONERS ABSENT:	Matt Ikle Jason Schrock
STAFF PRESENT:	Scott Barb Rob Stanford Martha Haglund
OTHERS PRESENT:	Bruce Powellson (Marion Twp), Tim Boal (Howell Twp), David LeClair, Austin LeClair, Tanya LeClair, Sarah P. (Online)

1. **CALL TO ORDER:** Meeting was called to order by Planning Commissioner Anderson at 6:30 PM.
2. **PLEDGE OF ALLEGIANCE TO THE FLAG**
3. **ROLL AND INTRODUCTION OF GUESTS:** None.
4. **APPROVAL OF AGENDA**

Commissioner Action: IT WAS MOVED BY COMMISSIONER BOWDOIN TO APPROVE THE AGENDA, DATED NOVEMBER 15, 2023, SECONDED BY COMMISSIONER CALL.

All in favor, motion passed 5-0.

5. **APPROVAL OF PLANNING COMMISSION MEETING MINUTES**

Commissioner Action: IT WAS MOVED BY COMMISSIONER FUNK TO APPROVE THE MINUTES, DATED OCTOBER 18, 2023, SECONDED BY COMMISSIONER BURKHOLDER.

All in favor, motion passed 5-0

6. CALL TO THE PUBLIC: None.

7. ZONING REVIEWS:

A. Z-34-23 GENOA CHARTER TOWNSHIP: REZONING
NSC NEIGHBORHOOD SERVICE COMMERCIAL TO GC GENERAL COMMERCIAL
DISTRICT
IN SECTION 7.

Current Zoning: NSC Neighborhood Service Commercial
Proposed Zoning: GC General Commercial District
Section: 7

Township Master Plan: The Township Master Plan Designates the parcel as a future Mixed Use Grand River.

Mixed Use-East/West Grand River: Two mixed-use districts are recommended that covers most the Grand River Avenue to allow flexibility of land uses. In these areas, commercial and residential uses, provided with a horizontal or vertical mixed use development pattern, will complement each other, creating "hubs" or "districts" of mutually supportive uses.

Township Planning Commission Recommendation: Approval. The proposed rezoning was approved at the October 10, 2023, public hearing. There were no major comments indicated in the draft meeting minutes of the October 10, 2023, public hearing on the proposed rezoning.

Staff Recommendation: Approval. The township master plan designates the subject property as a mixed-use area along Grand River, although this category is not yet defined in their zoning plan; the Township Master Plan has a general description of mix use along Grand River allowing flexibility of currently developed parcels to service local and regional residents. The rezoning would be consistent with the township master plan and is compatible with surrounding uses.

Commission Discussion: None.

Public Comment: None.

Commission Action:

Commissioner Action: IT WAS MOVED BY COMMISSIONER BOWDOIN TO RECOMMEND APPROVAL, SECONDED BY COMMISSIONER FUNK.

Motion passed: 5-0

B. Z-35-23 GREEN OAK CHARTER TOWNSHIP: CONDITIONAL REZONING
R2 SINGLE FAMILY RESIDENTIAL TO CONDITIONAL GB GENERAL BUSINESS
SECTION 19.

Current Zoning: R2 Single Family Residential
Proposed Zoning: Conditional GB General Business
Section: 19

Township Master Plan:

The Green Oak Future Land Use Map designates the subject parcel as Public/Institutional. The Township Master Plan states the following regarding Public/Institutional:

Public/Institutional Land areas and facilities such as public schools, libraries, and government buildings are considered public uses. Institutional includes such uses as churches, private schools, hospitals, private cemeteries, utility sites and the like.

The parcel was classified as PI (Public Institutional) when the farm operated as a collaborative for community supported agriculture. All other parcels in the Future Land Use Map designated Public Institutional are owned by schools, churches, or utilities. All the PI parcels are all currently zoned R2-Single Family Residential.

The Township Zoning Plan, in the Township Master Plan, designate the corresponding zoning of Public/Institution (PI) as the Public Land (PL) district. Some uses in PL include: public parks, public golf courses, recreation activities, private and public forest preserves.

Township Planning Commission Recommendation: Denial. At the Public Hearing, October 19, 2023, the Planning Commission voted to recommend Denial of the Conditional Rezone from R2 to GB.

There was a public hearing at the September 7, 2023, Green Oak Planning Commission meeting to conditionally rezone the parcel to allow wedding/event barns under the existing R2 Single Family District. Public comments included: those that were in favor of the project; preserved green space and preferring the project over a subdivision. Several letters of support were submitted. Concerns related to traffic, access drive on Spicer, and operational hours.

The first public hearing was to conditionally rezone under the R2 Single Family Residential for the facility. Township Planner noted that a conditional rezoning cannot introduce a use that is not permitted in the district. There needed to be a second public hearing to conditional rezone within General Business as this is the only district that allows Assembly Halls as a special use.

The Green Oak Planning Commission held a public hearing October 19, 2023, meeting. There were no public comments made. During deliberation the commissioners discussed: rezoning a portion of the parcel without doing a land split, the proposed access to Spicer Rd would go through what remained of the residential area, clarification that the conditional rezoning would only be for the proposed use in the conditional agreement not another use, even if property is sold in the future. Commissioners noted concerns with having commercial use within residential areas. rezoning a portion of the property and not the whole, other areas in the township may be appropriate for the use.

The Township Resolution for Recommended Denial can be found in **County Report, Z-35-23**.

Staff Recommendation: Approval: The Conditional Rezoning is consistent with the Township Master Plan. The Conditional Site Plan meets the standards for the future use of Public/Intuition or Public Land from the Zoning Plan. The Conditional Rezoning is compatible with the existing mixed land uses including church, museum, industrial, commercial to the south. The proposed preservation of open space makes it compatible with surrounding residential uses. Traffic would be comparable or less intense than its current zoning of R2.

The Township Planning Commission recommended denial (5-2) to Conditional Rezone from R2 to GB. The Township Board may ask for clarification as to which conditions the Township Planning Commission found to be inconsistent with the Master Plan, Zoning, or surrounding land uses. The Township Planning Commission Resolution submitted lists the findings of denial, but County Staff find most of the reasons presented would be reasons to support the Conditional Rezoning from R2 to GB and be consistent with the Township Master Plan. Staff would disagree with finding (g); the conditional rezoning would be inconsistent with the Master Plan.

Commission Discussion: David LeClair gave background on his current event barn in Brighton Township. He also stated he would be ok with splitting the land at the new proposed site in Green Oak and recording an easement to the south through the remaining residential area to allow for access to Spicer Rd. David LeClair presented a letter of support from Paul Burisk at 9806 Musch Rd. Principal Planner Haglund provided additional guidance to the applicant and the Township Planning Commission and Board's should the applicant decide to adjust the conditions going forward. Commissioner Bowdoin inquired about the whole parcel zoning. Principal Planner Stanford spoke about the integrity of the Brighton project that Mr. LeClair also owns and operates. Commissioner Funk asked if the facility would be made available during the week for other events aside from weddings. Mr. LeClair said it would be used for additional events as well. Commissioner Funk asked about the confusing inconsistency of the points stated in the Green Oak Township Planning Commission's resolution and its decision to deny. Commissioner Bowdoin asked if anyone from the Township is online that could answer questions. Principal Planner Stanford stated there was no one online

proposed use and a residential use. Commissioner Funk stated that the recent observance of erosion of local control by the State regarding solar and wind development may also affect land use issues such as event barns in the future. Commissioner Bowdoin added a friendly amendment to the motion, stating that perhaps the standard letter regarding this case is sent from County Planning Commission/County Planning Department to the Township Board should include a recommendation to ask clarification from the Township Planning Commission on why it was recommended denial based on the resolution.

Public Comment: David LeClair, applicant, spoke about the history, background, and plans for the project. He provided insight as to the traffic concerns as well as the green space/open space requirement and how this proposal would comply.

Commission Action:

Commissioner Action: IT WAS MOVED BY COMMISSIONER BURKHOLDER TO RECOMMEND APPROVAL WITH A FRIENDLY AMENDMENT FROM COMMISSIONER BOWDOIN TO RECOMMEND THE TOWNSHIP BOARD ASK FOR CLARIFICATION FROM THE TOWNSHIP PLANNING COMMISSION AS TO WHY THEY RECOMMENDED DENIAL OF THE CONDITIONAL REZONING BASED ON THE RESOLUTION AND SECONDED BY COMMISSIONER CALL.

Motion passed: 5-0

**C. Z-36-23: AMENDMENTS TO THE ZONING ORDINANCE:
CHAPTER 2 GENERAL PROVISIONS, SECTION 2.14 KEEPING OF ANIMALS.**

The Handy Township Planning Commission is proposing to amend Section 2.14 of the Township Zoning Ordinance by creating new language that will replace the existing text in this section of the Ordinance.

Township Recommendation: Approval. The Handy Township Planning Commission recommended approval of the proposed amendments at their October 26, 2023, public hearing. There were no public comments at the meeting.

Staff Recommendation: Approval. The Handy Township Planning Commission recommended approval of the proposed amendments at their October 26, 2023, public hearing. There were no public comments at the meeting.

Commission Discussion: Commissioner Bowdoin stated that the acreage calculation requirement should use "usable acres". Commissioner Call stated that GAAMPS changes frequently, and many times are not consistent from one year to another.

Public Comment: None.

Commission Action:

Commissioner Action: IT WAS MOVED BY COMMISSIONER FUNK TO RECOMMEND APPROVAL, SECONDED BY COMMISSIONER BURKHOLDER.

Motion passed: 5-0

D. Z-37-23 MARION TOWNSHIP TEXT AMENDMENT
SECTIONS 3.2 DEFINITIONS, ARTICLE 10 LI-LIGHT INDUSTRIAL DISTRICT AND
SECTION 17.36 SPECIAL USE SPECIFIC LAND USES-DATA PROCESSING FACILITIES

The Marion Township Planning Commission proposes amendments to the Marion Township Zoning Ordinance to amend and add definitions related to data processing facilities.

Township Planning Commission Recommendation: Approval. The Marion Township Planning Commission recommended Approval of this zoning amendment at its August 22, 2023, public hearing. There were no public comments noted in the minutes.

Staff Recommendation: Approval. The proposed amendments related to the regulation of data processing facilities in Marion Township appear to be suitable and reasonable. As regulating this land use activity is very much new territory for many communities, it remains to be seen if the provisions of this proposed ordinance will adequately and effectively govern the use to the complete satisfaction of the township and its residents in the future.

Commission Discussion: Commissioner Funk explained to the commission what 'data mining' is in the data processing industry.

Public Comment: Bruce Powellson, Marion Township, spoke about the amendments to the Ordinance. He would have liked to have had an eight (8) foot fence required, rather than the six (6) foot fence as proposed.

Commission Action:

Commissioner Action: IT WAS MOVED BY COMMISSIONER BOWDOIN TO RECOMMEND APPROVAL, SECONDED BY COMMISSIONER CALL

Motion passed: 5-0

8. **OLD BUSINESS:** None.

9. **NEW BUSINESS:**

10. **REPORTS:**

- A. **2025 Livingston County Master Plan update:** Director Barb gave the Commissioners a brief update on the on-going Master Plan Update process. The Intent to Plan letter will be going out by the end of November to all statutorily required parties.
- B. **MSU Extension/County Planning Roles & Responsibilities Training:** Director Barb spoke about the information flyer (handout) and advertising for this upcoming 3-session training opportunity that we are partnering with Michigan State University Extension in the coming weeks.
- C. **Local City, Village and Township Planning Commission Meeting Schedule:** Local City, village and Township meeting schedule handed out to all Commissioners.
- D. **Annual Meeting to Follow Regular County Planning Commission Adjournment:** The Annual Meeting of the County Planning Commission will take place immediately following adjournment of this regular meeting of the County Planning Commission.

11. **CALL TO THE PUBLIC:** None.

12. **ADJOURNMENT:**

Commissioner Action: IT WAS MOVED BY COMMISSIONER CALL TO ADJOURN THE MEETING AT 7:52 P.M., SECONDED BY COMMISSIONER FUNK.

Motion passed: 5-0



Livingston County Department of Planning

MEMORANDUM

TO: Livingston County Planning Commissioners and the Marion Township Board of Trustees

FROM: Robert Stanford, Principal Planner

DATE: November 6, 2023

SUBJECT: Z-37-23 Amendments to Zoning Ordinance Articles - Various Sections: Data Processing Facility

Scott Barb
AICP, PEM
Director

Robert A. Stanford
AICP
Principal Planner

Martha Haglund
Principal Planner

The Marion Township Planning Commission proposes amendments to the Marion Township Zoning Ordinance to amend and add definitions related to data processing facilities.

Proposed additions to existing text are noted in red underline, deletions in ~~strike through~~.

The Marion Township Planning Commission proposes amendments to the Marion Township Zoning Ordinance to amend and add definitions related to data processing facilities, in the following manner:

ITEM 1. AMENDMENT OF ARTICLE III: DEFINITIONS

Section 3.02 Definitions of the Zoning Ordinance is amended by adding the following definition to read in its entirety, as follows:

Data Processing Facility: A building, dedicated space within a building, or group of structures located on one or more acres of land used to house a large group of computer systems and associated components, such as telecommunications and data processing systems, to be used for the remote storage, processing, or distribution of large amounts of data. Examples of such data include, but are not limited to, computationally intensive applications such as blockchain technology, cryptocurrency mining, weather modeling, genome sequencing, etc. Such facilities may also include air handlers, power generators, water cooling and storage facilities, utility substations, and other associated utility infrastructure to support operations.

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ITEM 2. AMENDMENT OF ARTICLE X: INDUSTRIAL

A new item, (D)(5), is added to Section 10.01 LI: Light Industrial District to read, in its entirety, as follows:

ARTICLE X: INDUSTRIAL DISTRICTS

Section 10.01 LI: Light Industrial District

(D) Uses Permitted By Special Use Permit:

1. Asphalt and concrete batching facilities.
2. Billboards.
3. Communication towers.
4. Junkyards/Reclamation centers.

(5) Data processing facility

ITEM 3. AMENDMENT OF ARTICLE X: INDUSTRIAL

Section 10.01 LI: Light Industrial District, Item E (1)(c) is revised in its entirety, to read as follows:

E. Site Development Requirements: The following minimum and maximum standards shall apply to all uses and structures in the LI: Light Industrial District unless they are specifically modified by the provisions of Article VI: General Provisions or Article XVII: Standards for Specific Special Land Uses; or as varied pursuant to Article V: Zoning Board of Appeals.

1. Performance Standards:

c. Sound:

- i. **Non-Residential.** The intensity level of sounds shall not exceed the following decibel levels when adjacent to the following types of **non-residential** uses:

Decibels	Adjacent Use	Where Measured
55	Residential Dwellings	Common Lot Line
65	Commercial	Common Lot Line
70	Industrial and Other	Common Lot Line

<u>Decibels</u>	<u>Adjacent Use</u>	<u>Where Measured</u>
<u>65</u>	<u>Commercial</u>	<u>Common Lot Line</u>
<u>70</u>	<u>Industrial and Other</u>	<u>Common Lot Line</u>



ii. Residential. The intensity level of sounds shall not exceed the following decibel levels when directly adjacent to residential uses, measured at the common lot line:

<u>Residential Noise Level Limits</u>		
<u>Daytime</u> <u>(7 am-7 pm)</u> <u>45 dB(A)</u>	<u>Evening</u> <u>(7-11 pm)</u> <u>35 dB(A)</u>	<u>Night</u> <u>(11 pm-7 am)</u> <u>30 dB(A)</u>

The sound levels shall be measured with a type of audio output meter approved by the Bureau of Standards. Objectionable noises due to intermittence, beat frequency, or shrillness shall be muffled so as not to become a nuisance to adjacent uses.

STAFF COMMENT: Examples of different decibel levels

(Source: <https://www.iacacoustics.com/blog-full/comparative-examples-of-noise-levels>)

Passenger car at 65 mph at 25 ft (77 dB); freeway at 50 ft from pavement edge 10 a.m. (76 dB). Living room music (76 dB); radio or TV-audio, vacuum cleaner (70 dB).	70 dB	Arbitrary base of comparison. Upper 70s are annoyingly loud to some people.
Conversation in restaurant, office, background music, Air conditioning unit at 100 feet.	60 dB	Half as loud as 70 dB. Fairly quiet.
Quiet suburb, conversation at home. Large electrical transformers at 100 feet.	50 db	One-fourth as loud as 70 dB.
Library, bird calls (44 dB); lowest limit of urban ambient sound	40 db	One-eighth as loud as 70 dB.
Quiet rural area.	30 dB	One-sixteenth as loud as 70 dB. Very Quiet.



ITEM 4. AMENDMENT OF ARTICLE XVII: SPECIAL USE SPECIFIC LAND USES

A new section entitled “Section 17.36 Data Processing Facility” is hereby added to the Zoning Ordinance which shall read, in its entirety, as follows:

ARTICLE XVII: STANDARDS FOR SPECIFIC SPECIAL LAND USES

The following standards apply to the uses of land permitted by special use permit. The regulations contained in this Article shall be applied in addition to any other applicable, standard or regulation contained elsewhere in this Ordinance unless specifically noted.

Section 17.36 Data Processing Facility

The primary intent of the data mining ordinance is to establish guidelines and safeguards for the collection, storage, and use of data within our rural community. By implementing this ordinance, we aim to protect the privacy of our residents, ensure data security, and foster trust and transparency in data-driven practices.

STAFF COMMENT: The definition for the intended use as provided in this amendment uses the term “Data Processing Facility”, as does the title of this Intent section. However, the first sentence uses the term “data mining ordinance”, which is inconsistent. This should be corrected prior to any formal approval.

Data Processing Facilities are considered special uses and are therefore subject to the provisions of Article XVI, Special Use Permits, and other applicable provisions of the Ordinance. A Special Use Permit, and any conditions attached thereto, may be approved by the Township Board if all the criteria listed hereof are met.

Locational Requirements: Data Processing Facilities are permitted in the Light Industrial Districts with a minimum lot size of four (4) acres.

Performance Standards:

- a. Data Processing Facilities are considered a principal use and shall be the only principal use on a property at any one time.
 - b. Shall not be located within an industrial park;
 - c. At all times, sound levels at the property boundary may not exceed thirty (30) dB(A);
 - d. A fence shall be installed around the perimeter with a minimum height of six (6) feet;
 - e. Additional screening, such as a vegetative buffer, may be required at the discretion of the Planning Commission, per standards in Section 6.13.
-

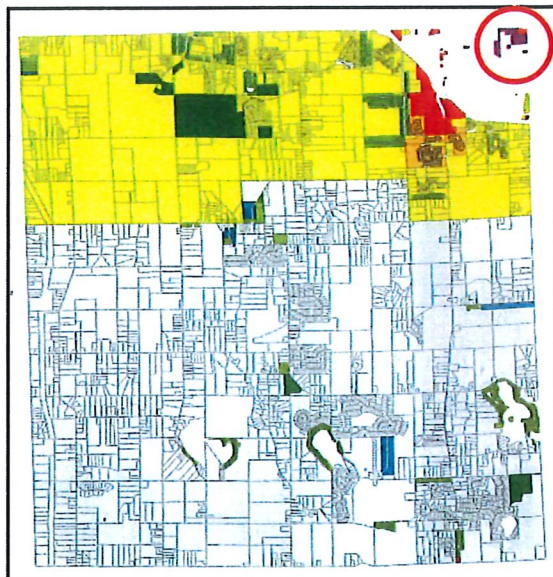


STAFF COMMENTS:

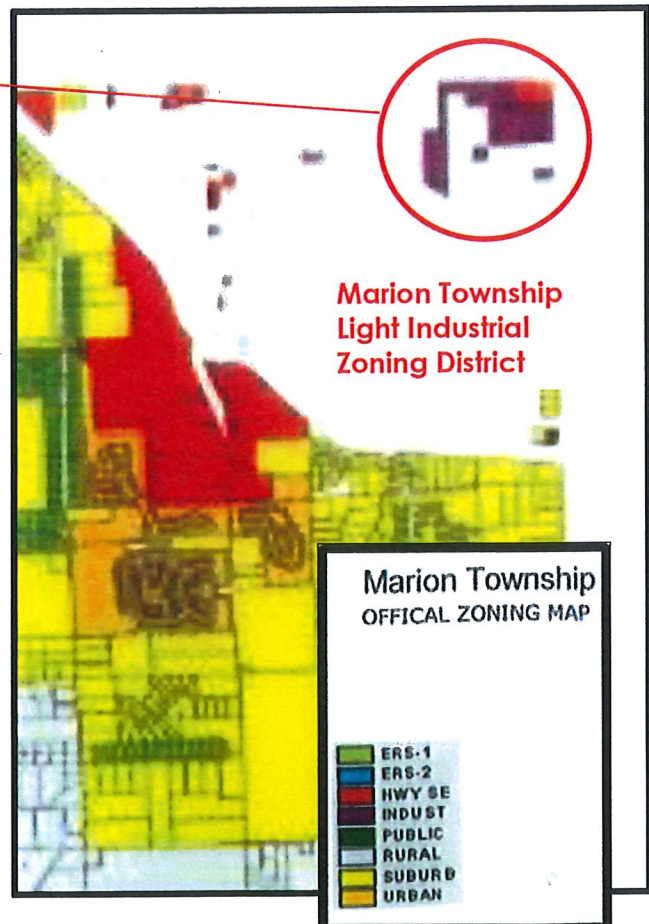
Data processing facilities are the physical facilities where the internet lives. Fundamentally, they consist of networked computer systems used for data storage and processing, along with supporting equipment, such as batteries, back-up power generators, and cooling devices. And an emerging segment of the data processing facility market consists of facilities dedicated in whole or part to "mining cryptocurrency."

From the exterior, data centers and cryptocurrency mining facilities may be physically indistinguishable from many commercial or light industrial uses. However, the operational characteristics of these facilities are typically quite distinct from those of surrounding land uses. From a planning and zoning perspective, the most noteworthy characteristics relate to their electricity and water use, noise production, enhanced safety and security needs, and low employment densities.

Marion Township has decided to allow this land use as a permitted special land use in the LI-Light Industrial zoning district. The map below identifies the location of the Township's LI-Light Industrial zoning district.



Marion Township Zoning Map (2008)





Z-37-23: Marion Township
Various Sections of the Township Zoning Ordinance related to Data Processing Facilities
Page 6



An example of a new cryptocurrency data mining facility in Cherokee County, North Carolina

Source: <https://www.citizen-times.com/story/news/madison/2023/06/16/madison-county-imposes-1-year-moratorium-on-data-processing-facilities/70318736007/>

Township Recommendation: Approval. The Marion Township Planning Commission recommended Approval of this zoning amendment at its August 22, 2023 public hearing. There were no public comments noted in the minutes.

Staff Recommendation: Approval. The proposed amendments related to the regulation of data processing facilities in Marion Township appear to be suitable and reasonable. As regulating this land use activity is very much new territory for many communities, it remains to be seen if the provisions of this proposed ordinance will adequately and effectively govern the use to the complete satisfaction of the township and its residents in the future.

MEMO

To: Marion Township Planning Commission
From: Bob Hanvey
Date: November 28, 2023
Subject: Lawn Mowing / Snow Plowing Equipment Storage

There was a Township Board meeting November 16, 2023. At that meeting the Board was considering the request by Mitch Harris to rezone some of his property from Highway Service to Urban Residential. Dan Lowe suggested that it would be a bad idea because we have several people in the township that operate lawn mowing and snow plowing businesses that keep their equipment at their homes. Rezoning to UR would give them fewer opportunities for storage.

After reviewing the ordinance, I don't think the current language in the Zoning Ordinance allows storing lawn mowing and snow plowing equipment in the Highway Service District.

It is allowed in the Light Industrial District but only in an enclosed building. I don't know how many people can afford an enclosed building to store equipment.

Any suggestions?