

Wexford Joint Planning Commission

% Cherry Grove Township
4830 E. M-55
Cadillac, Michigan 49601
(231)775-1138

Minutes

Time, date: 6:30 pm, Thursday November 17, 2016

Meeting location: Wexford County Road Commission meeting room, 85 West Highway M-115, Boon, Michigan. Coordinates: 44° 19' 32.5" N, 85° 34' 53.4" W (44.325685, -85.581500)

Chair Schroeder called the meeting to order at 6:31 pm. Pledge of Allegiance was recited. 6:31pm.

Roll call: Dave Schroeder, present; Paul Osborne, will be coming later; Bev Monroe, present; Sharon Zakrajsek, absent; Donna Taylor, present; Marty Dahlstrom, arrived later; Gary Emery, absent; Richard Harvey, present; Thelma Paul, present; Erica Szegda, ~~arrived later~~. Slagle Township has no representative at this time. A quorum is present.

Kurt H. Schindler, MSU Extension, and Richard Wilson, Jr., attorney from Mika & Meyers, were present. Also present were Douglas Paul, Terry Garbrecht, Dick and Jody La Barre, Mike Vogelsong, Adam Gandolfi, John Prebay Gerald, Sours, Cathy Knight, Jenifer Draper and Richard Draper.

Chair Schroeder explained one purpose of the meeting was to have a Public Hearing and take comments on the proposed Wexford Joint Planning Commission (WJPC) Ordinance.

Public Comment: None

Public Hearing on proposed zoning ordinance:

Dick LaBarre, Greenwood Township had several comments.

1. On the map all of Greenwood is Agriculture or Forest Recreation. The Proposed version has many changes to Rural Residential. Many of the farm are small and some are Amish. This is major change. Question is can all functions of Agriculture be done in Rural Residential.

~~Erica Szegda arrived.~~

2. Page 67 Article 1801 B. 3. says Rural Residential, but is confusing with R-1 and R-2. Can we take RR from B? Page 25 talks about the tractor and limiting hours of operation. Page 28 limits chickens. I assume that Rural Residential (RR) has no limits.
3. Temporary dwellings Article 1701 page 43. Definition of a trailer is that it can be towed which makes it a recreational vehicle. #3 limits parking an RV up to 60 days. He would

it changed to be 180 or 90 days.

4. On the rewrite in the future can we allow travel trailers with well and electric for RR and Forest Recreation (FR). Storage on #4 page 43 is too restrictive for RR and FR. On 4.d. it requires a screening around the Recreation Vehicle. Can this be implemented? North of 42 on 33 Rd there is a retreat subdivision where trailers are set up well and not all have electricity.
5. Please consider pole buildings without a principle residence.
6. There is a land-locked subdivision which has access through DNR property. Should it be residential? Is it platted?

Dahlstrom arrived at 6:52 pm

7. The Olds' family cattle pasture on the map, should it be in the Manistee River Corridor which does not allow agriculture?
8. Master Plan does not match the Ordinance.

Terry Garbrecht-Greenwood Township

Asks why there is such a rush to change the zoning now. Schindler explained that Wexford County Zoning terminates at the end of the year so WJPC is trying to avoid having a gap with no zoning. Wilson stated that all land uses in existence right before the adoption of zoning become nonconforming if there is a gap of with no zoning. Terry said it is harder to change ordinances later.

Kathy Knight-Henderson Township

Asks how and why would Henderson join.

Gerald Sours-Henderson

Wants to know what the costs will be for Henderson to join WJPC. Henderson has 255 parcels and 158 voters. Schindler explained how the yearly costs were determined.

Taylor said to refer to the spread sheet of cost allocation. Boon has 651 parcels and pays \$2800 so Henderson can assume that their part will be less. Sours asked if someone can call him with the costs, Schindler agreed to respond. He also said the procedure to follow is in the agreement which was sent to Henderson Township.

Schindler explained how this ordinance was made. The County's Ordinance #5, currently in use, is out of date and parts are not legal. Version #6 which was prepared but not adopted by the Wexford County Board of Commissioners had resolved some of the problems. This was written with an updated template and was easier to adopt. The WJPC knows that once adopted it will have to review and modify the Ordinance.

Richard Draper-Greenwood Township

Does the Ordinance go back to the townships now? Yes. Wilson said the township board will have a chance to adopt it and it will be published. Garbercht asked what would happen if the township does not adopt the Ordinance. Wilson answered that the township will have no zoning until they adopt the Ordinance. That will result in lots of nonconforming uses because Wexford County Zoning has been eliminated. Draper asked if Colfax has joined. Schindler replied that Colfax did not join by intention. The townships must make the decision.

John Prebay-Selma Township

I am currently on the County Zoning Board of Appeals. The Selma representative is not here so who will vote for Selma. There are many problems because Wexford County is/was not enforcing the Ordinance.

LaBarre asked about no roosters. Schindler explained that the Right-to-Farm Act is very confusing and preempts local ordinances then delegates some back to local rule. Agriculture has Right-to-Farm protection under the GAAMPS. Regulations for Agriculture-like uses are applicable only in those areas with higher housing density where GAAMPs delegates control back to the local government for livestock. Previous Agriculture is now called Rural Residential to conform to name of that type of district often used in other parts of the state.

(Monroe had previously expressed opposition to the change of farms around 12 Road and 41 Road in Liberty Township, which includes three centennial farms, from Agriculture to RR.)

Szedga said Page 27 2. B. of Article 1031 should specify that no roosters in *residential* areas.

The Public Hearing was closed at 7:28 PM.

Adam Gandolfi from Mutual Underwriters next spoke about future insurance needs for WJPC. He needs more information to get a quote prepared. He needs a copy of our agreement. Liability has no trigger for coverage unless damages involved. There will be costs of attorneys and court costs. He talked of other factors which would affect the quote and coverage. Schindler asked for information on Mutual Underwriters. Gandolfi said it was started in 1985. He has 170 municipalities, his partner in Traverse City has 130 municipalities. The company has Par Plan which covers nine of our eleven townships.

Consent Business: Chair asked for approval of the listed minutes of October 17, 2016 regular meeting October 29, 2016 special meeting October 17, 2016 executive committee meeting and November 9, 2016 executive committee meeting. **Taylor motioned to accept each of the minutes listed, Harvey seconded, all approved.**

Treasurer Taylor reported that all revenues have been received. The only outstanding bills are for the advertisement for Zoning Administrator. The total of those bills were for 10 days of advertising in Traverse City, Cadillac, Big Rapids and Manistee for \$2,996.39. **Szedga made a motion to approve the expenditures and Dahlstrom seconded it. A roll call vote was taken and all approved.** Taylor asked for a budget amendment to account for extra expenditures for advertisement and suggested that we take the moneys from the zoning administrator. Schindler said to use the planner item because the need for a planner can be put off (delaying updating work). Wilson said that unless the townships assume the notice of ordinance adoption expense, money will be needed for that. He recommended that amending of the budget be done a few times a year rather than with each expenditure. The balance is now at \$48,332.20. (Bills and accounts on file in the Commission's office of record.)

Osborne arrived at 7:42 pm.

Board comment: Szegda said the bylaws states that only voice votes are needed with no exception for monetary votes so the roll call vote was unnecessary.

The Board then made amendments to the Ordinance on the basis of the comments received, legal advice and unfinished sections. Discussion on the Joint Zoning Ordinance was done viewing “draft V2.2 for public hearing” dated November 17, 2016:

Paul asked how hard will the Ordinance be to amend? Wilson replied that amending is the same process as the initial ordinance; Planning commission, public hearing, recommend to the townships, posting notice of adoption. It does now go to the Wexford County Planning Commission. Their response is only advisory so we do not have to wait for their response. Any township comments will be considered after January 1. Dahlstrom asked what is the date of the Ordinance being in effect? Wilson said each township may have different dates and different dates of adoption. Szegda said the effective dates will vary according to our agreement. The act of adopting is a vote of the township board and the notice of ordinance adoption.

Taylor said on page 46 of Article 1071 we should take out restrictions of trailers. Wilson asked where does it apply—everywhere. He suggested addition specific districts. It is hard to get rid of these trailers once they are established and they become rundown. Harvey asked if you can get electrical service without an address. Schindler said no and suggested extension of days allowed. Harvey asked for clarification. Wilson said these are trailers located on vacant property, enforcement means must move to storage which will keep them in repair. Szegda suggested changing the days to 90, Harvey said 180. Schindler has it written as 90 days in residential and 180 days in other districts. **Monroe motioned that we use the 2.2 version as printed for section 1071.A.3. with 90 days in a calendar year in residential districts. Harvey seconded. Vote was 7 aye and 1 (Schroeder) opposed.**

On Article 1071.A.3. Page 41 Taylor motioned to add 180 days in a calendar year in other districts, Osborne seconded, 7 ayes and one opposed (Schroeder). Szegda motioned Harvey seconded and 7 ayes and one opposed (Monroe).

Map: comments were resolved except Article 20 does not allow agriculture and Wilson recommended not to change the Olds farm as it will be grandfathered as a nonconforming use in that district. Changing would cause spot zoning in the River Corridor.

Schindler mentioned the two subdivisions in the River Corridor. Szegda asked if changing would change anything for these people and it will not unless they decide to alter their residence, then it will be nonconforming. **Monroe motioned and Harvey seconded that we leave the yellow (residential district) areas as presented. All approved.**

Correspondence from Consumers Energy for section 8404 received November 9. Wilson stated that he does represent Consumers at times. **Szegda motioned to approve the change requested, Paul seconded, all approved.**

Article 80: Wilson explained that the law defines nonconforming uses and what they are. There are two categories of nonconforming uses now in the County which is more restrictive than the

WJPC Ordinance will be. WJPC Ordinance will restrict current nonconforming uses. Articles 8002 b deleted. 8003 and 8004 Wilson changed the categories to Class A and Class B and read the changes to the Board. **Monroe made the motion to adopt the changes made by Mr. Wilson, Dahlstrom seconded the motion. All ayes—approved.**

Dahlstrom left the meeting at 8pm.

Article 96 Appeals Board. The Law says that the township MUST make the appointment of the members to the board. The Planning Commission can nominate someone but the township must make the appointment. Other positions were described by Mr. Schindler. The Joint Planning Act plans for a zoning board of appeals but does not specify how they are appointed. The appointments must be made by a body which reports directly to voters (township boards). Monroe asked if that will create a problem of training as each township will have to appoint one or more individuals. **Szegda motioned to accept option D (Monroe-Osborne), Paul seconded. All ayes-approved.**

Paul asked about shooting clubs. Wilson replied that he did research it and it is left to the local zoning by the state Act 269 Public Act 169 MCL691.1541 to .1544. “Sporting range” cannot be prohibited if damaged or stopped from expansion, but location, use, and construction can be restricted locally.

Wireless Communication of Article 1703 permitted and expanding. Article 1608 is new tower regulation. #8 Osborne said now it is stated as 10 miles apart, more tower density now is needed for data. Wilson said to leave it at 10 miles and let the companies show why it has to have a variance. **Motion for 1608 A. 1. Second sentence, motion by Monroe to delete allowance of reduction of setback, seconded by Osborne, 6 ayes and one opposed (Szegda).**

Article 1073 Motion made by Harvey, seconded by Osborne to adopt Schindler’s language, all approved.

Article 9804 C. needs identification of court 84th District Court. B. Add Wexford County Sheriff (may require a contract). **Motion made by Osborne, seconded by Szegda to adopt, all approved.**

Schindler will remove signature block from last page.

Motion to RECOMMEND ADOPTION OF THE WEXFORD JOINT ZONING ORDINANCE, WITH CHANGES MADE, BY EACH PARTICIPATING TOWNSHIP, AND TO SEND A COPY TO WEXFORD COUNTY PLANNING COMMISSION FOR REVIEW made by Osborne and seconded by Taylor. All approved. (Copy of the recommended ordinance on file in the Commission’s office of record.)

Consensus was to continue the meeting past 8:30pm.

~~Dahlstrom left the meeting.~~

Schindler asked to have signatures on a service agreement between WJPC and MSUE. **Motion**

by Szegda and second by Harvey to sign the service agreement with Michigan State University Extension. Motion adopted. (Attachment "A" to these minutes.)

Chair Schroeder reported that the Executive Committee interviewed two of the six applicants for the zoning administrator position. These two filled all of the criteria that were requested such as skillsets, experience and certifications. Both are excellent. Mr. Hall is recommended because he has experience working with several townships. **Szegda motioned to offer the position for one day per week at \$6240 annual pay to Mr. Hall, second was by Paul. All approved.** (Service Agreement: attachment "B" to these minutes.) Wilson explained that the duties of a contract employee are the same as an employee. Wilson will provide a contract for the position. If Mr. Hall agrees, then Mr. Thompson will be contacted along with the other applicants. **If Mr. Hall rejects the offer, motion made by Taylor and seconded by Szegda to offer the position to Mr. Thompson. All approved.** Other applicants will be offered the recording secretary position.

Wilson turned over the original affidavits to Schindler for our files.

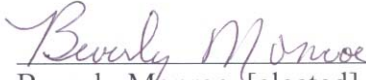
Schindler further responded to Henderson Township, Mr. Sours. He cannot give definite amounts of money it will take to join the WJPC, however, he will use the original budget for an estimate. He cannot estimate joining fees at this time.

Paul stated that Garbrecht commented about Greenwood Township and the possibility of not approving the Ordinance. Schindler replied they have options; 1. Adopt. 2. Do not adopt and items they want changed listed for WJPC consideration. 3. Withdraw—this will cost them money and they will lose all that has been paid and will take a period of time. 4. Pay in and have a representative but no zoning for their township. If they do not adopt by January 1, there will be a gap between County zoning and WJPC zoning and create nonconformities. Additionally each township will have to appoint a member for the Zoning Board of Appeals.

Taylor asked about extra pay for Monroe who is also doing the Recording Secretary job which is budgeted. **Taylor motioned to pay Monroe \$25.00 per meeting from that budget, Paul seconded, all approved motion passed.**

Motion by Szegda and second by Osborne to adjourn. All approved. Adjourned at 9:30 pm.

Respectfully submitted:



Beverly Monroe, [elected] Secretary

MSU Extension
Services Agreement
Cover/Budget

Project Name: Wexford Joint Planning Commission

Institute: Greening Michigan

Educator/Lead Educator: Kurt H. Schindler, AICP

Other Educators (if applicable): n/a

Workgroup: Government and Public Policy

Program Category:

1. Programs that are fundamental to MSU Extension's mission and are considered for public good; advertised widely and open to anyone to attend. These programs/services are offered to clients and recover only variable costs (meals, workbooks, guest speaker fees, speaker and host travel, other venue costs and supplies).
2. Programs offered to groups of clients with a common interest but not open to the public-at-large or those providing certification or continuing education credits. These programs/services recover all costs that are recovered by Category 1 programming plus partial fixed cost (salary) recovery. Example groups might include a specific business or group of businesses, a cooperative, non-government group or governmental agency. Certification programs would include programs like Private Applicator Training, Master Gardener, ServSafe, Certified Crop Advisor, etc
3. Services that provide important private value to the participants beyond the public value created. Services recover all expenses including Educator/Specialist time.

Budget

Anticipated Expenses:

Description	Amount
<u>"Local" project within Educator's 20% for local services</u>	_____
_____	_____
_____	_____
_____	_____
_____	_____

Anticipated Income: \$ _____

Anticipated Net Income: \$ _____

Institute Director Approval:  _____

For Business Office Use Only:

Service Agreement Tracking #

Account #:

Sub-Account #:

Project Code:

Services Agreement Statement of Work

Project Name:

Wexford Joint Planning Commission

Purchaser/Client Name:

Wexford Joint Planning Commission

Purchaser Contact Name:

David Schroeder, Chair

Address:

c/o Cherry Grove Twp, 4830 E. M-55

City:

Cadillac

State:

Michigan

Zip:

49601-9332

Contact Email:

daschroeder@acegroup.cc

Contact Phone:

231 269 4145

Institute:

Greening Michigan

Billing Information:

(if different from Purchaser)

Billing Contact Name:

Thelma Paul

Address:

c/o Cherry Grove Twp, 4830 E. M-55

City:

Cadillac

State:

Michigan

Zip:

49601-9332

Services to be Performed :

To attend initial meetings of the Wexford Joint Planning Commission, provide consulting service to get the organization started, adopt zoning, hire their own staff, attorney, consulting planner, and provide transition to their staff and consultants to replace MSUE's involvement.

Service Agreement Billing Terms:

Service Agreement Total: \$ 0.00

Number of Invoices: 0

Terms of Invoicing:

Estimate provided for 0

Services Agreement between Wexford Joint Planning Commission [purchaser/client] and
MSU Extension, Greening Michigan Inst [unit name] **at Michigan State University**

Thank you for your request for services from the MSU Extension, Greening Michigan Inst [unit] at Michigan State University

1. **Purpose** The University, through MSU Extension, Greening Michigan Inst [unit] will perform the services and provide the deliverables described in Exhibit A.
2. **Dates** The duration of this agreement is from 10/11/16 to 10/11/16
3. **Payment** You agree to pay, when you receive an invoice, the sum of money specified on Exhibit A
4. **Confidentiality** "Confidential Information" means any materials, written information, and data marked "Confidential" that you provide. If you provide material verbally that you want treated as confidential, you must write down that information, mark it as Confidential, and forward it to MSU Extension, Greening Michigan Inst [unit] within 30 days of first sharing the information. Confidential Information does not include information in the public domain or independently known or obtained by the University. The University agrees to treat your Confidential Information with the same degree of care that it uses to protect its own confidential information, and, to the extent allowed by law, keep the Confidential Information confidential for a period of three (3) years from the termination date of this agreement.
5. **Intellectual Property** Any intellectual property you provide to MSU Extension, Greening Michigan Inst [unit] will remain your intellectual property. Any intellectual property that MSU Extension, Greening Michigan Inst [unit] provides to the project will remain the intellectual property of the University. Any copyrighted deliverables provided to you under this agreement will be considered Works for Hire and become your property upon payment in full.
6. **Export Control** You may not provide any export controlled data or materials to the University without the University agreeing in writing in advance.
7. **Termination** Either you or the University may terminate this agreement by giving 10 days written notice to the other. You will pay all reasonable costs and non-cancelable obligations incurred by the University at the time of the termination. At your request and expense, the University will return to you or destroy all unused material provided by you.
8. **Independent Contractor** The University is an independent contractor providing services to you. You and the University do not have the relationship of partners, joint ventures, principals or agents.
9. **Liability** IN NO EVENT WILL THE UNIVERSITY BE RESPONSIBLE FOR ANY DAMAGES OR PENALTIES RESULTING FROM THE UNIVERSITY'S FAILURE TO PROVIDE, OR DELAY IN PROVIDING, THE SERVICES OR DELIVERABLES. IF A SERVICE OR DELIVERABLE IS FOUND, WITHIN SIX MONTHS OF INVOICE, TO BE SUBSTANTIALLY DEFECTIVE, THE UNIVERSITY WILL CORRECT THE DEFECTIVE PORTION OF THE SERVICE OR DELIVERABLE AT NO COST TO YOU. THIS IS YOUR SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT. THE SERVICES AND DELIVERABLES ARE PROVIDED "AS IS" AND UNIVERSITY EXPRESSLY DISCLAIMS ANY WARRANTIES EXISTING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, THOSE WHICH ARE EXPRESS OR IMPLIED, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL THE UNIVERSITY BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER, NOR WILL THE UNIVERSITY'S AGGREGATE LIABILITY TO YOU EVER EXCEED THE AMOUNT PAID BY YOU UNDER THIS AGREEMENT.
10. **Conditions Beyond Control** You and/or the University will be excused from the obligations of this agreement if the performance is delayed or prevented by circumstances (except financial) reasonably beyond control including, but not limited to, by fire, lack of water, labor or materials, storm, flood, war, rebellion, insurrection, riot, strike, differences with workmen, failure of carriers to transport or furnish facilities for transportation, as a result of some order, requisition or necessity of government, mechanical breakdown, plant shut down, and unavailability of raw materials.
11. **General** This agreement is non-assignable and non-transferable. The State of Michigan's laws apply to this agreement, excluding its choice of law provisions. This agreement, with its Exhibit A, is the entire agreement between the parties and can only be modified in a written change signed by both you and the University.

MICHIGAN STATE UNIVERSITY

By: [Signature]

Its: David Ivan, Greening Institute Director

Date: 11-30-16

PURCHASER

By: [Signature]

Its: David Schroeder, Chair

Date: Nov. 17, 2016

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into effective as of December 1, 2016, (the "Effective Date"), by and between the WEXFORD JOINT PLANNING COMMISSION, a Michigan joint municipal planning commission organized pursuant to 2003 PA 226, being MCL 125.131, et seq. of 4830 E. M-55, Cadillac, MI 49601 (the "Planning Commission"), and ROBERT HALL, of _____, MI _____ ("Contractor").

RECITALS:

- A. The Planning Commission desires to engage Contractor to render those services as provided in this Agreement.
- B. Contractor desires to accept such engagement with the Planning Commission on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants, agreements and undertakings set forth below and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Planning Commission and Contractor agree as follows:

1. Engagement; Services; Terms.

- (a) Engagement. Subject to the terms and conditions of this Agreement, Planning Commission engages Contractor and Contractor agrees to perform those services generally consisting of the duties of a planning /zoning administrator, enforcement officer and authorized local official for the Planning Commission and its Participating Municipalities, as defined in Wexford Joint Planning Commission Ordinance and Agreement, approved in September, 2016, and the Wexford Joint Zoning Ordinance currently under consideration for adoption by the Participating Municipalities ("Services"), and as the Planning Commission may from time to time request. Contractor shall report to and take direction from the Executive Committee of the Planning Commission.
- (b) Time. During the term of this Agreement, Contractor will expend such time, attention and energies on the performance of the Services as the Planning Commission may request or as the work load requires, but not more than an average of eight (8) hours per week, which Services may be performed over more than one day. The Executive Committee of the Planning Commission may authorize, and Contractor may perform additional hours of Services in connection with specific projects at the contract rate of \$15 per hour.
- (d) Standard of Performance. Contractor will perform the Services and will fulfill his duties and obligations under this Agreement faithfully, diligently, to the best of his ability and in accordance with such rules, regulations and requirements as the Planning Commission may establish from time-to-time. Contractor shall maintain such insurance coverage as may be required by law for the performance of the Services.

- (e) Relationship. In the performance of the Services under this Agreement, it is mutually understood and agreed that Contractor is at all times acting and performing as an independent contractor in the performance of this Agreement.

It is further agreed that neither the Planning Commission nor any Participating Municipality shall have any responsibility for withholding taxes, FICA, Medicare or FUTA contributions from the contract payments made to the Contractor and Contractor shall indemnify and hold harmless the Planning Commission and all Participating Municipalities for all claims for unpaid taxes of whatever nature. The Contractor shall be solely responsible for payments to all taxing authorities resulting from his receipt of contract payments.

Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the Planning Commission, any Participating Municipality and the Contractor, or to authorize either the party to act as a general or special agent of the other party in any respect that would involve employment. Nothing in this Agreement that may cause an employer-employee relationship shall be enforceable by either party.

- (f) Equipment. Contractor shall provide all tools and equipment necessary or convenient for the performance of the Services including transportation and telephone, except the Planning Commission will provide or arrange for use of an office, office computer with internet access, and office supplies and forms needed for the performance of the Services and administration and enforcement of the Wexford Joint Zoning Ordinance.
- (g) Space. The Planning Commission will provide Contractor with office space at the Planning Commission's offices in the Cherry Grove Township Hall, 4830 East M-55, Cadillac, MI 49601. The Planning Commission may change the location of the office from time to time, at its discretion.
- (h) Records. All records, in whatever form (paper or digital), prepared, owned, used, in the possession of or retained by the Contractor in the performance of his duties under this Agreement are the sole property of the Planning Commission and shall be kept at the office of the Planning Commission. Contractor shall have no right, title or interest in such records, however, Contractor may make, use and retain working copies of such records during the course of the performance of his duties.

2. **Compensation; Benefits; Expenses.** During the term of this Agreement, and provided this Agreement has not been terminated pursuant to Section 3 below:

- (a) Compensation. For all Services to be rendered by Contractor under this Agreement, the Planning Commission will compensate Contractor at a rate of Six Thousand Two Hundred Forty and 00/100 Dollars (\$6,240.00) per year, payable in equal bi-monthly or other regular installments in accordance with the normal payroll practices of Cherry Grove Township or such other Participating Municipality as may be performing

administrative payroll services for the Planning Commission.

- (b) Benefits. Contractor will not be entitled to pension, health insurance or any other employee benefits of any kind.
- (c) Expenses. The Planning Commission shall reimburse Contractor for documented expenses reasonably incurred by Contractor in the performance of the Services so long as the same have been budgeted or approved in advance by the Chairperson of the Planning Commission.

3. **Term and Termination**

- (a) Term. This Agreement shall commence on December 1, 2016, and shall extend for a period of one (1) year thereafter. Unless either party gives notice to the other of its intent not to renew, at least 30 days prior to end of the initial term, this Agreement shall automatically renew for successive, additional terms of one (1) year each, on the same terms and conditions as stated herein, until terminated.
- (b) Termination. Contractor's engagement under this Agreement is at will and may be terminated at any time by either party, with or without cause.

4. **Entire Agreement; Amendment; Waiver.** This Agreement sets forth the entire agreement and understanding of the parties to it, and supersedes all prior understandings, agreements, arrangements and communications, whether oral or written, with respect to its subject matter. This Agreement will not be modified or amended except pursuant to a written agreement executed by both parties.

5. **Governing Law.** This Agreement has been executed in, and will be governed by and construed in accordance with the laws of the State of Michigan, without regard to its conflict of laws principles.

6. **Assignment.** Contractor may not subcontract the performance of Services or any part thereof, or assign his rights, duties or obligations under this Agreement, any other provision of this Agreement to the contrary notwithstanding.

7. **Headings and Captions.** The headings and captions used in this Agreement are for convenience of reference only and will not be considered in construing this Agreement or deemed to explain, limit or amplify the provisions of this Agreement.

8. **Counterparts; Copies.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. Copies (photostatic, facsimile or otherwise) of signatures to this Agreement will be deemed to be originals and may be relied on to the same extent as the originals.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the day first above written.

WEXFORD JOINT PLANNING
COMMISSION

By: _____
David Schroeder
Its: Chairperson

Robert Hall, Contractor



A CMS Energy Company

General Offices:
One Energy Plaza
Jackson, MI 49201
Tel: (517) 788-0550
Fax: (517) 768-3141

*Washington Office:
1730 Rhode Island Ave. N.W.
Suite 1007
Washington, DC 20036
Tel: (202) 778-3340
Fax: (202) 778-3355

Writer's Direct Dial Number: (517) 788-0684
Writer's E-mail Address: Adam.Smith@cmsenergy.com

LEGAL DEPARTMENT
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and General Counsel
ASHLEY L Bancroft
Robert W Beach
Don A D'Amato
Robert A. Farr
Gary A Gensch, Jr.
Kelly M Hall
Gary L Kelterborn
Chantez P Knowles
Mary Jo Lawrie
Jason M Milstone
Rhonda M Morris
Deborah A Moss*
Mirce Michael Nestor
James D W Roush
Scott J Sinkwitz
Adam C Smith
Janae M Thayer
Bret A Totoraitis
Anne M Utvlugt
Attorney

MELISSA M GLEESPEN
Vice President, Corporate
Secretary and Chief
Compliance Officer

SHAUN M JOHNSON
Vice President and Deputy
General Counsel

H Richard Chambers
Eric V Luoma
Shelley J Ruckman
Kimberly C Wilson
Assistant General Counsel

VIA U.S. MAIL

November 9, 2016

Ms. Beverly Monroe, Secretary
Wexford County Joint Planning Commission
7039 N. 41 Road
Manton, MI 49663-9792

Re: Proposed Joint Zoning Ordinance—Consumers Energy Company Comments for Public Hearing on November 17, 2016

Dear Ms. Monroe:

I am an attorney for Consumers Energy Company, and recently received notice of the public hearing that is taking place on November 17, 2016 in connection with the Wexford County Joint Planning Commission's Proposed Joint Zoning Ordinance. Consumers Energy appreciates the opportunity to submit this comment regarding the proposed ordinance.

As with the entirety of its service area across the Lower Peninsula of Michigan, Consumers Energy is committed to providing safe, reliable and affordable energy to our customers throughout Wexford County. Depending on the circumstances, this can require Consumers Energy to upgrade, enhance or otherwise improve its infrastructure on relatively short notice to continue providing this essential public service.

As the Joint Planning Commission may be aware, the current Wexford County Zoning Ordinance has a provision in Section 3.17 that applies to essential facilities like those that Consumers Energy operates. That provision generally exempts utility facilities and property from coverage under the zoning ordinance, with the key language underlined:

3.17: ESSENTIAL SERVICES (See also Articles Two and Ten)

The erection, construction, alteration or maintenance of public utilities or municipal departments or commissions, of overhead or underground gas, electrical, steam or water distribution or transmission systems, collection, communication, supply or disposal systems, including mains, drains, sewers, pipes, conduits, wire, cables fire alarm boxes, police call boxes, traffic signals, hydrants towers, poles, electrical sub-stations gas regulator station an[d] other similar equipment and accessories in connection therewith,

reasonably necessary for the furnishing of adequate service by such public utility or municipal department or commission or for the public health, safety or general welfare, but including buildings, shall be permitted as authorized or regulated by law in any zoning district, it being the intention hereof to except such erection, construction, alteration, and maintenance from the application of this Ordinance. Privately-owned utilities meeting the general intention of this Section shall also be permitted in any Zoning District, but only after a Special Use Permit has been issued by the Planning Commission in accordance with Article Ten.

Indeed, many zoning ordinances across the State of Michigan contain a similar provision. This is likely a recognition of the speed with which utilities must restore service after an outage, as well as the fact that public utilities are subject to different national and state standards than typical construction projects. For example, and among other applicable requirements, the National Electrical Safety Code applies to utility-scale electrical installations (rather than the National Electrical Code), while the federal regulations established under 49 CFR Part 192 and the Michigan Gas Safety Standards apply to gas installations.

The Proposed Joint Zoning Ordinance contains somewhat similar wording to current Section 3.17 in proposed Section 8404(C), where it states that certain activities by public utilities, municipal departments or commissions would be exempt from most permitting requirements. That said, the Proposed Joint Ordinance would make all utility-related classifications under the North American Industry Classification System, 1997 version, special uses in the Forest Conservation District and Rural Residential District (see Sections 504, 3603(J) and 3703(K)).

Therefore, and in addition to modifying the language of Section 3.17 from the current zoning ordinance, the Proposed Joint Zoning Ordinance contains a potential contradiction (or at least an ambiguity in how its terms should be applied), by exempting utilities from zoning permits but then requiring a special use permit in two other sections. For these reasons, Consumers Energy respectfully recommends that the Joint Planning Commission modify Section 8404(C) of the Proposed Joint Zoning Ordinance to retain the language used in existing Section 3.17. Thus, proposed Section 8404 and subsection (C) would read as follows:

8404. Permit Exemptions Section 8402, 8403, 8407 notwithstanding, a zoning permit or fee is not needed under this section for the following uses. Nothing in this section exempts or requires construction permits, other than required by P.A. 230 of 1972, as amended, (being the State Construction Code Act, M.C.L. 125.1501 et. seq.)

* * *

C. The erection, construction, alteration or maintenance by public utilities or municipal departments or commissions, of overhead or underground gas, electrical, steam or water distribution or transmission systems, collection, communication, supply or disposal systems, including mains, drains, sewers, pipes, conduits, wire, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, towers, poles, electrical sub-stations, gas regulator stations and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such public utility or municipal department or commission or for the public health, safety or general welfare, but including buildings, shall be permitted as authorized or regulated by law in any zoning district, it being the


intention hereof to except such erection, construction, alteration, and maintenance from the application of this Ordinance. Privately-owned utilities meeting the general intention of this Section shall also be permitted in any Zoning District, but only after a Special Use Permit has been issued by the Planning Commission in accordance with Article 16. ~~The erection, construction, alteration, or maintenance by public utilities or municipal departments or commissions of over ground or underground gas, electrical, water, communication, or sewer systems, for the local distribution and/or collection systems via pipes, drains, sewers, wires, cables, traffic signals, hydrants, towers, pools, electrical substations, gas regulation stations, and similar equipment and accessories in connection therewith reasonably necessary for furnishing adequate service to individual customers/clients, but not including regional, long distance, interstate distribution or collection systems.~~

* * *

Consumers Energy also recommends that the Joint Planning Commission delete Sections 3603(J) and 3703(K) of the Proposed Joint Zoning Ordinance to eliminate any ambiguity with the revised language that it is proposing for Section 8404(C). This will allow the relevant provision from the current zoning ordinance to carry through to the Proposed Joint Zoning Ordinance if and when it is adopted.

Please do not hesitate to contact me at your convenience if you or the other members of the Joint Planning Commission have any questions regarding these comments.

Best regards,


Adam C. Smith

Bcc: DWDeYoung (via email only)
Richard M. Wilson, Esq. (via email only)