

**SAFETY NOTICE:**

*We request that any individual that is running a fever, coughing, sneezing (even allergies), or just not feeling well, refrain from attending in person and utilize our Zoom attendance option.*

*Thank you. The Whitewater Township Planning Commission*

Whitewater Zoom is inviting you to a scheduled Zoom meeting.

Topic: Planning Commission Meeting

Time: Feb 3, 2021 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://zoom.us/j/95642251999?pwd=WXoyTHFtNVhmZ01paDhaeS9Vbno5UT09>

Meeting ID: 956 4225 1999

Passcode: 859013

One tap mobile

+16465588656,,95642251999#,,,,\*859013# US (New York)

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Dial by your location

+1 646 558 8656 US (New York)

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+1 312 626 6799 US (Chicago)

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+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

Meeting ID: 956 4225 1999

Passcode: 859013

WHITEWATER TOWNSHIP PLANNING COMMISSION

AGENDA FOR REGULAR MEETING, *February 3, 2021*

7:00 p.m., Whitewater Township Hall

Via ZOOM and in person

5777 Vinton Road, Williamsburg, MI 49690

Phone 231-267-5141/Fax 231-267-9020

1. Call to Order/Pledge Allegiance
2. Roll Call of Commission Members
3. Set/Adjust Meeting Agenda
4. Declaration of Conflict of Interest
5. **Public Comment:** Any person shall be permitted to address a meeting of the Planning Commission. Public comments shall be carried out in accordance with the following rules and procedures:
  - a. Comments shall be directed to the Commission, with questions directed to the Chair.
  - b. Any person wishing to address the Commission shall speak from the lectern and state his/her name and address.

- c. Persons may address the commission on matters that are relevant to township planning and zoning issues.
  - d. No person shall be allowed to speak more than once on the same matter, excluding the time needed to answer Commission members' questions.
  - e. Public comment shall be limited to 3 minutes.
- 6. Public Hearing: Amendment 78 regarding Article 28, Condominium Regulations and Article 3, Definitions
  - 7. Approval of minutes of January 6, 2021
  - 8. Correspondence: None
  - 9. Reports/Presentations/Announcements/Comments
    - a. Zoning Administrator, Hall:
    - b. Chair, Mangus:
    - c. Township Board Representative, Not Available
    - d. ZBA Representative, Not Available
  - 10. Unfinished Business:
    - a. Master Plan review: Organizational structure, table of contents, professional input
    - b. Marijuana Ordinance: Introductory discussion and educational options
  - 11. New Business:
    - a. Election of Officers
  - 12. Next Meeting March 3, 2021
  - 13. Public Comment
  - 14. Commission Discussion/Comments
  - 15. Continuing Education:
  - 16. Adjournment

Tabled Items: RC District, Event Barns

Whitewater Township will provide necessary reasonable auxiliary aids and services to individuals with disabilities who are planning to attend. Contact the township clerk at 231-267-5141 or the TDD at 800-649-3777.

ARTICLE XXVIII

CONDOMINIUM DEVELOPMENT REGULATIONS

**28.10 INTENT**

The intent of this Article is to provide procedures and standards for the review and approval or denial of condominium developments implemented under the provisions of the Condominium Act (Act 59 of 1978, as amended) and to insure that such developments are consistent and compatible with conventional platted subdivisions as provided for through the Land Division Act (P.A 288 of 1967, as amended), and promote the orderly development of adjacent areas. These regulations are enacted by authority of the Condominium Act, the Michigan Zoning Enabling Act, and this Ordinance, as amended, whereby all developments utilizing any form of condominium development shall be approved or disapproved by the Township.

**28.11 APPLICABILITY**

**A. General Provisions**

Prior to recording of the master deed, required by Section 72 of the Condominium Act, the condominium development shall undergo a site plan review and approval by the Township in accordance with the provisions of this section. Approval under this section shall be required as a condition to the right to construct, expand or amend a condominium development in the Township.

**B. Condominium Conversions** – All individuals proposing a Condominium Conversion shall present the township with two copies of all required documents as indicated in the Condominium Act (Act 59 of 1978, as amended). Said review shall be conducted by the township Zoning Administrator and township attorney for compliance with the Condominium Act (Act 59 of 1978, as amended). Applicant shall be provided with a written response of approval or specific reason for failure to approve within 60 days of submission.

**C. Plat Approval**

There shall be no requirement for plat approval for a condominium development under the Township Subdivision Control Ordinance.

**D. Planned Developments**

The procedural provisions of this section shall not apply to condominium developments which are reviewed and approved through the Special Use Permit – Planned Unit Development procedure, **Article 31 of this Ordinance**.

**28.12 CONSULTATION**

In determining whether to approve a condominium development plan, the **Township may, as the Zoning Administrator and Planning Commission deem necessary, charge for consultation with the Township Attorney and other experts**, regarding the adequacy of the master deed, deed restrictions, utility systems, and streets, site layout and design, and compliance with all requirements of the Condominium Act and this Ordinance. All reasonable costs related to said consultation, as established by the Township, **shall be placed in escrow with the Township by the applicant prior to review in addition to the standard nonrefundable application fee**.

At any point during the review process, the Township may require that the applicant place additional funds with the Township to cover consultations deemed necessary to complete the review process. If consultation funds are not provided promptly, all reviews shall cease until funds are made available to continue. **Any unused consultation funds remaining after the Township completes its review shall be returned to the applicant with a line item record of distributions.**

**28.13 GENERAL REQUIREMENTS**

**A. Compliance with Federal, State and Local Laws**



## Draft Ordinance under review by Whitewater Township Planning Commission

All condominium developments shall comply with all applicable Federal, State and local laws and ordinances. No condominium documents shall conflict with the standards of this Ordinance.

### B. Fee Required

Before the Township reviews a condominium development plan, the applicant shall submit to the Township a nonrefundable application fee **or preliminary review fee** as established by resolution of the Board to cover the Township's cost of **internal** review. Such application fee shall be independent of any required consultation costs as described in Section 28.12.

### C. Information Required

All condominium development plans shall include the information required by **Section 66 of the Condominium Act** and the material required in **Section 25.11 (F)**. A person, firm, or corporation intending to develop a condominium development shall provide the following information:

1. **Size and Scale - Plans may be on paper and shall not be less than 24 inches by 36 inches, at a scale of at least 1 inch to 200 feet showing the date and north arrow.**
2. The name of the proposed condominium development.
3. The name, address, telephone number of:
  - a. All persons, firms, or corporations with an ownership interest in the land on which the condominium development will be located and a description of the nature of each entity's interest (for example, fee owner, optionee, or land contract vendee)
  - b. All engineers, attorneys, architects, landscape architects, or registered land surveyors associated with the condominium development.
  - c. The individual **or entity** applying for the condominium development.
4. The legal description of the land on which the condominium development will be developed together with any expansion plans and appropriate tax identification numbers.
5. The acreage of the land on which the condominium development will be developed.
6. The land use and existing zoning of the proposed condominium development.
7. The following information for subject parcel and all parcels within 300 feet of the proposed site:
  - a. Name and address of the owners
  - b. The zoning classifications
  - c. Existing structures or significant land marks
8. Location, type, dimensions and proposed use of all existing structures.
9. A location map showing the relationship of the proposed plan to the surrounding area.
10. Statement of intended use(s). Such as, residential single-family, residential multi-family, commercial, industrial, etc. and the number of acres of each type of land use proposed.
11. Condominium lot lines and the total number of condominium units to be developed on the subject parcel.
12. Description of water system to be provided.
13. Description of sanitary waste disposal system to be provided.
14. Right-of-way easements, showing location, width, and purpose.
15. Existing topographic elevations at two (2) foot intervals, proposed grades and direction of drainage flows.
16. Location and types of all significant existing vegetation, water courses and bodies, flood plains and water retention areas, wetlands, and soil types.
17. Any additional information required during site plan review

### D. Utility Easements

## Draft Ordinance under review by Whitewater Township Planning Commission

The condominium development plan shall include all necessary easements for the purpose of constructing, operating, inspecting, maintaining, repairing, altering, replacing, and/or removing pipelines, mains, conduits, and other installations of a similar character providing public utilities.

### E. Performance Guarantees

As a condition of approval of the condominium development plan by the Township, a performance guarantee may be required to ensure construction of required improvements and the completion of filing requirements before land use permits are issued. Upon fulfillment of all requirements and filings, the applicant shall apply to the Township for release of performance guarantees. Performance guarantees shall comply with the requirements in **Section 25.16** of this Ordinance.

### 28.14 MOBILE HOME CONDOMINIUM DEVELOPMENTS

Mobile home condominium developments shall conform to the requirements of this Ordinance, in accordance with the Condominium Act and other applicable Local, State laws, ordinances and regulations. Such developments shall be located only in a zoning district that provides for mobile homes. The review and approval shall be processed in accordance with Section 28.15 Review Procedures.

### 28.15 STANDARDS AND DESIGN FOR CONDOMINIUM DEVELOPMENTS

#### A. Condominium Lots

The Condominium Development Plan shall indicate specific parcel dimensions allocated to each condominium dwelling unit. For the purpose of this section and to assure compliance with the provisions herein, these parcels shall be referred to as "condominium lots".

#### B. Condominium Development Layout and Design

The description, size, location and arrangement of the site condominium lots shall conform to the requirements of this Ordinance. The design of a condominium development shall be subject to the following requirements. Should there be unusual topographic or other natural feature constraints, these standards may be modified to achieve greater or lesser conformance in accordance with the judgement of the township **Planning Commission**.

1. Each condominium lot in a site shall be considered a single lot and shall comply with the zoning district in which it is located. The area **and setback requirements** of a dwelling unit or structures are subject to the zoning district in which it is located.
2. Each condominium dwelling unit shall be located within a condominium lot. In a condominium development containing single-family detached dwellings units, not more than one (1) dwelling unit shall be located on a condominium lot.
3. The condominium lots size and required setbacks shall be measured from the designated front, rear and side condominium lot lines.
4. There shall be a proper relationship between existing streets and highways within the vicinity, and proposed deceleration lanes, service drives, entrance and exist driveways, and parking areas to assure the safety and convenience of pedestrian and vehicular traffic, and that the proposed streets and access plan conform to any street or access plan adopted by the Township or the County Road Commission.
5. **Existing natural features which add value to a residential development and enhance the attractiveness of the community shall be retained, insofar as possible, in the design of the subdivision.**
6. Lands subject to flooding or otherwise deemed by the Township to be uninhabitable shall not be used for uses that may increase the danger to health, life, or property or increase the flood hazard. Such land within a condominium development may be set aside for other uses, such as parks or other open space.
7. Easements shall provide for utilities when necessary.
8. All condominium development units shall be accessible to emergency vehicles.



## Draft Ordinance under review by Whitewater Township Planning Commission

9. Common open space provided shall remain open for recreational and conservational purposes, and recorded as part of the master deed.
10. Condominium development units having water frontage shall meet the requirements of Article 14 Easement to Waterfront.
11. A plan for erosion control and storm water discharge must be approved by the appropriate public agency.
12. All condominium developments shall obtain approval from all applicable governing agencies.

### 28.16 REVIEW PROCEDURES

#### A. Preliminary Review

Any applicant can request a preliminary review of a proposed condominium development with the Zoning Administrator and one to three Planning Commissioners. This review allows an open dialogue and an opportunity to discuss a proposed goals, features, location and scope of operations prior to a formal application. Preliminary Review is available as a sounding board only, no decisions or approvals shall be rendered, either stated or implied.

#### B. Agency Submittal

The applicant shall provide copies of the proposed condominium development plan to the following Grand Traverse County Agencies: Health Department (or Department of Public Works if proposed on municipal water and/or sanitary sewer), Drain Commission, Soil Erosion, and Road Commission (or Michigan Department of Transportation if proposed on a state highway), as well as the Michigan Department of Environment, Great Lakes, and Energy (when sensitive areas and wetlands are a concern), and the Whitewater Township Fire Department **or the respective successor for any of the above agencies**. Four (4) hard copies and a digital print shall also be provided to the Whitewater Township. The Zoning Administrator shall distribute the proposed condominium development plans to the Planning Commission and Board of Trustees for review.

#### C. Public Hearing

The Planning Commission shall hold a public hearing on the proposed site condominium development plan, for the purpose of reviewing and making a recommendation of approval, approval with conditions, or denial to the Township Board.

#### D. Planning Commission Determination

After preceding with the **Article 25, Site Plan Review** process, if the Planning Commission determines that the proposed plan meets all the requirements of this Ordinance and the Condominium Act, the Planning Commission shall recommend approval or approval with conditions of the site condominium development plan and shall send written notice of action taken with comments to the Township Board and applicant.

If the Planning Commission determines that the condominium development plan does not meet all requirements, the Planning Commission shall state its reason in its official minutes and shall provide written notice of said decision to the Township Board and applicant. The Planning Commission shall recommend to the Board, disapproval of the plan until the objections causing disapproval have been changed to meet the requirements of this Ordinance and the Condominium Act.

#### E. Township Board Procedure

The Township Board shall not review, approve or reject a condominium development until it has received from the Planning Commission its report and recommendations.

## Draft Ordinance under review by Whitewater Township Planning Commission

The Township Board shall consider the condominium development plan at its next meeting after receipt of the report and recommendations from the Planning Commission **provided all documents are received 15 days prior to meeting date**. The Board shall render a written decision **within 15 days their meeting** unless the applicant and Board agree to a later deadline.

### **F. Township Board Determination**

The Township Board shall approve the condominium development plan, with or without conditions, reject the plan and give its reasons, table the proceedings pending further review or pending changes to the plan to make it acceptable to the Board, or refer that application back to the Planning Commission for further review and report.

## **28.17 CONDITIONS AND DURATION OF APPROVAL**

### **A. Conditions**

The approval of the Board of Trustees will indicate that the proposed condominium development plan meets the ordinances and regulations of Whitewater Township, but does not cover additional permits that may be required after the Master Deed has been recorded. The Township may impose reasonable conditions on the approval of any condominium development plan consistent with the Condominium Act, this Ordinance, and the protection of public health, safety and welfare.

### **B. Duration**

Approval of the condominium development plan by the Township shall be for a period of two (2) years from the date of approval. If no Master Deed is recorded with the Grand Traverse County Register of Deeds Office within two years of approval, such approval shall be considered null and void. The Zoning Administrator may extend the two-year period by one additional year if applied for by the applicant subject to satisfying the requirements of **Section 25.15 Failure to Initiate Construction**.

### **C. Condominium Development Plan Approval Contract**

If the Township Board approves the site condominium development plan, it shall prepare a written order setting forth the conditions upon which the approval is based. Such order shall be entered into between the Township and the applicant prior to the issuance of a Land Use Permit for any construction in accordance with the approved site condominium development plan. All reasonable costs related to the preparation of said order, as established by the Township, shall be paid by the applicant to the Township Treasurer prior to Township signature and issuance of such order.

## **28.18 FINAL FILINGS REQUIREMENTS**

Prior to the recording of the Master Deed the Township Treasurer shall certify that all taxes and special assessments not delinquent. A copy of the Master Deed, Bylaws/ Restrictive Covenants must be recorded with the County Register of Deeds. The Township shall be provided with two (2) copies of each document, including as-built prints, and all pertinent attachments which shall remain on file with the Township.

## **28.19 CONDOMINIUM DEVELOPMENT AMENDMENTS**

Condominium Development Plans may be amended as follows:

### **A. Minor Amendments**

Minor amendments are those which are determined by the Zoning Administrator to have no foreseeable effect beyond the condominium development boundary such as minor changes in the

## Draft Ordinance under review by Whitewater Township Planning Commission

location of buildings, the alignment of utilities, and the alignment of interior roadways. Minor amendments for good cause may be authorized by the Zoning Administrator provided that no such changes shall increase the size or height of structures, reduce the efficiency of public facilities serving the site condominium, reduce usable open space, or encroach on natural features proposed by the plan to be protected.

### **B. Major Amendments.**

Any amendment not qualifying as a minor amendment as determined by the Zoning Administrator shall be considered a major amendment and must be approved by the Planning Commission according to the procedures authorized by this Article for approval of a condominium development.

## **Article 3 – Definitions**

**Condominium Conversion** – Any property or group of properties whose form of ownership is changed to condominium units from another form of ownership.



WHITEWATER TOWNSHIP PLANNING COMMISSION  
MINUTES FOR REGULAR MEETING via ZOOM  
January 6, 2021

Call to Order at 7:00 p.m.

Roll Call: Via Zoom: Dean, Hooper, Mangus, Wroubel,

In person: Jacobson,

Also in attendance: Recording Secretary MacLean

Set / Adjust Agenda: Set

Declaration of Conflict of Interest: None.

Public Comment: Paul Brady, 7911 Cram Rd.: Hope to undertake a project to build high density residential housing on the Walter's property on Williamsburg, just north of Crisp Rd. He has spoken with Zoning Administrator(ZA), Hall. There currently appears to be no zoning that allows high density residential housing. Looking for ideas and everyone's take on it. We know that a project like this would likely require water and sewer. The plan is to possibly work with the Tribe on that. A letter is in the Board packet for next week's board meeting regarding water, sewer and The Tribe. Looking to possibly get a preliminary meeting with a couple PC members and the ZA for discussion, virtual or in person. Hall has been talking with Mr. Brady for a couple months. Dean and Hooper are willing to meet.

Michael Corocan, 800 Cottage View, represents Northpoint Farms. Ordinance 59 and 60 regarding Marijuana. Have been working with Hall. I know the PC will be addressing the Zoning Ordinance (ZO) amendment regarding which districts, set-backs, special use permit, etc. I am aware there is a possible referendum. Ask you to move forward with due diligence. The applicant and co-applicant are willing to pay for a special meeting. The costs to the township will be covered by fees.

Lois MacLean, 5919 Linderleaf Lane, regarding the PC agenda/packet and the revised agenda/packet. In an email to the attorneys from the Supervisor it sounds like putting out the agenda and then a revised agenda was done underhandedly in an attempt to hide agenda items. It was not at all. The agenda packet was prepared, sent out and posted based on the agenda/packet from the cancelled November meeting. The Chair added items so there was a revised agenda/packet prepared, sent out and posted to the web as soon as possible.

Discussion amongst commissioners ensued regarding the agenda/packet procedure. Commissioners indicate they like the current system and would like it to continue as it seems to follow the guidelines and posting requirements. The Chair and Recording Secretary, MacLean, will continue to collaborate to get the agenda/packet out in a timely fashion.

Public Hearing: None

Approval of Minutes:

MOTION by Jacobson, second by Hooper to approve October 7, 2020, Meeting Minutes.

Roll call: Dean-yes; Hooper-yes; Jacobson-yes; Mangus-yes; Wroubel-yes. Motion carried.

Correspondence: None

Reports:

*Zoning Administrator Report, Hall:* Will have the annual report for the meeting next month. Township has opted into marijuana via police power ordinances. The PC will work to adopt the zoning ordinance. There is a process. It will be good to work with Mr. Brady. Regarding Master Plan (MP) review, the ZA believes the PC and the public would be best served to bring in a third party to step through the review with an audit including statutory requirements that needs to be in the MP.

*Chair's Report, Mangus:* The Township Board, at the December meeting, passed an ordinance to allow for indoor grow and processing for medical and recreational marijuana. It is not a permitted use in any of our districts. The board has requested an ordinance from the township attorney. It is still up to us to have an idea of what we are doing so we can present the ordinance to the board for adoption.

*Township Board Rep.:* Not Available

*ZBA Representative, Hooper:* No meetings. There have been no zoning problems that need ZBA attention!

*Committee Reports:* None.

*Additional Items:* None.

#### Unfinished Business

1. Discussion of meeting format, Zoom vs In person: Previously the PC had decided not to hold meetings until we could openly have meetings at the township hall for the most open dialog possible.  
Is the PC willing to do Zoom meetings? Public Hearings are able to be done through zoom meetings. November board meeting had a public hearing. The ordinances were passed at the December meeting.  
Consensus to move forward using Zoom as needed. Mike will attend in person at the hall.  
Hall: Recommendation that we get an unbiased third party involved with the Master Plan review and it would work well via zoom. Hall will get information and pricing. It should fit in our budget this year.
2. Discussion of timing and direction for addressing Tabled Items, Event Barns and RC District: both would be good to have during an open format for attendance. Do we want to discuss these right away or wait until April? The amendment regarding condominium is more housekeeping and is not considered controversial.  
Consensus on dealing with Event Barns and RC district when we can get more community input.  
Consensus that the marijuana ordinance needs can be dealt with via zoom.  
Consensus to bring in a third party for input and instruction on the MP. The "plan" seems to have always been sticking with the "status quo". We need to address that stance.  
We need to be cautious and vet this third party person. The PC would want to walk through the process not necessarily the specific content with this third party.  
Hall: The MP sentiment statements are perfect.
3. Reschedule Public Hearing 78, Article 28, Condominium Regulations and Definitions:  
**MOTION** by Dean, second by Wroubel, to schedule a Public Hearing on February 3, 2021, on Amendment 78, Article 28, Condominium Regulations and Definition Article 3.  
Roll call: Hooper-yes; Jacobson-yes; Mangus-yes; Wroubel-yes; Dean-yes. Motion carried.
4. Master Plan Update Review: Read through of suggested updates supplied by Savage. Discussion. Consensus to indicate that the gun range is nearby but not in our township and remove the reference to Mill Creek.  
Mention DTE expansion here with more detail under utilities.  
Introduction provided by Dean: Read through. Discussion. Consensus to go with it as presented.

#### New Business:

1. Bi-laws: Discussion. Question regarding changes to an agenda. Special Meetings require everyone be present to make a change to the agenda. Regular meeting agenda can be changed at the start of the meeting.  
Consensus to leave the bi-laws as written.
2. Resolution PC21-01, 2021/2022 Meeting Schedule  
**MOTION** by Jacobson, second by Dean, to adopt Resolution PC21-01, 2021/2022 Meeting Schedule  
Roll call: Mangus-yes; Wroubel-yes; Dean-yes; Hooper-yes; Jacobson-yes. Motion carried.
3. Election of Officers. Consensus to postpone until February.
4. Year-end Report to include work done on Article 28, Condominium, preparation for a survey for RC district, Master Plan process review. Mangus will complete the report and bring it back to the PC.
5. Marijuana law education, discuss direction and intent. Hall provided a quick run-down on basics of the law. Questions can be addressed by the attorney. Can do a special over-lay district. The state has very specific regulations. The ZO already has special use provisions and can incorporate specific marijuana stipulations. At this time the steps will be that ZA processes the application, the board approves it then the PC looks at the special use permit.  
As it stands right now the ordinance will go into effect this month. The ZA will not accept applications until the Zoning Ordinance is updated. Discussion of referendum and/or possible township vote.  
Do we have any update on timing for the draft from the attorney? Would like to have it for the February PC agenda. May want to incorporate verbiage regarding care-giver grow.

Bob says Thank you to the PC for coming together for the meeting.

Next Regular Meeting is scheduled for February 3, 2021.

Agenda: Public Hearing on Amendment 78, Article 28, Condominium Regulation and Definitions; Master Plan review; marijuana ordinance update.

Postponed to the future: RC District review and Event Barns review; AG district review (from the complete review of the Zoning Ordinance)

Public Comment:

Vaughn Harshfield, 4404 Broomhead, impressed with the commission. You have a lot on your plate. Complements on the job you are doing for our township.

Carl Wroubel: The MP can change as new people have moved in.

Della Benak: 8190 Bunkerhill, Yes you can add over-lays to further restrict in the districts where these can be allowed.

Linda Slopesma 9693 MB Road, lots of discussion regarding town hall meetings and public input. It can be difficult for people who do not have access to electronic meetings. Be careful and make sure written comments are included in minutes. You have several items and you need to focus on what is important to the residents. You do not want to be accused of silencing the community.

Bob: If anything comes in to the ZA it will always be included as part of the packet.

Commission Discussion/Comments: We need to be thinking about ways to encourage input from the segment of the community that cannot attend. Could maybe get Planning Commission letter box at the building.

Internet is available in the parking lot at the township – we can let people know.

Continuing Education:

Adjournment: 9:07 p.m.

Respectfully Submitted  
Lois MacLean,  
Recording Secretary



# Fahey Schultz Burzych Rhodes

ATTORNEYS AT LAW

4151 OKEMOS ROAD

OKEMOS, MI 48864 USA

FSBRLAW.COM

TEL: 517.381.0100

FAX: 517.381.5051

January 28, 2021

**Via Email**

Robert Hall, Zoning Administrator  
Whitewater Township  
5777 Vinton Road  
Williamsburg, MI 49690  
[zoning@whitewatertownship.org](mailto:zoning@whitewatertownship.org)

Dear Planning Commission Members and Mr. Hall:

**Re:     *Marihuana Zoning Ordinances***

As you are aware, the Township Board adopted ordinances 59 and 60 permitting medical marihuana facilities and adult-use marihuana establishments consistent with state law and detailed local regulation. I have attached a draft zoning ordinance for your review and consideration to establish the land use regulations for these uses.

**Regulated Land Uses.** The draft zoning ordinance permits only Grower and Processor facilities and establishments, which are the two classes permitted under the regulatory ordinances. The draft places the permitted uses in the Industrial District and creates a new Marihuana Overlay District. Most, if not all, of our clients have utilized overlay districts to site marihuana businesses; it provides a flexible and precise option to regulate the land use. Here, the Marihuana Overlay would be in Agricultural District or the Industrial District, which is not required but is consistent with medical marihuana grower requirements. See MCL 333.27501(9). Only one parcel is identified in the overlay at this time, but the Township certainly could designate more and adjust zoning districts as needed.

**Draft Starting Point.** It is important to emphasize that this draft is a starting point. You are all well positioned to identify the areas and regulations required to best implement this land use. For example, the Industrial District and a small Overlay District provide several possible parcels and thus avoid spot zoning or exclusionary zoning challenges. But it would also be possible to expand the areas in the Overlay District and make it the exclusive zoning district for these uses.



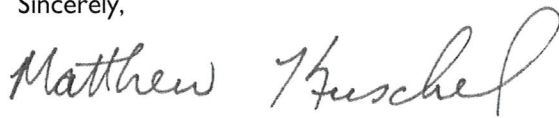
EXPERT COUNSEL. REAL SOLUTIONS.

**Special Use.** The marihuana businesses are only allowed by special use permit. In this draft, the Planning Commission issues the corresponding special use permit, which is consistent with your current ordinance. However, several communities place the final special use permit decision at the Township Board level and Whitewater Township could also elect to have the Planning Commission make a recommendation for these permits but have the Township Board responsible for final issuance.

**Medical Marihuana Caregivers.** We have also included regulations for medical marihuana caregiver operations under the original 2008 Michigan Medical Marihuana Act (MMMA). Zoning Regulations of these uses have been upheld by the Michigan Supreme Court. While these uses are not connected to ordinances 59 and 60, it is appropriate to consider this additional option as create regulations for other marihuana facilities and establishments. This draft simply places these uses in the Industrial District. Many communities have regulated these as a home occupation and of course, these regulations are also a starting point.

As with any zoning ordinance amendment in the Township, these amendments should be considered by the Planning Commission, set for public hearing, and ultimately crafted to a final form for recommendation to the Township Board. We are happy to assist moving this forward as the Township takes these initial steps.

Sincerely,



**MATTHEW A. KUSCHEL**  
**ASSOCIATE**

Direct: 517.381.3162

[mkuschel@fsbrlaw.com](mailto:mkuschel@fsbrlaw.com)

attachment

Draft

**WHITEWATER TOWNSHIP  
GRAND TRAVERSE COUNTY, MICHIGAN  
ZONING ORDINANCE AND ZONING ORDINANCE MAP AMENDMENT**

**ORDINANCE NO. \_\_\_\_\_**

At a duly scheduled meeting of the Township Board of Whitewater Township, Grand Traverse County, Michigan, held at the Whitewater Township Hall on \_\_\_\_\_, 2021 at \_\_\_\_\_ p.m., Township Board Member \_\_\_\_\_ moved to adopt the following ordinance, which motion was seconded by Township Board Member \_\_\_\_\_:

*An Ordinance to amend the Whitewater Township Zoning Ordinance, as amended, to provide for the zoning regulation of Commercial Medical Marihuana Facilities, Adult-Use Marihuana Establishments, and Primary Caregiver operations; and designate such Facilities, Establishments, and Operations as special uses; in order to maintain the public health, safety and welfare of the residents and visitors to Whitewater Township. The Ordinance further amends the Zoning Ordinance Map of the Whitewater Township Zoning Ordinance to establish a Marihuana Overlay District consistent with text amendments to the Whitewater Township Zoning Ordinance.*

THE TOWNSHIP OF WHITEWATER ORDAINS:

**Section 1. Amendment of Article III, Definitions:** The Whitewater Township Zoning Ordinance, Article III, Definitions, shall be amended to add the following definitions:

A. “*Commercial Medical Marihuana Facility*” or “*Facility*” means one of the following:

1. “*Provisioning Center*,” as that term is defined in the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.* (“MMFLA”);
2. “*Processor*,” as that term is defined in the MMFLA;
3. “*Secure Transporter*,” as that term in the MMFLA;
4. “*Grower*,” as that term is defined in the MMFLA;
5. “*Safety Compliance Facility*,” as that term is defined in the MMFLA.

B. “*Marihuana Establishment*” or “*Establishment*” means one of the following, or any other type of marihuana-related business Licensed by the Department of Licensing and Regulatory Affairs or its authorized Michigan agency.

1. “*Marihuana grower*,” as that term is defined in the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 *et seq.* (“MRTMA”); and
2. “*Marihuana microbusiness*,” as that term is defined in the MRTMA; and



3. "*Marihuana processor*," as that term is defined in the MRTMA; and
  4. "*Marihuana retailer*," as that term is defined in the MRTMA; and
  5. "*Marihuana secure transporter*," as that term is defined in the MRTMA; and
  6. "*Marihuana safety compliance facility*," as that term is defined in the MRTMA; and
  7. "*Designated consumption establishment*," as that term is defined by the Department of Licensing and Regulatory Affairs or as may be defined in the MRTMA; and
  8. "*Excess marihuana grower*," as that term is defined by the Department of Licensing and Regulatory Affairs or as may be defined in the MRTMA; and
  9. "*Marihuana event organizer*," as that term is defined by the Department of Licensing and Regulatory Affairs or as may be defined in the MRTMA; and
  10. "*Temporary marihuana event*" as that term is defined by the Department of Licensing and Regulatory Affairs or as may be defined in the MRTMA.
- C. "*Patient*" means a "registered qualifying patient" or a "visiting qualifying patient" as those terms are defined by MCL 333.26421, *et seq.*
- D. "*Primary Caregiver*" means a Person qualified under MCL 333.26423(g), and the rules promulgated therefore by the Department of Community Health, R 333.101 *et seq.*, including, but not limited to possession of a valid, unexpired registry identification card, to assist with a Patient's medical use of Marihuana, and authorized under the Michigan Medical Marihuana Act ("MMMA") to operate as a Primary Caregiver.

**Section 2. Amendment of Article 9, Section 9.11, Uses Permitted by Special Use Permit:** The Whitewater Township Zoning Ordinance, Article 9 Industrial District N, Section 9.11, Uses Permitted by Special Use Permit, shall be amended to read as follows:

#### **SECTION 9.11 USES PERMITTED BY SPECIAL USE PERMIT**

The following additional uses may be permitted subject to review and approval of the Planning Commission in accordance with procedures of Article 25.

- A. Industry or business, the operation of which uses any product or by-product or other thing which may cause contamination to the water, air, or land of the area unless adequate provision is made for the disposition of such product, by-product or waste which meets the approval of the Planning Commission and shall not be offensive, objectionable, or in any way endanger public health, safety, or welfare.

- B. Junk, scrap metal, or salvage yards.
- C. Stock yards, slaughterhouses, rendering plants, meat or pelt processing establishments.
- D. Establishments primarily engaged in heavy industry such as smelters, foundries, heavy industrial stamping operations.
- E. Growers Facilities and Marihuana Grower Establishments.
- F. Processor Facilities and Marihuana Processor Establishments.
- G. Primary Caregiver Operation
- H. Any similar business or operation offensive or objectionable to public health, safety, or welfare.
- I. All special uses permitted within the Commercial, Village, and Residential Districts.

**Section 3. Amendment of Article 5 to add Section 5.19 Marihuana Overlay District:** The Whitewater Township Zoning Ordinance, Article 5 shall be amended to add Section 5.19 Marihuana Overlay District, providing as follows:

#### **SECTION 5.19 MARIHUANA OVERLAY DISTRICT**

- A. This District shall comprise only property within either the Agricultural A-1 or the Industrial N zoning districts.
- B. The Official Zoning Map of Whitewater Township shall be amended to reflect the portion of the Township described as follows:

THAT PART OF THE SOUTHWEST 1/4 OF SECTION 9, TOWN 28 NORTH, RANGE 9 WEST, DESCRIBED AS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 9 FOR THE POINT OF BEGINNING, THENCE NORTH 00°05'55" EAST ALONG THE WEST LINE OF SAID SECTION AND THE CENTERLINE OF MUNRO ROAD 781.83 FEET; THENCE SOUTH 89°52' 41" EAST 315.87 FEET; THENCE SOUTH 00°09'53" WEST 116.82 FEET; THENCE SOUTH 89°52' 41" EAST 122.66 FEET; THENCE SOUTH 40°42' 34" EAST 88.66 FEET; THENCE SOUTH 00°05'55" WEST 597.90 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION AND THE CENTERLINE OF ANGELL ROAD; THENCE NORTH 89°56'50" WEST ALONG SAID SOUTH LINE AND SAID CENTERLINE 495.65 FEET TO THE POINT OF BEGINNING.

**Section 4. Amendment to add Article 11B: Marihuana Overlay District:** The Whitewater Township Zoning Ordinance, shall be amended to add Article 11B: Marihuana Overlay District, providing as follows:

#### **ARTICLE 11B – MARIHUANA OVERLAY DISTRICT.**

##### **SECTION 11B.01 – PURPOSE.**

The Marihuana Overlay District (“Marihuana Overlay District”) is intended to provide opportunities for the development of certain Marihuana Facilities or Establishments permitted

under the MMFLA and MRTMA and to require compliance with this Ordinance, in order to maintain the public health, safety and welfare of the Township. This Article proposes to accomplish this through the implementation of regulations that promote the use of land within the Marihuana Overlay District for certain Commercial Marihuana Facilities and Establishments.

#### **SECTION 11B.02 – PARCEL REGULATIONS**

- A. Land located within such overlay district may be developed according to the provisions of the underlying zoning district or according to the provisions of this Article.
- B. All land in the overlay district shall be subject to the terms and conditions imposed by the zoning district where such parcel or lot may be located and any other applicable ordinances.
- C. The Facility or Establishment shall be the only principal use located on the Permitted Property, except that the co-location of facilities and establishments is permitted and the stacking of applicable Facility or Establishment licenses is permitted, subject to other applicable ordinances, laws, or regulations.
- D. Each Facility or Establishment shall comply with all Site Plan requirements of this Ordinance. The Site Plan shall include the surrounding area and identify any school, house of worship, park, or residential dwelling units within 500 feet of the proposed Permitted Premises at the time of Special Use Permit application.

#### **SECTION 11B.03 – USES PERMITTED BY SPECIAL USE PERMIT.**

The following uses are permitted in the Marihuana Overlay District with a Special Use Permit:

- A. Growers Facilities and Marihuana Grower Establishments.
- B. Processor Facilities and Marihuana Processor Establishments.

#### **SECTION 11B.04 – REVIEW PROCESS**

A complete application shall be reviewed and granted by the Planning Commission in accordance with the provisions of this Article and Article 25 – Site Plan Review and Special Land Uses, subject to all hearings and other provisions set forth therein, as applicable.

**Section 5. Amendment of Article 25 to add Section 25.23 Operational Requirements – Primary Caregiver Operations:** The Whitewater Township Zoning Ordinance, Article 5 shall be amended to add Section 25.23 Operational Requirements – Primary Caregiver Operations, providing as follows:



## **SECTION 25.23 OPERATIONAL REQUIREMENTS – PRIMARY CAREGIVER OPERATIONS**

- A. *Scope of Primary Caregiver Operation.* Only one (1) Primary Caregiver is permitted to operate within any Primary Caregiver Operation.
- B. *Awareness Permit.* A Primary Caregiver cultivating Medical Marihuana plants for distribution to Patients in compliance with the MMMA shall apply for an Awareness Permit on an application form provided by the Township. A copy of the Primary Caregiver's Registry Identification Card shall be provided with the Awareness Permit application.
- C. *Required spacing.* A Primary Caregiver Operation shall not be within five-hundred (500) feet from any school, church, house of worship or other religious facility, or public or private park, with the minimum distance between uses measured horizontally between the nearest points of each property line.
- D. *Amount of Marihuana.* The amount of Marihuana on the property and under the control of the Primary Caregiver operating the Primary Caregiver Operation may be no more than twelve (12) Marihuana plants and no more than 2.5 ounces of usable Marihuana per Patient to whom the Primary Caregiver is lawfully connected, up to a maximum of five (5) patients, sixty (60) Marihuana plants and 12.5 ounces of Usable Marihuana per Caregiver. A Primary Caregiver who is also registered as a Patient may grow an additional 12 Marihuana plants and maintain 2.5 ounces of Usable Marihuana for himself. The Primary Caregiver operating the Primary Caregiver Operation must specify the name and address of the place where all portions exceeding the amount permitted by law shall be disposed.
- E. *Storage of Marihuana.* All Marihuana must be contained within a separate enclosed, locked facility for each Patient to whom the Primary Caregiver is lawfully connected, in accordance with the MMMA, MCL 333.26421, et seq. The Primary Caregiver Operation shall have secure windows and doors and the Primary Caregiver shall implement security measures to prevent theft of stored Marihuana.
- F. *Use of Marihuana.* Smoking or consumption of controlled substances, including Marihuana, shall be prohibited on the site of the Primary Caregiver Operation.
- G. *Operation.* The Primary Caregiver Operation's operation and design shall minimize any impact to adjacent uses, including the control of any odor by maintaining and operating an air filtration system so that no odor is detectable outside the Primary Caregiver Operation.
- H. *Permits.* A Primary Caregiver Operation must obtain all necessary building, electrical, plumbing, and mechanical permits for any part of the structure in which electrical, wiring, lighting, or watering devices that support the cultivation, growing, or harvesting of Marihuana are located.

- I. *Distribution of Marihuana.* No person operating a Primary Caregiver Operation shall provide or otherwise make available medical Marihuana to any person who is not a Patient legally connected to that Primary Caregiver.
- J. *Inspections.* Primary Caregiver Facilities are subject to random and unannounced examinations of the Primary Caregiver Operation and all articles of property in that facility at any time to ensure compliance with this Ordinance, any other local regulations, and state law.

**Section 6. Severability:** The provisions of this Ordinance are declared severable. If any part of this Ordinance is declared invalid for any reason by a court of competent jurisdiction, that declaration does not affect or impair the validity of all other provisions that are not subject to that declaration.

**Section 7. Effective Date:** This Ordinance shall take effect seven (7) days after publication of a notice of adoption of this Ordinance, unless referendum procedures are initiated under MCL 125.3402. If referendum procedures are initiated, this Ordinance will take effect in accordance with MCL 125.3402.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT/ABSTAIN: \_\_\_\_\_

ORDINANCE DECLARED ADOPTED.

\_\_\_\_\_  
Ron Popp, Whitewater Township Supervisor

**CERTIFICATION**

I hereby certify that:

1. The above is a true copy of an Ordinance adopted by the Whitewater Township Board at a duly scheduled and noticed meeting of that Township Board held on \_\_\_\_\_, pursuant to the required statutory procedures.
2. A summary of the above Ordinance was duly published in the \_\_\_\_\_ newspaper, a newspaper that circulates within Whitewater Township, on \_\_\_\_\_.
3. Within 1 week after such publication, I recorded the above Ordinance in a book of ordinances kept by me for that purpose, including the date of passage of the ordinance, the names of the members of the township board voting, and how each member voted.

ATTESTED:

\_\_\_\_\_  
Cheryl Goss, Whitewater Township Clerk