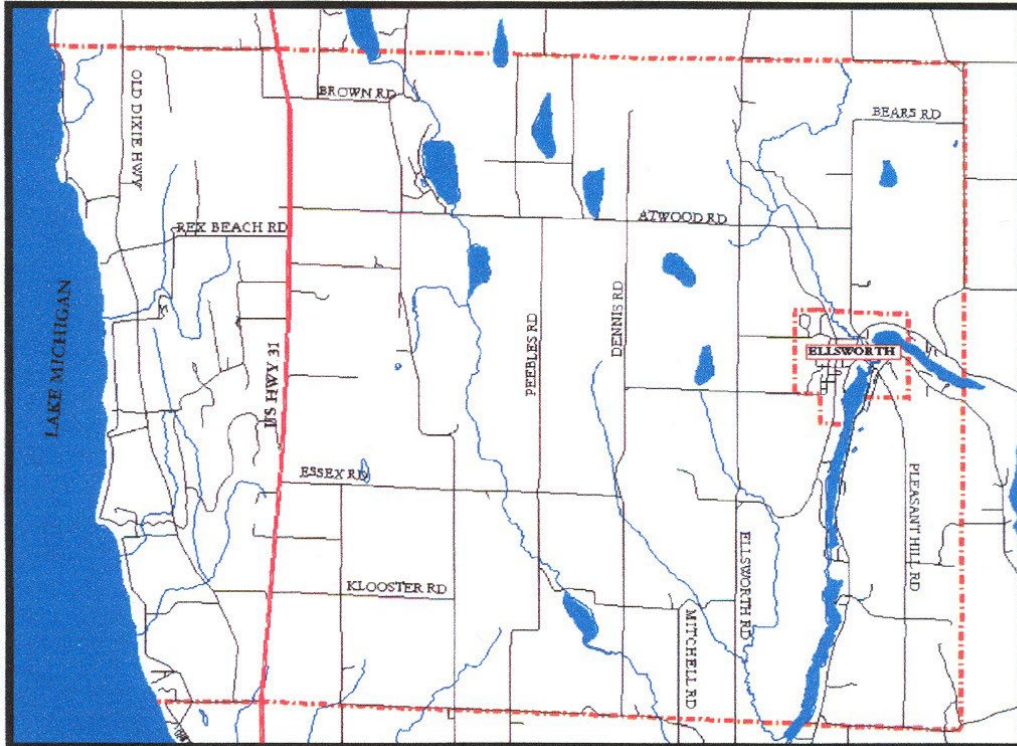

BANKS TOWNSHIP



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Including Amendments Adopted Through December 2024

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ARTICLE I: SHORT TITLE AND PURPOSE

Section 1.01 - Title

This Ordinance shall be known and may be cited as the Banks Township Zoning Ordinance.

Section 1.02 - Purpose

The purposes of this ordinance are as follows:

1. To meet the needs of the citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land;
2. To ensure that use of land shall be situated in appropriate locations and relationships;
3. To limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities;
4. To facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements;
5. To promote public health, safety, and welfare.

The purpose and intent of the Sections of this Ordinance pertaining to the regulation of sexually oriented businesses is to regulate the location and operation of, but not to exclude, sexually oriented businesses within the Township, and to minimize their negative secondary effects. It is recognized that sexually oriented businesses, because of their very nature, have serious objectionable operational characteristics which cause negative secondary effects upon nearby residential, educational, religious and other similar public and private uses. The regulation of sexually oriented businesses is necessary to ensure that their negative secondary effects will not contribute to the blighting and downgrading of surrounding areas and will not negatively impact the health, safety and general welfare of Township residents. The provisions of this Ordinance are not intended to offend the guarantees of the First Amendment to the United States Constitution or to deny adults access to sexually oriented businesses and their products, or to deny sexually oriented businesses access to their intended market. Neither is it the intent of this Ordinance to legitimize activities which are prohibited by Township ordinance, state or federal law. If any portion of this Ordinance relating to the regulation of sexually oriented businesses or referenced in those sections is found to be invalid or unconstitutional by a court of competent jurisdiction, the Township intends said portion to be disregarded, reduced and/or revised so as to be recognized to the fullest extent possible by law. The Township further states that it would have passed and adopted what remains of any portion of this Ordinance relating to regulation of sexually oriented businesses following the removal, reduction or revision of any portion so found to be invalid or unconstitutional.

Section 1.03 - Authority

This Ordinance is ordained and enacted into law pursuant to the provisions and in accordance with the State of Michigan, Michigan Zoning Enabling Act, Act 110 of 2006, as amended.

Section 1.04 - Validity

This Ordinance and various parts, sections, subsections, sentences, phrases and clauses thereof are hereby declared to be severable. If any part, sentence, paragraph, section, subsection, phrase or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of this Ordinance shall not be affected thereby. The Township Board hereby declared that it would have passed this Ordinance

and each part, section, subsection, phrase, sentence, and clause thereof irrespective of the fact that any one or more parts, sections, subsections, phrases, sentences or clauses be declared invalid.

Section 1.05 - Limitation of Zoning Ordinance

The provisions of this Zoning Ordinance shall not apply to the erection, repair, or use of customary accessory farm buildings or structures, such as barns, sheds, pens, fences, and the like: PROVIDED no farm accessory buildings or structures other than open fences through which there shall be clear vision shall be erected, moved or maintained less than one hundred (100) feet from any abutting highway right-of-way line.

Section 1.06 - Repeal of Previous Zoning Ordinance

This ordinance repeals and replaces any previous Banks Township Zoning Ordinance in its entirety.

ARTICLE II: INTERPRETATION OF WORDING

In order to clarify the intent of the provisions of this Ordinance, the following rules shall apply, except when clearly indicated otherwise.

1. The particular shall control the general.
2. The word "shall" is always mandatory and never discretionary. The word "may" is permissive.
3. Words used in the present tense shall include the future; words in the singular number shall also denote the plural and the plural shall also denote the singular.
4. A "building" or "structure" includes any part thereof.
5. The phrase "used for" includes "arranged for", "designed for", "intended for", "maintained for" and "occupied for".
6. Unless the context clearly indicates otherwise, where a regulation involves two (2) or more items, conditions, provisions, or events, the terms "and", "or", "either...or", such conjunction shall be interpreted as follows:
 - a. "And" denotes that all the connected items, conditions, provisions, or events apply in combination.
 - b. "Or" indicates that the connected items, conditions, or provisions, or events may apply singly or in any combination.
7. "Township" shall refer specifically to Banks Township.
8. The term "person" or "entity" shall mean an individual, partnership, corporation or other associations or their agents.
9. Terms not defined shall be assumed to have the meaning customarily assigned them.
10. Any necessary interpretation of this Ordinance shall be defined by the Banks Township Zoning Board of Appeals.

ARTICLE III: DEFINITIONS

For the purpose of this Ordinance, certain words and terms are herewith defined. Terms not herein defined shall have the meanings of their ordinary uses.

Access Drive: An easement or right-of-way that provides motor vehicle access to three or more lots, parcels or site condominiums.

Accessory Building or Structure: A supplemental building or structure on the same property as the main building, or a structure which is intended to be supplemental to an allowed use to be added in the future, provided such a structure is devoted exclusively to an accessory use, but not for dwelling, lodging, or sleeping purposes except as accessory dwelling units as provided in this ordinance. Where an accessory building is attached to a main building in a substantial manner, such as a wall or roof, the accessory building shall be considered a part of the main building.

Accessory Dwelling Unit: A residential dwelling unit located on the same property as a single-family dwelling and constructed as an accessory use to the single-family dwelling.

Accessory Use: A use naturally and normally incidental and subordinate to the main use of the land or building.

Adult Arcade: Any place to which the public is permitted or invited wherein coin-operated or slugoperated, electronically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time and where the images so displayed are distinguished or characterized by depicting or describing of Specified Sexual Activities or Specified Anatomical Areas.

Adult Bookstore or Adult Video Store: A commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration one or more of the following: books, magazines, periodicals or other printed matter or photographs, films, motion picture, video cassettes or video reproductions, slides or other visual representations or media which depict or describe Specified Sexual Activities or Specified Anatomical Areas; or instruments, devices, or paraphernalia that are designed for use in connection with Specified Sexual Activities. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing Specified Sexual Activities or Specified Anatomical Areas and still be categorized as an Adult Bookstore or Adult Video Store. The sale of such material shall be deemed to constitute a principal business purpose of an establishment if it comprises 35% or more of annual sales volume or occupies 35% or more of the floor area or visible inventory within the establishment.

Adult Cabaret: A nightclub, bar, restaurant, or similar commercial establishment that regularly features: persons who appear in a state of nudity; live performances that are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities; films, motion pictures, video cassettes, slides, other photographic reproductions or visual media that are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas; or persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

Adult Motel: A hotel, motel or similar commercial establishment that: offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions,

films, motion pictures, video cassettes, slides, other photographic reproductions or visual media that are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas and has a sign visible from the public right of way that advertises the availability of any of the above; offers a sleeping room for rent for a period of time that is less than twelve (12) hours; or allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than twelve (12) hours.

Adult Motion Picture Theater: A commercial establishment which for any form of consideration, regularly and primarily shows films, motion pictures, video cassettes, slides, or other photographic reproductions or visual media that are characterized by depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

Adult Theater: A theater, concert hall, auditorium, or similar commercial establishment that regularly features a person or persons who appear in a state of nudity or live performances that are characterized by exposure of Specified Anatomical Areas or by Specified Sexual Activities.

Agricultural Assembly Space: An agricultural tourism use designed to provide an assembly space for small-scale entertainment, weddings, birthday parties, corporate picnics, and other similar events on property that is actively engaged in agricultural processes.

Agricultural Tourism: A use that involves the visiting of an agribusiness, horticultural, or agricultural operation, including but not limited to, a farm, orchard, winery, greenhouse, hunting preserve, a companion animal or livestock show, for the purpose of recreation, education, or active involvement in the operation, other than as a contractor or employee of the operation. Also referred to as "ag-tourism" or "agri-tourism".

Agriculture: The use of land or tilling of the soil, raising of trees or field crops or animal husbandry, as a source of significant income.

Alley: A dedicated vehicular way, either public or private, usually between or behind buildings, which affords a secondary means of access to abutting property but is not intended for general traffic circulation.

Alterations: Any change, addition or modification in construction or type of use or occupancy; any change in the supporting structural members of a building, such as walls, partitions, columns, beams, girders, or any change which may be referred to herein as "altered" or "reconstructed".

Alternative Tower Structure: Man-made trees, clock towers, bell steeples, light poles, and other similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

Anemometer: An instrument for measuring and recording the speed of the wind.

Anemometer Tower: A structure, including all accessory facilities, temporarily erected for no more than two (2) years, on which an anemometer is mounted for the purposes of documenting whether a site has wind resources sufficient for the operation of a wind turbine generator.

Antenna: Any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals,

radio frequencies (excluding radar signals), wireless telecommunication signals or other communication signals.

Appearance Ticket: see Municipal Civil Infraction Citation.

Architectural Features: Architectural features of a building shall include cornices, eaves, gutters, courses, sills, lintels, bay windows, chimneys, and decorative ornaments.

Automobile Repair: Any major activity involving the general repair, rebuilding, or reconditioning of motor vehicles or engines; collision repair, such as body, frame, or fender straightening and repair; overall painting and vehicle rust-proofing; refinishing or steam cleaning.

Automobile Sales Area: Any space used for display, sale or rental of motor vehicles, in new or used and operable condition.

Automobile Wash Establishment: A building, or portions thereof, the primary purpose of which is that of washing motor vehicles.

Average: For the purpose of this Ordinance, the term, "average" will be an arithmetic mean.

Basement: That portion of a building which is partly or wholly below grade but so located that the vertical distance from the average grade to the floor is greater than the vertical distance from the average grade to the ceiling.

Bed and Breakfast Facility: See definition for Tourist home.

Bedroom: A dwelling room used or intended to be used by human beings for sleeping purposes.

Bedroom: A dwelling room used or intended to be used by human beings for sleeping purposes.

Berm: Anon-natural, constructed mound of soil designed or intended to separate two areas of land.

Billboard: An outdoor sign advertising services or products, activities, persons, or events which are not made, produced, assembled, stored, distributed, leased, sold, or conducted upon the premises upon which the sign is located. Tourist oriented directional signs, as provided by the Michigan Department of Transportation, are excluded from this definition.

Board of Appeals: As used in this Ordinance, this term means the Banks Township Zoning Board of Appeals.

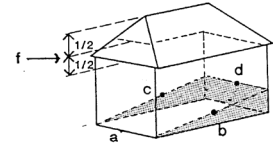
Boarding, Lodging, or Rooming House: A building other than a hotel where, for compensation and by prearrangement for definite periods, lodging, meals, or both are offered to three (3) or more, but less than twenty-one (21) persons at a time.

Boat and/or Canoe Livery and Boat Yard: A place where boats and/or canoes are stored, rented, sold, repaired, decked and serviced.

Buffer Strip: A strip of land not less than ten (10) feet in width for the planting of shrubs and/or trees to serve as an obscuring screen to carry out the requirements of this Ordinance.

Buildable Area: That portion of a lot remaining after the minimum setback and open space requirements of this Ordinance have been complied with.

Building Height: The vertical distance measured from the established grade to the highest point of the roof surface if a flat roof; to the deck of a mansard roofs; and to the mean height level between eaves and ridge of gable, hip and gambrel roofs. When the terrain is sloping, the height shall be computed using the average grade measured at the building wall on all four sides (see illustration).



$$\text{Average grade: } \frac{(a + b + c + d)}{4} = e$$

$$\text{Height} = (f) - (e) = (\text{elevation at average height between eaves and peak}) - (\text{average grade})$$

Buildable Width: The width of a lot left for building after required side yards are provided.

Building: Any structure having a roof supported by columns, or walls for the shelter or enclosure of persons, animals, or property of any kind.

Bulk Station: A place where crude petroleum, gasoline, naphtha, kerosene, benzene, or any other liquid except such as will stand a test of 150 degrees Fahrenheit, closed-up-testers, are stored for wholesale purpose where the aggregate capacity of all storage tanks is more than six thousand (6,000) gallons.

Campgrounds: Any parcel or tract of land, under the control of any person wherein sites are offered for the use of the public or members of an organization, either free of charge or for a fee for the establishment of temporary living quarters for five (5) or more recreational units.

Cargo Container: Originally designed for or used in the packing, shipping, movement or transportation of freight, articles, goods or commodities; and/or designed for or capable of being mounted or moved by rail, truck or ship by means of being mounted on a chassis or similar transport device. This definition includes the terms “transport containers,” “shipping containers,” and “portable site storage containers” having a similar appearance to and similar characteristics of cargo containers.

Church: See Place of Worship.

Clinic: A building or group of buildings where human patients are admitted for examination and treatment by more than one professional, such as a physician, dentist, or the like, except that human patients are not lodged therein overnight.

Club: Buildings and facilities owned or operated by a corporation, association, person or persons, for social, educational, or recreational purposes.

Co-Locate: To place or install wireless communications equipment on an existing wireless communications support structure or in an existing equipment compound that do not raise the height more than 20 feet.

Condominium Unit: That portion of a condominium subdivision designed and intended for occupancy and use by the unit owner consistent with the provisions of the master deed.

dBa: The sound pressure level, in decibels, as measured using the impulse mode and “A” weighting network on a precision level meter.

Dock: A temporary or permanent structure, built on or over the water, supported by pillars, pilings, or other supporting devices.

Drive-Thru Business: Any restaurant, bank or business with an auto service window.

Driveway, Private: A privately owned and maintained property which is used for vehicular ingress and egress serving not more than three (3) residential building sites.

Dwelling Unit: A building or portion of a building, either site-built or pre-manufactured which has sleeping, living, cooking and sanitary facilities and can accommodate one family, either permanently or transiently. In the case of buildings which are occupied in part, the portion occupied shall be considered a dwelling unit, provided it is in conformance with the criteria for dwellings. In no case shall a travel trailer, truck, bus, motor home, tent or other such portable structures be considered a dwelling unit.

Dwelling, Farm Employee: A dwelling unit on the given farm provided to an individual employed full-time on said farm, during his or her period of employment.

Dwelling, Single-Family: A detached building containing not more than one dwelling unit designed for residential use and conforming in all other respects to the standards set forth in Dwelling Unit.

Dwelling, Two-Family: A building containing not more than two separate dwelling units designed for residential use and conforming in all other respects to the standards set forth in Dwelling Unit.

Dwelling, Manufactured: A building or portion of a building designed for long-term residential use and characterized by all of the following:

1. The structure is produced in a factory in accordance with the National Manufactured Housing Construction and Safety Standards Act (1976 HUD Manufactured Home Construction and Safety Standards), as amended; and
2. The structure is designed to be transported to the site in nearly complete form, where it is placed on a foundation and connected to utilities; and
3. The structure is designed to be used as either an independent building or as a component to be combined with other elements to form a complete building on the site.

Dwelling, Migratory Labor: A dwelling unit for temporary use provided to individuals employed on a transient, temporary or seasonal basis, in farm-related activities including planting and harvesting.

Dwelling, Mobile: A structure that is transportable in 1 or more sections, built on a chassis, designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure (Act 96 of 1987; MCL 125.2302 (h)).

Dwelling, Modular: A building or portion of a building designed for long-term residential use and characterized by all of the following:

1. The structure is produced in a factory in accordance with applicable state and local building codes; and
2. The structure is designed to be transported to the site in nearly complete form, where it is secured on a foundation and connected to utilities; and

3. The structure is designed to be used as either an independent building or as a module to be combined with other elements to form a complete building on the site.

Dwelling, Multiple-Family: A building containing three or more dwelling units designed for residential use and conforming in all other respects to the standards set forth in Dwelling Unit.

Economy Efficiency Unit: A dwelling that is less than 20 feet in width (typically 600 square feet or smaller), is built to all relevant building and sanitary codes, qualifies for a certificate of occupancy, is connected to utilities, and is anchored to a permanent foundation. This definition does not include mobile homes or recreational vehicles. Also known as a microhouse or tiny house, the purpose of an economy efficiency unit is to provide the opportunity for a smaller, resource- and energy-efficient housing option.

Efficiency Unit: A dwelling unit consisting of one room, exclusive of bathroom, hallway, closets, and the like providing not less than three hundred and fifty (350) square feet of usable floor area.

Enclosed, locked facility: That term as defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marihuana Act), being MCL 333.26423.

Erected: Includes built, constructed, reconstructed, extension, enlargement, moved upon, or any physical operation on the premises intended or required for a building or structure. Excavation, fill, drainage, and general land improvements which are not required for a building or structure, shall not be considered to fall within this definition.

Escort: A person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

Escort Agency: A person or business association who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

Essential Services: The phrase "essential services" means the erection, construction, alteration, or maintenance by public utilities or municipal department or commissions of underground, surface, or overhead gas, electrical, steam, or water transmission or distribution systems, collection, communication supply or disposal systems, including mains, drains, sewers, pipes, conduits, wires, cables, fire alarm boxes, traffic signals, hydrants, towers, poles, and other similar equipment, and accessories in connection therewith reasonably necessary for the furnishing of adequate service by such public utilities or municipal departments or commissions or for the public health or general welfare, but not including buildings other than such buildings as are primarily enclosures or shelters of the above essential service equipment. Telecommunication towers or facilities, alternative tower structures, and wireless communication antenna are not included within this definition.

Excavating: Excavating shall be the removal of sand, stone, gravel, or dirt.

Family: An individual, or two (2) or more persons related by blood, marriage or adoption, or a group of not to exceed four (4) persons not related by blood or marriage, occupying the premises and living as a single non-profit housekeeping unit with single culinary facilities, as distinguished from a group occupying a boarding house, lodging house, hotel, club, fraternity or similar dwelling for group use.

Farm: All of the contiguous neighboring or associated land operated as a single unit on which bona fide agriculture is carried on directly by the owner-operator, manager, or tenant-farmer by his own labor or with the assistance of members of his household or hired employees.

Fence: Any permanent or temporary means, partition, structure or gate erected as a dividing structure, or barrier and not part of a structure requiring a building permit.

Firearm: A weapon which will, or is designed to, expel a projectile by action of an explosive and which is not a weapon covered under Title 2 of the National Firearms Act, commonly referred to as Title 2 or NFA weapons.

Firearms Training Facility: An area of land and its associated buildings and structures designed and operated to provide a safe location for the discharge of various types of firearms for the purpose of training individuals enrolled in home defense, self-defense, hunter safety, firearm or safety training, or concealed pistol license courses taught by training instructors and for the purpose of training, certifying, and re-certifying law enforcement officers in the proper use of firearms. A firearms training facility shall include individual shooting ranges, safetyfans, shotfall zones, and parking areas, but shall not be open to the general public.

Firing line: A line parallel to a target from which firearms are discharged.

Floor Area: See ground floor area.

Garage-Private: A building used primarily for the storage of vehicles for the use of the occupants of a lot on which such building is located.

Garage-Public: A building, or part thereof, designed or used for equipping, servicing, repairing, hiring, storing, or parking motor vehicles. The term repairing does not include the rebuilding, dismantling or storage of wrecked or junked vehicles.

Gas and Oil Processing Facilities: Any facility and/or structure used for, or in connection with, the production, processing or transmitting of natural gas, oil, or allied products or substances, and the injection of same into the ground for storage or disposal, not under the exclusive jurisdiction or control of the Supervisor of Wells, Department of Natural Resources or Public Service Commission; not including industrial facilities such as cracking plants, large oil storage facilities, and heavy industrial operations and facilities.

Gasoline Service Station: Any land, building or structure used for sale or retail of motor vehicle fuels, oils, or accessories, or installing or repairing parts and accessories, but not including repairing or replacing of motors, doors, or fenders, or painting motor vehicles.

Grade: The ground elevation established for the purpose of regulating the number of stories and the height of buildings. The building grade shall be the level of the ground adjacent to the walls of the building if the finished grade is level. If the ground is not entirely level, the grade shall be determined by averaging the elevation of the ground for each face of the building.

Greenbelt: A strip fifty (50) feet wide parallel to the bank of a stream or lake maintained in trees and shrubs or in its natural state to serve as a buffer strip in carrying out the requirements of this ordinance.

Greenway: A contiguous or linear open space, including habitats, wildlife corridors and trails that link parks, nature reserves, cultural features, or historic sites with each other, for recreation and conservation purposes.

Ground Floor Area: The square footage of floor space measured from exterior to exterior wall, but not including enclosed and unenclosed porches, breezeways, garages, attic, basement and cellar area.

Ground-Mounted Solar Installation: A private system installed as an accessory structure on the ground of parcel that converts sunlight into electricity or thermal energy, whether by photovoltaics, concentrating solar thermal device, or any other various experimental solar technologies. The primary purpose is for consumption of generated energy on site.



Guest House: Guest house shall mean a building which is on the same lot or building site as the principal dwelling, and is used for the accommodation of guests of the occupants of the dwelling.

Hazardous Substances: Any substances or materials that, by reason of their toxic, caustic, corrosive, abrasive or otherwise injurious properties, may be detrimental to the health of any person handling or otherwise coming into contact with such materials or substances.

Home Business: A profession, occupation, or trade that is accessory to a principal residential use conducted within a dwelling or residential accessory building. Home businesses fall into one of two classifications defined below:

Home Occupation: A profession or occupation conducted within a dwelling which is clearly incidental and secondary to the use of the lot and dwelling for residential purposes. Home occupations are regulated by Section 4.12.1.

Cottage Industry: An occupation or trade conducted within a detached residential accessory structure which is clearly incidental and secondary to the use of the lot and dwelling for residential purposes. Cottage industries are regulated by Section 4.12.2.

Hospital: An institution providing health services, primarily for inpatients and medical or surgical care of the sick or injured, including as an integral part of the institution, such related facilities as laboratories, outpatient departments, training facilities, central service facilities, clinics, and staff offices.

Hotel: A building occupied or used as a predominantly temporary abiding place by individuals or groups of individuals, with or without meals, and in which building there are more than five (5) sleeping rooms and in which rooms there is no provision for cooking.

Housekeeping Cabin Park: A parcel of land on which two (2) or more buildings are maintained, offered, or used for dwelling or sleeping quarters for transients, but shall not include boarding or lodging houses, tourist homes, hotels or motels.

Impervious surface: A surface or structure incapable of or highly resistant to penetration by water including, but not limited to, roofs of any type, concrete, asphalt or bituminous paving, compacted gravel, earth, flagstone or brick.

Industrial Park: A special or exclusive type of planned industrial area designed and equipped to accommodate a community of industries, providing them with all necessary facilities and services in attractive surroundings among compatible neighbors.

Industry: A use engaged in manufacturing, fabricating, and/or assembly activities.

Inland Lakes and Streams: Means a natural or artificial lake, pond, or impoundment; a river, stream, or creek which may or may not be serving as a drain as defined by the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630; or any other body of water that has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water. Inland lake or stream does not include the Great Lakes or a lake or pond that has a surface area of less than five acres.

Invasive Species: Means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health. (Federal Executive Order 13112)

Junkyard: An open area where waste, used or second-hand materials are bought and sold, exchanged, stored, baled, packed, disassembled or handled including, but not limited to scrap or other metals, paper, rags, rubber tires, and bottles. A “Junkyard” includes automobile wrecking yards and includes any area of more than two hundred (200) square feet for storage, keeping or abandonment of junk, but does not include uses established entirely within enclosed buildings.

Kennel: Any lot or premises on which four (4) or more dogs, or cats four (4) months of age or older are kept temporarily or permanently.

Loading Space: An off-street space on the same lot with a building or group of buildings, for temporary parking of a commercial vehicle while loading or unloading merchandise or materials. Off-street loading space is not to be included as an off-street parking space in computation of required off-street parking.

Lot: The parcel of land occupied or to be occupied by a use or building and its accessory buildings or structures together with such open spaces, minimum area, and width required by this Ordinance for the district in which located, but not including any area within any abutting right-of-way or traffic lane.

Lot, Corner: A lot located at the intersection of two streets or a lot bounded on two sides by a curving street, any two (2) sides of which form an angle of one hundred thirty-five (135) degrees or less.

Lot Coverage: The part or percent of the lot occupied by buildings or structures, including accessory buildings or structures.

Lot Depth: The horizontal distance between front and rear lot lines, measured along the median between side lot lines.

Lot, Double Frontage: A lot other than a corner lot having frontage on two (2) more or less parallel streets. In case of a row of double frontage lots, one street will be designated by the Zoning Board of Appeals as the front street for all lots in the plat in the request for zoning compliance permits. If there are existing structures in the same block fronting on one (1) or both of the streets, the required front yard setback shall be observed on those streets where such structures presently front.

Lot, Interior: A lot other than a corner lot with only one (1) lot line fronting on a street.

Lot Lines: The property lines as defined in this Ordinance bounding a lot, or two or more lots used as one development site.

Lot Line, Front: In the case of a corner lot or through lot, it is the line separating the lot from the abutting public or private road right-of-way. In the case of an interior lot, it is the line separating the lot from the abutting public or private road right-of-way. In the case of a waterfront lot, it is the ordinary high water mark.

Lot Line, Rear: The lot line opposite and most distant from the front lot line. In the case of a lot irregularly shaped at the rear, it is an imaginary line parallel to the front lot line, not less than ten (10) feet long, lying farthest from the front lot line and wholly within the lot.

Side Lot Line: A lot line other than a front lot line or a rear lot line. A side lot line separating a lot from an abutting public or private road right-of-way is a street side lot line. A side lot line separating a lot from another lot is an interior side lot line.

Lot of Record: A parcel of land defined by a legal description and recorded in the office of the Antrim County Register of Deeds on or before the effective date of this Ordinance.

Lot, Waterfront: A lot having frontage directly upon a lake, river, or stream. The portion adjacent to the water is considered the water frontage.

Lot Width: The horizontal distance between the side lot lines, measured at the two (2) points where the building line intersects the side lot line.

Lot, Zoning: A contiguous tract of land which at the time of filing for a zoning permit is designated by its owner or developer as a tract to be used, developed, or built upon as a unit, under single ownership.

Manufactured Home: see Dwelling, Manufactured.

Marijuana or marihuana: That term as defined in Section 7106 of Act No. 368 of the Public Acts of 1978, as amended (Michigan Public Health Code), being MCL 333.7106.

Master Plan or Comprehensive Plan: The statement of policy by the Township Planning Commission relative to the agreed-upon desirable physical pattern of future community development. It consists of a series of maps, charts, and written material representing in summary form the community's conception of how it should grow in order to bring about the very best community living conditions.

Medical Use: That term as defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marihuana Act), being MCL 333.26423.

Migratory Labor: Temporary or seasonal labor employed in farm-related activities including planting and harvesting.

Mobile Home: see Dwelling, Mobile.

Mobile Home Park: A parcel of land which has been planned and improved for the placement of three (3) or more mobile homes for residential dwelling use.

Mobile Home Site: A plot of ground within a mobile home park designed for the accommodation of one mobile home.

Modular Homes: see Dwelling, Modular.

Motel or Motor Court: A series of attached, semi-detached or detached rental units providing overnight lodging for transients, open to the traveling public for compensation.

Municipal Civil Infraction Citation: A written complaint or notice prepared by an authorized Township official, directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction violation by the person cited.

Nonconforming Lot of Record: A lot of record that legally existed on or before the effective date of this ordinance or any amendment to this ordinance and does not meet dimensional requirements of this ordinance or amendment.

Nonconforming Structure: A building, structure, or portion thereof that lawfully existed before the effective date of this ordinance or any amendment to this ordinance and that does not meet the floor area, setback, parking or other dimensional regulations for the zoning district in which such building or structure is located.

Nonconforming Use: A use which lawfully occupied a building or land at the effective date of this Ordinance or Amendments thereto that does not conform to the use regulations of the Zoning District in which it is located.

Noxious Weed: A weed which is considered to be harmful to the environment and/or human health, especially one which may be the subject of regulations governing attempts to control it.

Nude Model Studio: Any place where a person who displays Specified Anatomical Areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration, but does not include an educational institution funded, chartered, or recognized by the State of Michigan.

Nudity or a State of Nudity: Knowingly or intentionally displaying in a public place, or for payment or promise of payment by any person including, but not limited to payment of an admission fee, any individual's genitals or anus with less than a fully opaque covering, or a female individual's breast with less than a fully opaque covering of the nipple and areola. Public nudity does not include any of the following:

1. A woman's breastfeeding of a baby whether or not the nipple or areola is exposed during or incidental to the feeding.
2. Material as defined in section 2 of Act No. 343 of the Public Acts of 1984, being section 752.362 of the Michigan Compiled Laws.
3. Sexually explicit visual material as defined in section 3 of Act No. 33 of Public Acts of 1978, being section 722.673 of the Michigan Compiled Laws.

Nuisance Factor: An offensive, annoying, unpleasant, or obnoxious thing or practice, a cause or source of annoyance, especially a continuing or repeating invasion of any physical characteristics of activity or use across a property line which can be perceived by or affects a human being of reasonable sensibility, or the generation of an excessive or concentrated movement of people or things, such as noise; dust; heat; electronic or atomic radiation; objectionable affluent; noise or congregation of people, particularly at night.

Nursery, Plant Materials: A space, building or structure, or combination thereof, for the storage of live trees, shrubs, or plants offered for retail sale on the premises, including products used for gardening or landscaping. The definition of nursery does not include space used for the sale of fruits or vegetables.

Off Street Parking Lot: A facility providing vehicular parking spaces, along with adequate drives and aisles. Adequate maneuvering space shall also be included to allow unrestricted ingress and egress to at least two (2) vehicles.

Open Air Business: Includes uses operated for profit, substantially in the open air, including:

1. Bicycle, utility truck or trailer, motor vehicle, boats, or home equipment sale, repair or rental services.
2. Outdoor display and sale of garages, motor homes, mobile home, snowmobiles, farm implements, swimming pools, and similar activities.
3. Retail sale of trees, fruit, vegetables, shrubbery, plants, seeds, top-soil, humus, fertilizer, trellises, lawn furniture, playground equipment, and other home garden supplies and equipment.
4. Tennis courts, archery courts, shuffleboard, horseshoe courts, rifle ranges, miniature golf, golf driving ranges, children's amusement park or similar recreation uses.

Open Space: Land upon which no structures, parking, rights-of-way, easements, sewage disposal systems (including backup areas for sewage disposal) or other improvements have or will be made that commit land for future use other than outdoor recreational use. Land proposed for outdoor recreational usage that will result in the development of impervious surfaces shall not be included as open space.

Ordinary High Water Line: The line between upland and bottomland which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the soil and the vegetation.

1. Lake Michigan: For the purposes of this Ordinance, the Ordinary High Water Mark along Grand Traverse Bay shall be 580.5 feet above the International Great Lakes Datum 1985, as established by the U.S. Army Corps of Engineers and defined by the Michigan Natural Resources and Environmental Protection Act, as amended.
2. Inland Lake and Streams: Means a level established by law or the ten-year flood limit boundary, whichever is the highest established elevation.

Park: Properties and facilities owned or operated by any governmental agency, or owned or operated by any private agency, which are open to the general public for recreational purposes.

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

Place of Worship: A building wherein people regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such principal purpose.

Planning Commission: For the purpose of this Ordinance the term Planning Commission is deemed to mean the Banks Township Planning Commission.

Planned Unit Development (PUD): A type of development to be planned and built as a unit and which permits upon review and approval, variations in many of the traditional controls related to density, land use, setbacks, open space and other design elements, and the timing and sequencing of the development.

Pick-up Camper: See Recreational Vehicle.

Porch, Enclosed: A covered entrance to a building or structure which is totally enclosed, and projects out from the main wall of said building or structure and has a separate roof or an integral roof with the principal building or structure to which it is attached.

Porch, Open: A covered entrance to a building or structure which is unenclosed except for columns supporting the porch roof, and projects out from the main wall of said building or structure and has a separate roof or integral roof with principal building or structure to which it is attached.

Primary caregiver: That term as defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marihuana Act), being MCL 333.26423 who has registered with the Bureau of Health Professions, Michigan Department of Licensing and Regulatory Affairs or any successor agency under the Michigan Medical Marihuana Act.

Primary caregiver facility: A building in which the activities of a primary caregiver are conducted.

Principal Use: The main use to which the premises are devoted and the principal purpose for which the premises exists.

Professional Office: The office of a professional person such as a doctor, dentist, engineer, architect, attorney, insurance or real estate agent, and the like.

Public Sewer Systems: A public sewer system shall be defined as a central or community sanitary sewage and collection system of pipes and structures including pipes, conduits, manholes, pumping stations, sewage and waste water treatment works, diversion and regulatory devices, and outfall structures, collectively or singularly, actually used or intended for use by the general public or a segment thereof, for the purpose of collecting, conveying, transporting, treating or otherwise handling sanitary sewage or industrial liquid waste of such a nature as to be capable of adversely affecting the public health operated and maintained by the general public.

Public Utility: Any person, firm, corporation, municipal department board, or commission fully authorized to furnish and furnishing, under federal, state or municipal regulations, to the public, electricity, gas, steam, communications, telegraph, transportation, water services, or sewage disposal.

Qualifying patient: That term as defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marihuana Act), being MCL 333.26423 who has registered with the Bureau of Health Professions, Michigan Department of Licensing and Regulatory Affairs or any successor agency under the Michigan Medical Marihuana Act, and includes the parents or legal guardians of a qualifying patient under the age of 18 who are serving as the primary caregiver as required by the Michigan Medical Marihuana Act exclusively for that qualifying patient under the age of 18.

Recreational Vehicle: A vehicle with wheels that is less than forty (40) feet in overall length and is designed to be driven or towed on a street or highway, and requires a certificate of registration as defined

in the Michigan Vehicle Code, MCL 257.216, as amended, and to be used primarily for temporary recreational purposes, including temporary sleeping quarters and/or cooking facilities. A vehicle or unit which is forty (40) feet or more in overall length shall be considered a Mobile Home and not a Recreational Vehicle.

Resort: A recreational lodge, camp or facility operated for gain, and which provides overnight lodging and one or more of the following: golf, skiing, dude ranching, recreational farming, snowmobiling, pack trains, bike trails, boating, swimming, hunting and fishing and related or similar uses normally associated with recreational resorts.

Road: Any public or private thoroughfare or right-of-way, other than a public or private alley, dedicated to or designed for travel and access to any land, lot or parcel whether designated as a thoroughfare, road, avenue, highway, boulevard, drive, lane, place, court or similar designation.

Road, Private: Any road which is privately constructed and has not been accepted for maintenance by the Antrim County Road Commission, State of Michigan or the federal government, but which must meet the requirements of the Banks Township Zoning Ordinance.

Road, Public: Any road or portion of road which has been dedicated to and accepted for maintenance by the Antrim County Road Commission, State of Michigan or the federal government.

Roadside Stand: An accessory and temporary farm structure operated for the purpose of selling local agricultural products, part of which are raised or produced on the same farm premises.

Retail and Retail Stores: Any building or structure in which goods, wares, or merchandise are sold to the ultimate consumer for direct consumption and not for resale.

Safety fan: An area within a firearms training facility designed to contain projectiles fired from a shooting range.

Shooting range: An area within a firearms training facility designed and improved to encompass shooting stations or firing lines, target areas, berms and baffles, and other related components.

Shooting station: A fixed point from which firearms are discharged.

Shotfall zone: An area within a shooting range which the shot or pellets contained in a shotgun shell typically fall.

School: A public or private educational institution offering students a conventional academic curriculum, including kindergartens, elementary schools, middle schools, and high schools. Such term shall also include all adjacent properties owned by and used by such schools for educational, research, and recreational purposes.

Seasonal Use: Any use or activity that cannot be conducted or should not be conducted each month of the year.

Setback: The minimum horizontal distance from an applicable lot line within which no building or structure can be placed, except as otherwise provided in this Ordinance. Provided, however, if a private easement is located within a lot and abuts a lot line, then the setback shall be the minimum horizontal distance from the easement line closest to the center of the lot within which no building or structure can be placed, except as otherwise provided in this Ordinance.

Setback, Front: The required setback measured from the front lot line or applicable easement line.

Setback, Rear: The required setback measured from the rear lot line or applicable easement line.

Setback, Side: The required setback measured from a side lot line or applicable easement line.

Sexual Encounter Center: A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

1. physical contact in the form of wrestling or tumbling between persons of the opposite sex;
or
2. activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity.

Sexually Oriented Business: A business or commercial enterprise engaging in any of the following: (1) adult arcade; (2) adult bookstore or adult video store; (3) adult cabaret; (4) adult motel; (5) adult motion picture theater; (6) adult theater; (7) escort agency; (8) nude model studio; and (9) sexual encounter center.

Shopping Center: A group of commercial establishments, planned, developed, owned, and managed as a unit, with off-street parking provided on the property, and related in its location, size and type of shops to the trade area which the unit serves.

Short Term Rental: The use of a dwelling unit by an individual, or two (2) or more persons related by blood, marriage or adoption, or a group of not to exceed four (4) persons not related by blood or marriage paying a fee or other compensation for a period of less than 30 days at a time when the owner of the dwelling unit does not reside at the dwelling unit during the rental period.

Sign: An identification, description, illustration or device affixed to, or represented directly or indirectly upon a building, structure or land and which directs attention to a product, place, person, activity, institution, or business. A sign so described may be either mobile or non-mobile.

Sign, Animated: Any sign having a conspicuous and intermittent variation in the illumination of the physical position of any part of the sign.

Sign, Off Premise: Any sign relating to subject matter not conducted on the premises on which the sign is located.

Sign, On Premise: An advertising sign relating in its subject matter to the premises on which it is located, or to products, accommodations, service, or activities on the premises.

Site Plan: The drawings and documents depicting and explaining all salient features of a proposed development so that it may be evaluated according to the procedures set forth in this ordinance, to determine if the proposed development meets the requirements of this Zoning Ordinance.

Solar Energy: Radiant energy received from the sun that can be collected in the form of heat or light by a solar energy system.

Special Approval: Approval by the Township Planning Commission of a use of land in a district that is not antagonistic to other land use in the district when such use is specified in this Ordinance for that district upon such approval.

Specified Anatomical Areas: are defined as:

1. Less than completely and opaquely covered human genitals, pubic regions, buttocks, anus and female breast below a point immediately above the top of the areola; and
2. Human male genitals in a discernibly turgid state even if completely and opaquely covered.

Specified Sexual Activities: means and includes any of the following:

1. the fondling or other erotic touching of human genitals, pubic regions, buttocks or female breast;
2. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
3. masturbation, actual or simulated; or
4. excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.

Stable: A building or structure used to house horses, either for the property owner's private use or for hire.

Story: That portion of a building, other than a basement or mezzanine, included between the surface of any floor and the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it.

1. A "mezzanine" floor shall be deemed a full story only when it covers more than fifty (50%) percent of the area of the story underneath said mezzanine, or if the vertical distance from the floor next below it to the next above it is twenty-four (24) feet or more.
2. For the purpose of this Ordinance, a basement or cellar shall be counted as a story only if over fifty (50%) percent of its height is above the level from which the height of the building is measured, or if it is used for business purposes. Street, Highway, Road: A thoroughfare which affords the principal means of access to abutting property.

Structural Change or Alteration: See Alterations.

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

Structure-Mounted Solar Installation: A private system installed on a structure that converts sunlight into electricity or thermal energy, whether by photovoltaics, concentrating solar thermal device, or any other various experimental solar technologies. The primary purpose is for consumption of generated energy on site.



Surface Danger Zones (SDZ): An area established to contain all projectiles and debris caused by firing ammunition and explosives (see Section 8.03.18, Table 1). SDZ dimensions are dictated by the types of ammunition, types of targets, and types of firing activities allowed on the range.

Telecommunication Towers and Facilities: All structures and accessory facilities, relating to the origination, creation, transmission, emission, storage-retrieval, or reception of electromagnetic waves; satellite dishes; federally licensed amateur (HAM) radio facilities; and governmental facilities which are subject to state or federal law or regulations which preempt municipal regulatory authority.

Temporary Building and Use: A structure or use permitted by this Zoning Ordinance to exist during periods of construction of the main building or for special events.

Thoroughfares: An arterial street which is intended to serve as a trafficway serving primarily the immediate Township area and serving to connect with major thoroughfares.

Tourist Home: Any family occupied dwelling used or designed in such a manner that certain rooms in excess of those used by the family are rented to the transient public for compensation. For the purpose of this Ordinance, the term tourist home also includes bed and breakfast facility.

Tower Safety Zone: A circular area that is specific to each tower that is equal to the area that a Professional Engineer (PE) certifies in writing will be the location within which the tower (and any associated parts) will be confined in the event of a structural failure of the tower, as installed. The circular area of the safety zone shall be measured from the center of the tower's base.

Trail Coach: See Recreational Vehicle definition.

Travel Trailer: See Recreational Vehicle definition.

Undevelopable Land: Land which has soil types or a high water table condition which present severe limitations on septic tanks and tile fields and on which no septic tank and tile field can be legally constructed and to which no public sewer is extended.

Undeveloped State: A natural state preserving natural resources, natural features, or scenic or wooded conditions; agricultural use; open space; or similar use or condition. Land in an "undeveloped state" does not include a golf course but may include a recreational trail, picnic area, children's play area, greenway, or linear park. Land in an undeveloped state may be, but is not required to be dedicated to the use of the public.

Use: The lawful purpose of which land or premises, or a building thereon, is designed, arranged, or intended, or for which it is occupied, or maintained, let, or leased, according to this Ordinance.

Utility-Scale Solar Energy Systems: A system, including all structural components such as bases, mounts, towers, solar collectors, and accessory equipment or structures (e.g. utility interconnections, etc.), in such configuration as necessary to convert solar radiation into thermal, chemical, or electrical energy, whether by photovoltaics, concentrating solar thermal devices, or any other various experimental solar technologies.

Variance: A modification of literal provisions of this Ordinance which the Zoning Board of Appeals is permitted to grant when strict enforcement of said provision would cause practical difficulty or undue hardship owing to circumstances unique to the individual property on which the variance is sought.

Wind Turbine Generator: A tower, pylon, or other structure, including all accessory facilities, upon which any, all, or some combination of the following are mounted:

1. A wind vane, blade, or series of wind vanes or blades, or other devices mounted on a rotor for the purpose of converting wind into electrical or mechanical energy.
2. A shaft, gear, belt, or coupling device used to connect the rotor to a generator, alternator, or other electrical or mechanical energy producing device.

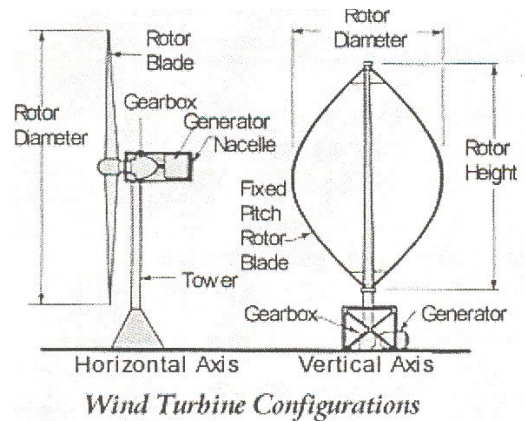
3. A generator, alternator, or other device used to convert the energy created by the rotation of the rotor into electrical or mechanical energy.

Wind Turbine Generator, Commercial: A wind turbine generator designed and used primarily to generate electricity by or for sale to utility companies.

Wind Turbine Generator, Noncommercial: A wind turbine generator designed and used primarily to generate electricity or produce mechanical energy to offset the energy used on the property where located or on an abutting property as permitted under Section 4.06 of this Ordinance.

Wind Turbine Generator Tower Height:

1. Horizontal Axis Wind Turbine Rotors: The distance between the ground and the highest point of the wind turbine generator, plus the length by which the rotor wind vanes or blades mounted on a horizontal axis wind turbine rotor exceed the height of the wind turbine generator.
2. Vertical Axis Wind Turbine: The distance between the ground and the highest point of the wind turbine generator, inclusive of the length of the blade when fully extended vertically.



Yard: A space open to the sky between a building and the lot lines of the parcel of land on which located, unoccupied or unobstructed by an encroachment or structure except as otherwise provided by this Ordinance.

Yard, Front: A yard across the full width of the lot extending from the front line of the principal building to the front lot line, or highway-right-of-way line as the case may be.

Yard, Rear: A yard extending across the full width of the lot from the rear line of the building to the rear property lot line.

Yard, Side: A yard between the side lot line and the nearest side of the building, extending between the front yard and rear yard.

Zoning Permit: A zoning permit is written authority as issued by the Zoning Administrator on behalf of the Township permitting the construction, moving, exterior alteration or use of a building in conformity with the provisions of this Ordinance

ARTICLE IV: GENERAL PROVISIONS

Section 4.01 The Effect of Zoning

1. In order to carry out the intent of this Ordinance, no use or activity on a piece of land shall be allowed or maintained, no building or structure or part thereof shall be allowed to be used, constructed, remodeled, altered, or moved upon any property unless it is in conformance with this Ordinance, and a zoning permit has been obtained, except in the case of lawful nonconforming uses.
2. If any activity, use, building, structure or part thereof is placed upon a piece of property in direct conflict with the intent and provisions of this Ordinance, such activity, use, building or structure shall be declared a nuisance and may be required to be vacated, dismantled, abated, or cease operations by any legal means necessary and such use, activity, building or structure shall not be allowed to function until it is brought into conformance with this Ordinance.
3. In the event that any lawful use, activity, building or structure which exists or is under construction at the time of the adoption of this Ordinance and is not in conformance with the provisions of the zoning district in which it is located, such use, activity, building or structure shall be considered a legal nonconforming use and be allowed to remain as such, including completion of construction, providing said construction does not require more than one (1) year from the effective date of this Ordinance for completion. If said construction is continued for more than one (1) year, the legal status of the activity, use, building or structure shall be determined by the Township Planning Commission.

Section 4.02 Nonconformities

1. Classification of Nonconforming Uses and Structures

Nonconforming uses and structures are those which do not conform to a provision or requirement of this Ordinance or any subsequent amendment but which were lawfully established prior to the time of Ordinance adoption or amendment. Class "A" nonconforming uses or structures are those which have been so designated by the Planning Commission, after application by the person having interest in the property or the Zoning Administrator, upon finding that the use or any portion of the structure:

- a. Is not in an environmentally sensitive area;
- b. And the continuance thereof would not be contrary to the purpose of this Ordinance as described in Section 1.02;
- c. And the use or structure does not and is not likely to significantly depress the value of nearby properties;
- d. And that the use or structure was lawful at the time of its inception and that no useful purpose would be served by strict application of the provisions or requirements of this Ordinance with which the use or structure does not conform.
- e. And that the use or structure is of economic benefit to the community.

All nonconforming uses and structures not designated as a Class "A" are Class "B" nonconforming uses or structures.

2. Procedure for Obtaining Class "A" Designation, Conditions

A written application shall be filed setting forth the name and address of the applicant, giving a legal description of the property to which the application pertains and including such other information

as may be necessary to enable the Planning Commission to make such a determination of the matter. The Planning Commission may require the furnishing of such additional information as it considers necessary. The notice of hearing procedure before the Planning Commission shall be same as in the cases of an application for a variance. The decision shall be in writing and shall set forth the findings and reasons on which it is based. Reasonable conditions may be attached to the Class A designation to prevent conflicts with other property uses or to assure compatibility with the purpose of this Ordinance as outlined in Section 1.02. No vested interest shall arise out of a Class "A" designation.

3. Revocation of Class "A" Designation

Any Class "A" designation shall be revoked, following the same procedure required for designation, upon a finding that as a result of any change of conditions or circumstances the use or structure no longer qualifies for Class "A" designation.

4. Regulations Pertaining to Class "A" Nonconforming Uses and Structures

A Class "A" nonconforming use or structure shall not be repaired, restored, extended, enlarged, or substituted for except in accord with the following requirements:

- a. The Planning Commission may permit the repair, improvement, or modernization of a Class A nonconforming structure to correct deterioration, obsolescence, depreciation and wear, provided the structure will still meet the qualifications of a Class A nonconforming use or structure.
- b. A Class "A" nonconforming use or structure damaged by fire, explosion, flood, erosion or other acts of God may be restored, rebuilt or repaired only after approval by the Planning Commission. The Planning Commission shall permit any structure to be returned to its prior use provided there is no increase in the intensity of the nonconforming use and providing there is no increase in the square footage of the nonconforming structure. No restoration, rebuilding or repair shall increase the extent of violation of setback or other area requirements of this Ordinance. If a nonconforming structure can be rebuilt in greater conformance or even complete conformance with this Ordinance, then the Planning Commission shall require the greatest possible conformance unless the cost of such compliance exceeds one hundred fifty (150) percent of the replacement cost of the entire structure, then complete compliance or partial compliance shall not be required. The Planning Commission may require the land owner to provide site plans, appraisals or other construction or land data which are necessary to assure compliance with the Ordinance.
- c. There shall be no structural changes including enlargement or extension of a Class "A" nonconforming structure or use except after approval of the Planning Commission. In exercising its discretion regarding a request for approval of a structural change, the Planning Commission shall consider the factors contained in Section 8.02 Uses Subject to Special Approval. In addition, no extension or enlargement of a Class "A" nonconforming use shall be approved if approval would result in a violation or increase of the waterfront, front yard, rear yard or side yard setback, or similar requirements of this Ordinance.

- d. A Class “A” nonconforming use may be substituted for a similar nonconforming use or structure when the Planning Commission determines the substitution would improve the property, would not increase the structure or uses nonconformity, or when the substitution would not be contrary to the intent of this Ordinance.
- e. The Planning Commission may attach conditions to any approval granted by the Planning Commission to a Class “A” nonconforming use. Those conditions shall attempt to make the use less nonconforming or to lessen its impact on nearby properties.

5. Regulations Pertaining to Class “B” Nonconforming Uses and Structures.

It is the intention of this Ordinance that all Class “B” nonconforming uses will either be eliminated or changed to conforming uses over a period of time. This Ordinance is intended to encourage the elimination of Class “B” nonconforming uses or discourage anything that extends the normal useful life of a Class “B” nonconforming use. A Class “B” nonconforming use or structure shall not be repaired, restored, extended, enlarged or substituted for except in accord with the following requirements:

- a. Minor repairs or maintenance of a Class “B” nonconforming use or structure in order to keep it structurally safe and sound is permitted. A Class “B” nonconforming use or structure shall not be repaired, improved or remodeled when such repairs or improvements exceed fifty (50) percent of the structure’s replacement cost as determined by the Planning Commission. If a Class “B” nonconforming use or structure is changed to conform with this Ordinance, the limitations on repairs or improvements shall not apply.
- b. Any Class “B” nonconforming use or structure damaged by fire, explosion, flood, erosion or other acts of God may be restored, rebuilt, repaired only after approval by the Planning Commission. The Planning Commission shall permit any structure to be returned to its prior use provided there is no increase in the intensity of the nonconforming use and providing there is no increase in the square footage of the nonconforming structure. No restoration, rebuilding or repair shall increase the extent of violation of setback or dimensional or area requirements of this Ordinance. If a nonconforming structure can be rebuilt in greater compliance or even complete conformance with this Ordinance then the Planning Commission shall require it. The cost of complete compliance or greater compliance shall not be a factor in the decision of the Planning Commission unless the cost of compliance exceeds one hundred fifty (150) percent of the replacement cost of the structure as determined by the Planning Commission. The Planning Commission may require the land owner to provide site plans, appraisals, or other construction or land data which are necessary to assure compliance with this Ordinance.
- c. No Class “B” nonconforming use or structure shall be enlarged, extended or structurally altered nor shall the nonconforming use be changed to a substantially different nonconforming use.
- d. If a mineral extraction operation is designated a nonconforming use, existing holes, shafts may be worked or enlarged on the land which constituted the lot on which operations were conducted at the time of operation being so classified, but no new holds or shafts shall be established.

- e. Class “B” nonconforming use or structure shall be permitted to continue in existence if it was lawful at the time it was established.

A Class “B” nonconforming structure or use may be substituted for a conforming use or structure, or by a use or structure which meets the requirements of a Class “A” nonconforming use when the Planning Commission determines that the substitution would not increase the nonconformity of the use or structure or be contrary to the public health, safety, and welfare.

6. Determination of Replacement Cost; Prior Value

The cost of repairing, restoring, or improving a Class “A” or “B” nonconforming use or structure (excluding contents), damaged by fire, explosion, flood, erosion or other acts of God, shall be made on the basis of an appraisal by a qualified individual designated by the Planning Commission. The cost of such determination shall be borne by the applicant. The Planning Commission may determine previous value of an existing or pre-catastrophe structure based on information from the most recent Property Tax Assessment record if they find that such record is current and reasonably accurate.

7. Nonconforming Lots of Record:

In any district, principal structures and customary accessory buildings may be erected on any nonconforming lot of record, provided permit for construction of a well and septic system is granted by the District Health Department and can meet district regulations.

8. Abandonment of Nonconforming Use or Structure

If a property owner has an intent to abandon a nonconforming use or structure and in fact abandons this nonconforming use or structure for a period of one (1) year, then any subsequent use of the property or structure shall conform to the requirements of this Ordinance. When determining the intent of the property owners to abandon a nonconforming use or structure, the zoning administrator shall consider the following factors:

- a. Whether utilities, such as water, gas, and electricity to the property have been disconnected.
- b. Whether the property, buildings, and grounds have fallen into disrepair.
- c. Whether signs or other indications of the existence of the nonconforming use have been removed.
- d. Whether equipment or fixtures necessary for the operations of the nonconforming use have been removed.
- e. Other information or actions that evidence an intention on the part of the property owner to abandon the nonconforming use or structure.

9. Creation of Nonconforming Lots or Parcels

No lot area and no yard, court, parking areas or other required space shall be divided, altered, reduced or diminished as to make area or dimension less than the minimum required or more than the maximum allowed under this Ordinance, except where such reduction or expansion has been brought about by the expansion or acquisition of public right-of-ways for a street, road, or highway. If a required area is already less than the minimum required under this Ordinance, said area or dimension shall not be further divided or reduced.

Section 4.03 Principal Uses

No lot may contain more than one (1) principal structure or use, except that upon determination by the Planning Commission, groups of apartment buildings, offices, retail business buildings, agricultural structures, or other similar groups of buildings may be considered principal structures or uses.

Section 4.04 Accessory Buildings

1. Authorized accessory buildings may be erected as part of the principal building or may be connected to the principal building by a roofed porch, patio, breezeway or similar structure or may be completely detached from the principal building.
2. Where any accessory building is attached to the side or front of a principal building, such accessory building shall be considered part of the principal building for purposes of determining yard dimensions.
3. All accessory buildings regardless of size or placement shall be located to closer to a front, side, or rear lot line than the permitted distance for the principal structure on the same lot.
4. In the Agricultural and Conservation/Recreation districts, an accessory building shall be allowed as a principal use building and may be used for dwelling purposes ONLY as accessory dwelling units as provided in this ordinance.
5. In all other districts, an accessory building shall be allowed as a principal use provided it is contiguous to a parcel of land under the same ownership with a primary structure. Accessory buildings may be used for dwelling purposes only as accessory dwelling units as provided in this ordinance.
6. A zoning permit is required for all accessory buildings with a permanent foundation regardless of size or a footprint that exceeds 200 square feet with or without a foundation.

Section 4.05 Essential Services Clause Pertaining to Utilities

The erection, construction, alteration, maintenance, and operation by utilities or municipal departments or commission, of overhead or underground gas, electrical, steam or water distribution, transmission systems, collection, communication, supply or disposal systems, including mains, drains, sewers, pipes, conduits, wires, hydrants, structures, towers, poles, electrical substations, 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 or safety or general welfare, shall be permitted as authorized or regulated by any laws and the ordinances of the Township of Banks in any Use District.

Telecommunication towers, alternative tower structures, antennas, wind turbine generators, and anemometer towers shall be regulated and permitted pursuant to this Ordinance and shall not be regulated or permitted as essential services, public utilities or private utilities.

Section 4.06 Noncommercial Wind Turbine Generators

1. Noncommercial wind turbine generators and anemometer towers may be located in any district, provided the WTG or anemometer tower is setback from the property line a distance at least equal to the total height, except as permitted under subsection 4 below.
2. The minimum site area for a noncommercial wind turbine generator or anemometer tower (either an individual lot or two (2) abutting lots as permitted under subsection 4 below) shall be three (3) acres.

3. The maximum height for a Non-Commercial Wind Turbine Generator or associated anemometer tower shall be (150) one hundred fifty feet.
4. The owners of abutting lots may jointly apply for a permit to construct an anemometer tower or noncommercial wind turbine generator serving the lots. If the anemometer tower or noncommercial wind turbine generator will not meet the setback requirements of subsection 1 above for the lot on which it will be located, then the owner(s) of the abutting lot and the owner(s) of all other lots directly impacted by the reduced setback requirements shall consent in writing to the reduced setback requirements and agree to impose deed restrictions on their property acknowledging and accepting the potential increased risk of damage to their land as a result of the closer proximity of the wind turbine generator or anemometer tower to their property. These deed restrictions shall run with the land, shall be in a form acceptable to the township attorney, and shall be recorded in the office of the Antrim County Register of Deeds.

Section 4.07 Mobile Homes

1. Newly sited mobile homes sited on individual lots shall meet the standards for minimum lot size, yard set-backs, minimum floor area and minimum dwelling unit width for the district in which they are located and shall meet the following additional standards:
 - a. Mobile homes shall be attached to an approved permanent foundation or basement and shall be anchored using a system that meets the Michigan Mobile Home Commission requirements.
 - b. Mobile homes shall be installed according to manufacturer's set up requirements, and the construction of the unit shall comply with the National Mobile Home Construction and Safety Standards Act of 1974.
 - c. The wheels, axles and towing assembly shall be removed from a mobile home before the unit is attached to the foundation. Additionally, no mobile home shall have any exposed undercarriage or chassis.
 - d. Mobile homes shall not be used as an accessory building.
2. Replacement of lawfully existing non-conforming mobile homes shall be allowed provided the replacement would improve the property, would not increase the structure or uses non-conformity or when the replacement would not be contrary to the intent of the Ordinance and shall meet the following additional standards:
 - a. Mobile homes shall be attached to an approved permanent foundation or basement and shall be anchored using a system that meets the Michigan Mobile Home Commission requirements.
 - b. Mobile homes shall be installed according to manufacturer's set up requirements, and the construction of the unit shall comply with the National Mobile Home Construction and Safety Standards Act of 1974.
 - c. The wheels, axles and towing assembly shall be removed from a mobile home before the unit is attached to the foundation. Additionally, no mobile home shall have any exposed undercarriage or chassis.
 - d. Mobile homes shall not be used as an accessory building.

Section 4.08 Recreational Vehicles

Use or storage of Recreational Vehicles shall comply with all the following applicable regulations:

1. The unoccupied storage of one (1) Recreational Vehicle shall be allowed in any zoning district within the side or rear yard on any lot with an existing single-family dwelling. The unoccupied storage of any additional recreational vehicle(s) shall only be allowed within an enclosed structure, or completely screened from view including from all public and private roads, and screened from view from all adjacent properties.
2. On lots three (3) acres or larger in any zoning district, without an existing single-family dwelling, the unoccupied storage of one (1) Recreational Vehicle shall be allowed for a period not to exceed forty-five (45) consecutive days. Upon the written request of the property owner, the Zoning Administrator shall grant one (1) additional forty--five (45) consecutive day period if no Township Ordinance violations or civil infractions have occurred on the property during the past twelve (12) months.
3. Recreational Vehicles shall be located in accordance with applicable setback standards of the underlying zoning district.
4. The outside storage of Recreational Vehicles shall comply with all provisions of the Banks Township Nuisance Ordinance No. 2 of 2021.
5. The use of one (1) Recreational Vehicle for recreational purposes, including temporary sleeping and/or cooking, shall be allowed in any zoning district for a period not to exceed forty-five (45) consecutive days. Upon the written request of the property owner, the Zoning Administrator shall grant one (1) additional forty--five (45) consecutive day period if no Township Ordinance violations or civil infractions have occurred on the property during the past twelve (12) months.
6. The use of two (2) Recreational Vehicles for recreational purposes, including temporary sleeping and/or cooking, shall only be allowed on lots that are one (1) acre or more in size, but less than three (3) acres in size in any zoning district for a period of up to fifteen (15) consecutive days. Upon the written request of the property owner, the Zoning Administrator shall grant one (1) additional fifteen (15) consecutive day period if no Township Ordinance violations or civil infractions have occurred on the property during the past twelve (12) months.
7. The use of between two (2) and four (4) Recreational Vehicles, inclusive, for recreational purposes, including temporary sleeping and/or cooking, shall be allowed on lots three (3) acres or larger in any zoning district for up to fifteen (15) consecutive days. Upon the written request of the property owner, the Zoning Administrator shall grant up to two (2) additional fifteen (15) consecutive day periods if no Township Ordinance violations or civil infractions have occurred on the property during the past twelve (12) months.
8. Decking, sheds, restrooms, walls, or similar permanent improvements are not permitted in conjunction with Recreational Vehicle use under this section. One (1) impervious surface parking pad not to exceed 200' square feet is allowed.
9. Waste disposal must be handled in accordance with the Sanitary Code. In order to prevent waste, sewage, or discharge from any Recreational Vehicle to any land, surface water, or groundwater, Recreational Vehicles under this section shall have self-contained wastewater holding tanks for sinks, shower, and toilet. The contents of such holding tanks shall be removed from lot for disposal.

Section 4.09 Substandard Dwelling Occupancy during the Construction of a Dwelling

For the express purpose of promoting the health, safety and general welfare of the inhabitants of the Township, and of reducing hazards to health, life and property, no basement-dwelling, cellar dwelling, garage-house, tent, camper, travel trailer, recreational vehicle, mobile home not installed according to the requirements of this Ordinance, or other substandard structure shall hereafter be erected or moved upon any premises and used for dwelling purposes except under the following applicable conditions:

1. The location shall conform to the provisions governing yard requirements of standard dwellings in the district where located.
2. The use shall be for the sole purpose of providing dwelling facilities for the owner of the premises during the period in which a dwelling conforming to the provisions of this Ordinance is in process of erection and completion, but not to exceed twelve (12) months. One (1) additional twelve (12) month extension may be obtained from the Zoning Administrator beginning with the date of issuance of the zoning permit. The substandard dwelling shall be removed upon completion of construction of a dwelling complying with the requirements of this Ordinance.
3. Installation of septic system and water well shall be constructed and maintained in accordance with the standards of materials and installation recommended by the District Health Department and shall precede occupancy of the substandard dwelling.
4. Application for the erection and use of a substandard dwelling shall be made at the time of zoning permit application for the permanent dwelling. On approval and delivery of the zoning permit, the applicant shall certify in a space allotted for that purpose, and on the copy retained for filing by the township, that he has full knowledge of the limitations of the permit and the penalty pertaining thereto. No such permit shall be transferable to any other person.
5. No annexes shall be added to temporary substandard dwellings.

Section 4.10 Animals

The keeping of pigs, hogs, horses, or other such livestock is allowed in all districts where Agriculture is allowed, provided the parcel of land is five (5) acres or greater in size. The keeping of poultry and rabbits is allowed in all districts where Agriculture is allowed, and in the Mobile Home District. All structures enclosing or housing animals shall be located, constructed, and maintained so that odor, dust, noise, or drainage shall not constitute a nuisance or hazard to adjoining properties.

Section 4.11 Greenbelt

To preserve natural resources, water quality and community scenic and recreational values, a greenbelt shall be established and maintained on all waterfront property. The greenbelt shall include all the land area located within twenty-five (25) feet of the ordinary high water mark of a lake or a stream abutting or traversing the property in question. Within the greenbelt, the following development or use restrictions shall apply:

1. No structures shall be allowed except for boathouses, launching ramps and docking facilities including steps and retaining walls, and such facilities shall meet the side yard setback for the district in which they are located. No boathouse shall exceed twelve (12) feet in height above the ordinary high water mark.
2. No dredging, excavation, or filling shall be allowed except for reasonable sanding of beaches and/or lakeshore abatement remediation where permitted by state or federal law.
3. The use of asphalt, concrete, wood or other similar surfaces shall be limited to walkways or stairs necessary for water access or boat launch ramps.
4. The use of fertilizers is prohibited. Pesticides and herbicides shall not be used, except as required to manage invasive species or noxious weeds as defined in the ordinance.
5. Leaves, grass clippings, and similar yard and garden wastes may not be burned or stored.
6. Neither septic tanks nor septic system filtration fields may be located within the greenbelt.
7. Natural vegetation cover, including trees, shrubs or herbaceous plants shall be maintained on at least seventy percent (70%) of the lake or stream frontage within the greenbelt. Beach sand, gravel,

cobblestone or rock may be substituted for vegetated areas where these materials naturally exist on the subject property.

8. The greenbelt shall be shown on any plot plan or site plan submitted for approval during the process of developing a water frontage parcel.
9. Banks Township will use the "Field Identification Guide to Invasive Plants in Michigan's Natural Communities" as published by the Michigan State University Extension Office, as periodically revised, to determine what constitutes a "native species" from an "invasive species." Invasive species listed in these guidelines are prohibited within the greenbelt.
10. Vegetation within the greenbelt shall be maintained in a natural state. The removal or pruning of native trees, shrubs, or other vegetation, and the mowing of grasses and herbaceous plants be prohibited within the natural shoreline buffer with the following exceptions:
 - a. Pruning to remove dead portions of trees, shrubs, or other vegetation.
 - b. Removal of dead trees, shrubs, or other vegetation, however, the root systems shall be left in place for shoreline stabilization.
 - c. Removal of invasive species as identified by the Field Identification Guide to Invasive Plants in Michigan's Natural Communities, including but not limited to Autumn Olive, Black and Pale swallow-worts, Black Locust, Canada Thistle, Common buckhorn, Garlic mustard, Glossy buckhorn, Japanese barberry, Japanese knotweed, Leafy spurge, Oriental bittersweet, and Wild parsnip.
 - d. Removing limbs and/or branches from living trees up to a height of twelve (12) feet above grade and trimming herbaceous plants that exceed a height of four (4) feet above grade to allow property owners to maintain or establish views of the lake.
 - e. Clearing and removal of vegetation to accommodate a walkway, a deck or patio structure, and/or to provide reasonable water access.
 - f. Removal of noxious weeds as identified by the Michigan Department of Agriculture's prohibited and restricted weed list including but not limited to, ragweed, poison ivy, poison sumac, purple loosestrife, and wild carrot, and gooseberry.
11. No lawn shall be maintained within the greenbelt.
12. No more than 15% of the greenbelt may be impervious surface.

Section 4.12 Home Business

While Banks Township recognizes that many residents feel the necessity to work at home, the Township also recognizes the rights of all residents to be free from actual or potential nuisance which may be caused by non-residential activities conducted in a residential zone. The intent of this section is to provide standards to ensure home occupations and cottage industries are compatible with other allowed uses in residential districts, and thus to maintain and preserve the residential character of the neighborhood.

1. Home Occupations

- a. Home occupations are permitted in all zoning districts in which single-family dwellings are permitted as a matter of right. A zoning permit is required.
- b. Home Occupations shall be operated in their entirety within the dwelling (not within an attached or detached garage or accessory building) and shall occupy no more than twenty-five percent (25%) of the dwelling's ground floor area. Attached and detached residential garages may be used for incidental storage.

- c. Home Occupations shall be conducted primarily by the person or persons occupying the premises as their principal residence. Not more than one (1) non-resident persons shall be employed to assist with the business.
- d. Additions to a dwelling for the purpose of conducting a Home Occupation shall be of an architectural style that is compatible with the architecture of the dwelling and shall be designed so that the addition can be used for dwelling purposes if the home occupation is discontinued.
- e. Home Occupations shall be incidental and subordinate to the principal use of the dwelling for residential purposes and shall not detract from the residential character of the premises or neighborhood.
- f. Home Occupations shall not result in the creation of conditions that would constitute a nuisance to neighboring property owners and the Township as a whole. Any machinery, mechanical devices, or equipment employed in the conduct of a Home Occupation based business shall not generate noise, vibration, radiation, odor, glare, smoke, steam, or other condition not typically associated with the use of the dwelling for residential purposes.
- g. Traffic and delivery or pickup of goods shall not exceed that normally created by residential uses.
- h. The outdoor storage of goods and/or materials of any kind is prohibited. No goods or materials shall be sold that are not produced through the conduct of the Home Occupation.
- i. There shall be no parking permitted within any setback areas.
- j. No process, chemicals, or materials shall be used which are contrary to applicable state or federal laws.

2. Cottage Industries

- a. Cottage industries may be permitted as a special use in any zoning district in which single-family dwellings are permitted, subject to review and approval by the Planning Commission. Cottage industries shall be allowed on the basis of individual merit, a periodic review of each cottage industry shall be performed to ensure the conditions of approval are adhered to. If a premises is sold, leased, or rented to a party other than the applicant, the permit shall be reviewed for compliance with the original permit by the Zoning Administrator. If any changes are necessary, the request will be reheard by the Planning Commission.
- b. Cottage industries shall be incidental and subordinate to the use of the premises for residential purposes and shall not detract from the residential character of the premises or neighborhood. There shall be no exterior evidence of such industry.
- c. A cottage industry shall occupy not more than one building. The floor area of such buildings shall not exceed twenty-four hundred (2400) square feet.
- d. The outdoor storage of goods and/or materials of any kind is prohibited unless screened (by a tight-board wood fence, landscaped buffer, landscaped berm, etc.) from view from neighboring property and road rights-of-way. If required, the type of screening shall be determined at the discretion of the Planning Commission.
- e. Cottage industries shall not result in the creation of conditions that would constitute a nuisance to neighboring property owners and surrounding zoning district. Any machinery, mechanical devices or equipment employed in the conduct of a Cottage Industry shall not generate noise, vibration, radiation, odor, glare, smoke, steam, or other condition not typically associated with the use of the premises for residential purposes.

- f. Traffic and delivery or pickup of goods shall not exceed that normally created by residential uses.
 - g. Cottage industries shall be conducted only by the person or persons residing on the premises. The Planning Commission may allow up to two additional employees or assistants.
 - h. To ensure that the cottage industry is compatible with surrounding residential use, a "not-to-exceed" number of vehicles that may be parked at any given time during business operations shall be established by the Planning Commission during the review and approval process.
 - i. Hours of operation shall be approved by the Planning Commission.
3. Termination, Extensions, Revisions, and Inspections
- a. Upon written application by the owner, the Planning Commission may, for just cause, grant time extension for compliance with the conditions of this Section.
 - b. Any home business (home occupation or cottage industry) shall be subject to periodic review by the Zoning Administrator.
 - c. If the Zoning Administrator has reason to believe the property owner is in violation of his or her permit or grounds for revocation exist, written notice of alleged violation(s) shall be sent to the operator of the home business. The operator shall be afforded the opportunity to appear at a public hearing before the Planning Commission to present his or her case. The hearing notice procedures shall be the same as those for a special approval (see Section 8.02).
 - d. Following the public hearing, the decision of the Planning Commission shall be made in writing and shall be based on the findings of fact. Reasonable conditions may be imposed to prevent conflicts with other property uses or to assure compatibility with the standards of this ordinance. The Planning Commission shall have the authority to order a limit on the hours of operation, impose conditions of operation or, if deemed necessary, order the complete termination of the activity.
 - e. Proposed revisions or additions to a cottage industry shall constitute a change of use and shall be subject to special use review and approval by the Planning Commission.

Section 4.13 Fences, Walls and Hedges

Notwithstanding other provisions in this Ordinance, fences, walls, or hedges may be permitted on any property in any District, provided that no fence, wall, or hedge exceed a height of six (6) feet and shall be no closer than five (5) feet to the front property line or road right-of-way, and further provided such fence, wall or hedge shall not obstruct sight distances needed for safe vehicular traffic, nor create a hazard to traffic or pedestrians. Fences may be located on the lot line in the side or rear yards.

Where a lot borders a lake or stream, fencing shall not be constructed on the waterfront side within the required fifty (50) foot greenbelt. Fences shall not exceed four (4) feet in height, nor unreasonably restrict views to the water from neighboring properties.

Section 4.13A Berms

Berms, as defined in this Ordinance, shall be a permitted use within any zoning district, subject to the following regulations:

1. Berms shall be constructed so as to maintain a side slope not to exceed a one foot (1') rise to a three feet (3') run ratio.
2. Berms shall not exceed a height of six (6) feet, as measured from the base of the berm (before any rise begins) to the highest point of the berm.
3. Berms shall be no closer than five (5) feet to the front property line or road right-of-way and shall not obstruct sight distances needed for safe vehicular and pedestrian traffic.
4. The base of the berm (before any rise begins) may be located immediately adjacent to the lot line in the side or rear yards.
5. Berms shall be planted with grass, ground cover, shrubs or other suitable plant material. A mixture of evergreen and deciduous trees of species native to northwestern Michigan may also be planted on the berm. All plant material shall be maintained in a healthy, living condition.
6. Berms shall be constructed in a way that does not alter drainage patterns on the site or on adjacent properties.
7. Berms shall not be constructed on the waterfront side of a lot that borders a lake or stream within the required fifty (50) foot greenbelt.

Section 4.14 Water Supply and Sewage Disposal Facilities

All water supply and sanitary sewage disposal systems either public or private, for any building hereafter erected, altered or moved upon any premises shall be subject to compliance with District Health Department sanitary code requirements. Plans must be submitted to and approved by the responsible agencies. The written approval of such facilities by the District Health Department shall be filed with application for a Zoning Permit.

Section 4.15 Storm Water Retention

Stormwater drainage in excess of natural conditions shall be retained on site. This provision may require stormwater retention ponds where appropriate. An exception may be made for water leaving the site via an adequately sized existing stormwater ditch, stormwater pipe or through other stormwater facilities that will be developed at the same time as the proposed new use. Stormwater management efforts shall be consistent with the provisions of the Antrim County Stormwater and Soil Erosion Control Program. In the case of conflicting regulations, between the Township Zoning Ordinance and the Antrim County Stormwater and Erosion Control Program, the more stringent of the two shall apply. Written approval from the Michigan Department of Transportation (MDOT) shall be required for an additional site run-off directed into a state trunkline ditch, i.e. US-31.

Section 4.16 Reserved for Future Use

Section 4.17 Hazardous Substances

All business or industries that store, use or generate hazardous substances, as defined in this Ordinance, shall meet all state and federal requirements for storage, spill prevention, record keeping, emergency response, transport and disposal of said hazardous substances. No discharge to groundwater, including direct and indirect discharges, shall be allowed without required permits and approvals.

Section 4.18 Junkyards, Salvage Yards, Sanitary Landfills

Location of a junkyard, salvage yard or sanitary landfill shall be not less than one hundred twenty-five (125) feet from any public highway. All uses of such facilities shall be completely screened from sight by natural terrain, or by a neatly finished and maintained wooden or masonry fence, or by well-maintained evergreens.

Glare from any process, such as arc welding, conducted at a junkyard, salvage yard or sanitary landfill, which emits harmful rays shall be screened so as not to constitute a hazard or nuisance to adjacent properties.

Section 4.19 Access Management

In order to protect public safety, preserve rural character, maintain traffic flow, consider future transportation needs, provide adequate and safe access to property, promote efficiency and economy in public utility requirements, minimize land use conflict, protect natural resources, promote consistent development patterns and enhance the visual characteristics of entryways to Banks Township, the following site development standards shall apply to all properties with frontage on US-31.

1. Building Setback Requirements - Development of highway corridor property, regardless of zoning district, shall have a minimum front yard setback of fifty (50) feet.
2. Property Access Requirements - The access drive shall comply with either subsection (a) or (b) below, whichever results in the least number of possible access drives, and with both subsections (c) and (d).
 - a. Not more than one driveway shall be allowed access to U.S. 31 within a lot of record, as the parcel exists on the effective date of this Ordinance, regardless of the number of future divisions of that parcel; and
 - i. The access drive and its right-of-way shall be designed and shown on a site plan to accommodate all possible future divisions of the lot of record, as it exists on the effective date of this Ordinance; and
 - ii. The access drive and its right-of-way shall be designed and shown on a site plan to provide access to any adjoining parcel of land which would otherwise become, or is, landlocked.
 - b. The location of a driveway with access to U.S. 31 shall comply with all of the following:
 - i. The location shall be at least seventy (70) feet from the intersection of any two roads.
 - ii. The location shall be at least two hundred (200) feet from another access drive on the same side of the road.
 - iii. The location shall be at least fifty (50) feet from any access drive on the opposite side of the road.
 - iv. Two access drives on adjacent parcels may share the same driveway entrance, and thereby have zero space between them, but shall comply with other driveway separation distances noted above.
 - c. Where there is a choice, driveways shall access adjacent local or minor streets in preference to U.S. 31, and/or provide a rear service drive to access such local or minor street.
 - d. Access drive width shall be between twenty (20) and thirty-five (35) feet.
3. Prior to review by the Planning Commission - Any site plan for a commercial use proposing new or altered access drives onto U.S. 31 shall be accompanied by written documentation of consultation with the Michigan Department of Transportation.
4. Special Use Review for High-Traffic Uses - In addition to other provisions of this ordinance, when a high-traffic commercial use in the highway corridor adjoins an existing residential use or a residentially zoned parcel, the high-traffic use shall be subject to review as a Special Use. The designation of a proposed use as a high-traffic use shall be determined by the Planning Commission.

The designation may include, but is not limited to, gasoline stations, convenience stores and businesses with drive-through service windows.

5. Landscape requirements for Commercial Uses

- a. Parking areas. In off-street parking areas containing greater than twenty (20) spaces, at least five (5) percent of the total parking area shall be used for interior landscaping. Parking lot landscape areas shall be no less than five (5) feet in any dimension and at least one hundred fifty (150) square feet in any single area. A minimum of one (1) tree at least two (2) inches caliper size shall be planted in each area.
- b. Residential buffer area. Where commercial, office, or industrial uses abut an existing residence or residentially zoned property, the intervening side or rear yard of the nonresidential use shall provide a completely obscuring wall, fence or landscape screen at least six (6) feet in height, measured from the surface of the ground of the abutting residential district.
- c. General landscaping. All developed portions of a site not occupied by buildings or pavement shall be planted with grass, ground cover, shrubs or other suitable plant material. A mixture of evergreen and deciduous trees of species native to northwestern Michigan shall be planted at a rate of one (1) tree per three thousand (3,000) square feet of landscaped open space on-site.
- d. Landscape preservation. Preservation of existing trees and site vegetation is encouraged and may be used to meet the landscaping requirement listed above.

Section 4.20 Outdoor Lighting

All outdoor lighting, whether for illuminating sites, parking areas, buildings, signs and/or other structures shall be shielded, shaded, designed and/or directed away from all adjacent districts and uses; and further shall not glare upon or interfere with persons and vehicles using public streets. Lighting fixtures are to be of the full cut-off design with horizontally aligned flush-mounted (non-protruding) lens, directing light on-site only, and no more than twenty (20) feet in height.

The Planning Commission may permit taller or require shorter fixtures only when the Commission determines that unique conditions exist and where a waiver would: reduce the number or size of light fixtures; not adversely impact neighboring properties and permit fixtures in proportion to height and bulk of nearby buildings and other fixtures. Site lighting shall not exceed twenty (20) foot candles as measured three (3) feet above the ground surface, directly under the fixture.

Section 4.21 Signs

The purpose of this section is to preserve the desirable character of Banks Township, as well as to recognize the need for and privilege of advertising, so that people unfamiliar with the area, such as tourists and transients, may avail themselves of the goods and services afforded by the local business places. At the same time, the Township recognizes the right of residents to be free of advertising that could affect property values and create an unpleasant or less than desirable atmosphere. The use and erection of all outdoor signs and media shall be subject to all state and local codes and statutes, in addition to the provisions of this ordinance.

1. Signs Not Requiring a Sign Permit: The following signs may be placed in any zoning district without a sign permit, provided such signs comply with any applicable federal or state law or regulation and are located so as not to cause a nuisance or safety hazard:

- a. One (1) non-illuminated identification sign per use, not exceeding two (2) square feet of sign surface.
- b. Street name signs, route markers, and other traffic control signs erected or approved by state, county or village agencies when necessary to give proper directions or to otherwise safeguard the public.
- c. Non-advertising signs erected by any organization, person, firm or corporation that is needed to warn the public of dangerous conditions and unusual hazards including but not limited to: road hazards, high voltage, fire danger, explosives, severe visibility, etc.
- d. Non-advertising signs exclusively devoted to controlling property access (no trespassing, private property, keep out, no hunting, hiking trail, day use only, and similar instructional messages), provided the sign surface does not exceed the maximum size limitations of subsection 2. below.
- e. Non-advertising signs marking a historically significant place, building or area when sanctioned by a national, state or local historic organization recognized by the planning commission, provided the sign surface does not exceed the maximum size limitations of subsection 2. below.
- f. Signs that have been approved in conjunction with a valid site plan or zoning permit for any principal or accessory use, and signs required by federal or state agencies in connection with federal or state grant programs.
- g. Temporary real estate signs, not exceeding ten (10) square feet, on individual lots advertising a premise for sale or rent.
- h. Signs advertising sales such as garage, estate, auction, moving, and yard sales, which last no more than seven (7) consecutive days, provided the sign surface does not exceed the maximum size limitations of subsection 2. below.
- i. Political and noncommercial signs provided the sign surface does not exceed the maximum size limitations of subsection 2. below.

2. Size Restrictions

The size of any publicly displayed sign, symbol or notice on a premises to indicate the name of the occupant, to advertise the business there transacted, to express non-commercial political views, or directing to some other locale, shall be regulated as follows:

Use District	Maximum Size of Sign per Side
R-1, R-2 and MH	Sixteen (16) square feet
C/R	Twenty-four (24) square feet
A, V and M	Forty (40) square feet

3. General Sign Regulations

In addition to the size limitations stated in Subsection 4.21.2, the following conditions shall apply to all signs and billboards erected in any use district:

- a. No sign, except non-illuminated residential name plates and signs specifically identified in subsection 1 above, shall be erected or altered until approved by the Zoning Administrator (ZA) or authorized by a Planning Commission (PC) approved site development plan. After the ZA or PC approval, the required sign permit shall be issued.

- b. No signs or billboards shall be located on any street corner which would obscure the vision of drivers using said streets, or conflict with traffic control signals at the intersection of any streets. No signs shall obstruct the vision of drivers at any driveway, parking lot or other route providing ingress or egress to any premises.
- c. Illumination of signs shall be directed, shaded or designed so as not to interfere with the vision of persons on the adjacent highway, streets or properties. The projected light shall not emanate beyond the sign and unnecessarily illuminate the night sky. Illuminated signs shall not be of the flashing, moving or intermittent type.
- d. In those instances where a business use or tourist service facility is not located directly on a major route, but is dependent upon passer-by traffic for support, not more than two (2) signs per business may be permitted in V, A and M Districts subject to review and approval of location by the Zoning Administrator. Not more than one (1) freestanding sign per six hundred sixty (660) feet of road frontage or per lot, may be allowed, EXCEPT if the signs are directional signs as provided by the Michigan Department of Transportation and approved by the Zoning Administrator. No off-premise signs shall be permitted in R-1, R-2, MH and C/R.
- e. All directional signs located along the highway, to direct traffic to a business off the highway, must conform to the standards used by the Michigan Department of Transportation for such signs. Wherever possible such directional signs will be clustered.
- f. Freestanding signs, pole signs or advertising pylons may be permitted in a required front yard for uses set ten (10) feet or more behind the front property line. No freestanding sign shall exceed a maximum of twenty (20) feet height, measured from the ground to the top of the sign, regardless of the zoning district.
- g. Both sides of any freestanding or overhanging sign may be used for display.
- h. No sign shall project beyond or overhang the wall, roof or any architectural feature by more than five (5) feet. However, prior to the erection or overhanging of a sign in a public right-of-way, the sponsor of such sign shall receive the approval of the proper governmental agency having jurisdiction over such right-of-way (county or state).
- i. Roof position signs or billboards are specifically prohibited.
- j. The number of signs allowed will be decided by the Planning and Zoning Commission at the time of development plan review. Factors considered will include building size, location and length of street frontage, and lot size.
- k. In no case shall a sign or signs exceed a total of ten percent (10%) of the building face to which they are attached.
- l. Portable signs shall be prohibited, except where allowed for in this section or such signs have been approved by the Planning Commission as meeting a special purpose need and/or being appropriate for the particular need. Approved sandwich board portable signs shall not exceed twenty-four (24) inches in width by forty-eight (48) inches in height.
- m. Advertising devices such as banners, balloons, flags, pennants, pinwheels, searchlights or other devices with similar characteristics are prohibited, except when used temporarily for a period not to exceed fifteen (15) days to announce the opening of a new type of business or use by a new owner.
- n. In the case of Special Events, which occur no more than once every six (6) months, advertising devices such as banners, balloons, flags, pennants, pinwheels, searchlights or

other devices with similar characteristics, are permitted with Planning Commission approval, for a period of not more than seven (7) days prior to the event and shall be removed within one (1) day of the completion of the event.

- o. In the case of seasonal recurring events, advertising devices such as banners, balloons, flags, pennants, pinwheels, searchlights or other devices with similar characteristics, are permitted with seasonal Planning Commission approval, such advertising devices shall not be used for a period of more than twenty-four (24) hours prior to the event and shall be removed immediately following the event.
 - p. Political signs: Political signs shall be removed within five (5) days after the election.
 - q. The use of any outdoor business or informational sign erected and in use at the date this amendment is enacted, may be continued. Such signs shall be designated as “Nonconforming Signs”. The maintenance, reconstruction, alteration, discontinuation, and change in the nonconforming nature of a Nonconforming Sign shall be governed by Article VI, Section 4.02 - Nonconformities of this ordinance the same as for other nonconforming uses under this ordinance.
4. Off-premise signs and billboards regulated by the Michigan Department of Transportation under the Highway Advertising Act, P.A. 106 of 1972 and amendments, shall also be subject to the size limitations of Subsections 1. All other off-premise signs shall be subject to the limitations of Subsections 4.21 2 and 3.

Section 4.22 Private Waterfront Access

All private waterfront accesses (regardless of district) will conform to the minimum lot area requirements, including lot width and square footage, of the Conservation Recreation District. A private waterfront access site of the required minimum size can support a maximum use density of five (5) non-waterfront properties. If the access property is designated for use by more than five (5) non-waterfront property owners, an additional twenty (20) feet of width and four thousand (4,000) square feet of land shall be required for each additional non-waterfront dwelling unit with designated use of the access site.

Section 4.23 Planned Unit Development

1. Intent

The intent of the Planned Unit Development is to allow design and use flexibility on a given site while at the same time protecting present and future residents and public facilities from the adverse effects of unplanned or unregulated development. This approach allows the applicant to utilize innovative designs and methods to control the effects of development rather than having rigid numerical zoning standards dictate design parameters. The burden of proving a Planned Unit Development is within the parameters and intent of this Ordinance is completely upon the applicant. The Township Planning Commission is to be the judge of whether or not the design contains sufficient safeguards as to make the effects of the development compatible with the intent of this Ordinance. It is the expressed intent of this section to allow such items as setbacks, yards, parking spaces, type of dwelling unit and use to be regulated on an overall impact or gross development basis rather than individually for each lot, use, or structure.

2. Criteria

A Planned Unit Development shall be judged against the criteria outlined below. The discretionary judgmental process shall follow, first the procedures specified in this Article and second other

conditions specified in this Ordinance, such as under the General Provisions and Supplemental Site Development Standards.

a. Size

- i. A Planned Unit Development shall be of sufficient size to contain on the site both physically and aesthetically not only the development proposed but also any effects of such development that would ordinarily be apparent and different from the effects of permitted uses on the adjacent properties.
- ii. The maximum density of residential development (dwelling units per acre) shall be based on the standards set forth in Section 6.09. Underwater areas, such as lakes, streams, ponds, and similar watercourses shall not be included as part of the total lot area in the calculation of density, except where such underwater areas are proposed to be constructed by the applicant, in which case fifty (50) percent of the proposed underwater area can be included in the calculation of density.
- iii. A PUD located in an Agricultural zoning district shall have building sites not more than one acre in size to encourage clustering of residential development, allow for the continuation of agricultural practices and the protection of open space.
- iv. At least twenty-five (25) percent of the total land area shall be designated as dedicated open space. The open space may consist of areas which contain physical characteristics that limit the development potential such as steep slopes or wetlands.
- v. The required open space shall be set aside by the developer in a conservation easement or deed restriction placed on the property, whereby the open space shall be developed according to an approved site plan. Said conveyance shall specify that the open space is an integral component in the overall development for the use and enjoyment of the residents within the Planned Unit Development. Such conveyance shall:
 - (a) Provide for the privately-owned open space to be maintained and the provisions of the conservation easement or deed restriction to be enforced by the private property owners.
 - (b) Provide maintenance standards and a maintenance schedule.
 - (c) Grant the Township the right, but not the obligation, to enforce the provisions of the conservation easement or deed restriction, if in the Township's opinion such provisions are not adequately enforced by the property owners.
 - (d) Be held by two entities, one being the Banks Township Board of Trustees and the other the landowner's association, land conservancy or other entity found acceptable to the Banks Township Planning Commission.

b. Internal Design Standards

- i. A Planned Unit Development shall be designed so as to provide future users, residents, visitors, and public service personnel with light, air, privacy, circulation patterns, park areas, and public services equal to or greater than those required of the same uses in any zoning district where they are permitted within Banks Township.

- ii. All private roads shall be constructed within a permanent right-of-way easement duly recorded with the Antrim County Register of Deeds. Such easements shall be a minimum of forty feet in width, unless additional right-of-way is required for adequate construction. At any dead-end or cul-de-sac, the easement shall widen to a minimum radius of sixty feet.
 - c. External Effects

A Planned Unit Development shall be designed so as not to create any significant negative impact upon adjacent properties, residents, or public facilities.
- 3. Approval Procedures
 - a. Pre-Application Meeting

The procedure of application and approval of a PUD permit shall include one (1) or more informal conferences between the applicant and Zoning Administrator. The applicant shall inform the Zoning Administrator of the applicant's general intentions at this time. The Zoning Administrator may request or recommend the applicant request representatives from Township or County agencies (department of public works, fire department, county sheriff and other agencies) to attend such informal conferences. After consideration of comments from the pre-application meetings, the applicant shall prepare a preliminary plan.
 - b. Requirements of Preliminary Plan

Following the Pre-application Conference, the applicant may file a PUD application with the Zoning Administrator in order to receive a formal Planning Commission review of a Preliminary Planned Unit Development Plan for the subject property. The applicant shall submit eight (8) copies of Preliminary Planned Unit Development Plan with the PUD application, at least thirty (30) days prior to the date of the Planning Commission meeting at which a Public Hearing on the Plan is to be scheduled. The Preliminary Planned Unit Development Plan shall provide all the information specified under Section 7.01 (2) Site Plan Review-Site Plan Data Required.
 - c. Planned Unit Development Review Procedure
 - i. Public Hearing: Township Planning Commission shall schedule, notice and conduct a public hearing on the Planned Unit Development Preliminary Plan.
 - ii. Approval / Action: Following the public hearing, the Township Planning Commission shall approve, disapprove or approve subject to specified conditions / revisions to the proposed Planned Unit Development. If the required conditions or revisions are, in the opinion of the Planning Commission, substantive in nature, a second public hearing shall be held. Approvals shall be valid for twelve (12) months. If a final plan is not submitted within twelve (12) months the preliminary approval shall become null and void.
 - iii. Final Approval: A final plan shall be prepared incorporating any changes specified as part of the preliminary approval. The Zoning Administrator shall review the final plan for compliance with the provisions of the preliminary approval. If found to be in compliance, the Zoning Administrator shall issue a final approval and shall notify appropriate agencies that construction permits may be issued. Final approval shall be valid for twelve (12) months. If construction permits are not obtained within this time, the approval shall become null and void.

- iv. Performance Bonds: To ensure compliance with the approved final plan, the Township may require a deposit, (cash, certified check, irrevocable bank letter of credit, or security bond), to cover the estimated cost of improvements. The performance guarantee shall be deposited, with the Township Clerk, at the time of the issuance of the permit authorizing the activities or project. The Township may not require the deposit of performance guarantee before the Township is prepared to issue the permit. The Township shall rebate or release any cash deposits in reasonable proportion to the ratio of work completed on the required improvements as work progresses.

d. Zoning Administrator Review

The Zoning Administrator shall review the application and information submitted under all requirements of this Ordinance to determine if all required information was supplied. If the Zoning Administrator determines that all required information was not supplied, he or she shall send written notification to the Applicant of the deficiencies. The application for the planned unit development permit cannot proceed until all required information has been supplied. Once all required information is submitted, the Zoning Administrator shall forward the application to the Planning Commission for its review under the procedures of this Ordinance.

4. Fees

Fees for PUD Project Master Plan review shall be established or revised by resolution of the Township Board of Trustees, as per Section 9.03 Fees.

Section 4.24 Antenna Co-location on an Existing Tower or Structure

1. No antenna or similar sending/receiving devices appended to the tower, following its approved construction, shall be permitted if it exceeds the engineered design capacity of the tower thereby jeopardizing the tower's structural integrity.
2. The installation and/or operation of the above mentioned, antennas or facilities shall not interfere with normal radio/television reception in the area. In the event interference occurs, it shall be the sole responsibility of the owner to rectify the situation with the parties involved.
3. No antenna or similar sending and receiving devices appended to the tower or structure shall increase the overall height of the tower or structure by more than twenty (20) feet.
4. No zoning permit shall be required for co-location of an antenna on an existing tower or structure.

Section 4.25 Second Dwelling on a Parcel

1. This Ordinance does not typically permit a second dwelling on a residential parcel where the principal use is a dwelling. However, under certain circumstances, this Section shall allow for placement of one additional (a second) dwelling on a parcel when circumstances require extended members of the family (or persons in a formalized custodial/guardian relationship) to take residence nearby but in separate quarters-due to age, illness or handicap such that they cannot care for themselves. It is the intent of this section to at the same time maintain the character of the surrounding area.
2. A second dwelling may be placed on the same parcel where a dwelling already exists if the following conditions are met:
 - a. The lot is a legal lot of record.

- b. The application for a Zoning Permit includes a site plan which meets the requirements of Article VII: Site Plan Review.
 - c. The addition of the second dwelling shall not result in a violation of the maximum lot coverage permitted in the applicable zoning district.
 - d. The second dwelling shall comply with all applicable construction, height, yard or setback regulations of this Ordinance. The Board of Appeals shall not grant variances to construction, height, yard or setback regulations of this Ordinance to the primary and secondary dwellings when both are located on the same parcel.
 - e. The minimum distance between the principal and second dwelling shall be equal to twice the side yard setback required in the respective district AND the design of the second dwelling shall be a moveable structure and shall be temporary, to be removed when no longer occupied by qualified resident.
 - f. Any mobile home used as the second dwelling shall comply with the provisions of Section 4.07 of this Ordinance.
 - g. The second dwelling shall be located in the rear or side yard.
 - h. The dwelling is on a parcel with frontage on either a public or private road, with one driveway to provide access to off-road parking for two (2) dwellings (at least, but not limited to, three (3) parking spaces), which provides access to a public or private road.
 - i. Occupancy of a second dwelling shall be only by family member(s) or an extended family who require daily supervision or care from a family member residing in the other dwelling located on the parcel.
 - j. Sanitation facilities shall meet all applicable Health Department standards.
 - k. The application shall include written recommendation from a medical doctor, community mental health professional or judge stating that the family member requires daily supervision or care from a family member residing in the other dwelling on the parcel.
3. The zoning permit, when issued, shall indicate it is for a temporary use and not transferable to another individual. This permit is to be renewed annually on a no-charge basis.

Section 4.26 Medical Marihuana

1. Intent and Purpose. With the enactment of the Michigan Medical Marihuana Act (hereinafter referred to as the “MMMA”), Initiated Law 1 of 2008, MCL 333.26423, et seq, and its administrative rules, R 333.101, et seq, the Banks Township Zoning Ordinance has not kept pace with this recent legislation. As a result, the purpose of this section is to implement land-use regulations to address the medical use of marihuana in accordance with the MMMA.
2. Regulations for Qualifying Patients. The medical use of marihuana by a qualifying patient in that qualifying patient’s dwelling or an accessory building is hereby recognized as an accessory use to the principal residential use of the property and can be established without a zoning permit in any zoning district, but shall be subject to the following regulations:
 - a. The qualifying patient must be issued and at all times must maintain a valid registry identification card by the Bureau of Health Professions, Michigan Department of Licensing and Regulatory Affairs or any successor agency under the provisions of the MMMA.
 - b. All marihuana plants or products must be contained within the dwelling or accessory building in an enclosed, locked facility that permits access only by the qualifying patient.
 - c. If a room with windows within the dwelling or accessory building is utilized to grow marihuana for medical use, any artificial lighting shall be shielded to prevent glare, must not

be visible from neighboring properties, and must not be visible from adjacent streets or public ways.

3. Regulations for Primary Caregivers. The medical use of marihuana by a primary caregiver is hereby authorized as a use by right within a dwelling or an accessory building in any zoning district, provided that all of the following regulations are met:
 - a. The primary caregiver must be issued and at all times must maintain a valid registry identification card by the Bureau of Health Professions, Michigan Department of Licensing and Regulatory Affairs or any successor agency under the provisions of the MMMA.
 - b. The primary caregiver must obtain a zoning permit under Section 9.02 of this Ordinance.
 - c. Except when being transported as provided in subsection i below, all marihuana plants or products must be contained within the dwelling or accessory building in an enclosed, locked facility that segregates the Marihuana plants and products for medical use for each qualifying patient and permits access only by the primary caregiver.
 - d. If a room with windows within the dwelling or accessory building is utilized to grow marihuana for medical use, any artificial lighting shall be shielded to prevent glare, must not be visible from neighboring properties, and must not be visible from adjacent streets or public ways.
 - e. No more than one (1) primary caregiver per dwelling unit shall be permitted. The dwelling unit shall be the principal dwelling of the primary caregiver. The medical use of marihuana shall comply at all times with the MMMA and General Rules of the Bureau of Health Professionals, Michigan Department of Licensing and Regulatory Affairs or any successor agency, as they may be amended from time to time.
 - f. Except for any qualifying patients who reside with the primary caregiver of medical marihuana, no qualifying patients may be present at a dwelling or accessory building for any purpose directly related to medical marihuana primary caregiver services. This subsection, however, shall not be construed to prohibit the presence of qualifying patients at a dwelling or accessory building for purposes unrelated to medical marihuana primary caregiver services.
 - g. No qualifying patients under the age of 18 (eighteen) shall be permitted at any time at a dwelling or accessory building in which a primary caregiver is providing primary caregiver services to qualifying patients, except in the presence of his/her parent or guardian, except when the qualifying patient resides with the primary caregiver at the dwelling, and except when the qualifying patient visits are for purposes unrelated to primary caregiver services.
 - h. No marihuana for medical use shall be dispensed by the primary caregiver to qualifying patients at the dwelling or accessory building in which a primary caregiver is providing primary caregiver services to qualifying patients, except to a qualifying patient who resides with the primary caregiver at the dwelling. Except as provided herein, the primary caregiver shall deliver all marihuana for the medical use of such qualifying patient, and such delivery shall take place on private property away from public view. Any such delivery vehicle shall be unmarked and not bear any emblem or sign that would indicate the nature of its cargo. In addition, all marihuana for medical use delivered to a qualifying patient shall be packaged so the public cannot see or smell the marihuana.
 - i. No marihuana for medical use shall be consumed, smoked, or ingested by a qualifying patient by any method at a dwelling or accessory building in which a primary caregiver is

- providing primary caregiver services to qualifying patients, except by a qualifying patient who resides with the primary caregiver at the dwelling.
- j. A dwelling or an accessory building in which a primary caregiver is providing primary caregiver services to qualifying patients shall display indoors and in a manner legible and visible to his/her qualifying patients:
 - i. A notice that qualifying patients under the age of eighteen (18) are not allowed at the dwelling or accessory building in which a primary caregiver is providing primary caregiver services to qualifying patients, except in the presence of his/her parent or guardian, except when the qualifying patient resides with the primary caregiver at the dwelling, and except when the qualifying patient visits are for purposes unrelated to primary caregiver services, and
 - ii. A notice that no dispensing or consumption of marihuana for medical use shall occur at the dwelling or accessory building in which a primary caregiver is providing primary caregiver services to qualifying patients, except to or by a qualifying patient who resides with the primary caregiver at the dwelling.
 - k. A dwelling or an accessory building in which a primary caregiver is providing primary caregiver services to qualifying patients shall not have any signage visible from the outdoors that would indicate the nature of the primary caregiver services being conducted in the dwelling.
 - l. A dwelling or an accessory building in which a primary caregiver is providing primary caregiver services to qualifying patients shall not be located within 1000 feet of the lot on which primary caregiver services is being provided to qualifying patients in any other dwelling or accessory building and shall not be located within 1000 feet of a lot on which any of the following uses are located:
 - i. Any church or place of worship and its accessory structures.
 - ii. Any public or private school and its accessory structures.
 - iii. Any preschool, child care or day care facility and its accessory structures.
 - iv. Any public facility, such as libraries, museums, parks, playgrounds, public beaches, community centers, and other public places where children may congregate.
4. Relationship to Federal Law. Nothing within this section is intended to grant, nor shall it be construed as granting, immunity from federal law.

Section 4.27 Cargo Containers

1. Intent and Purpose: As cargo containers become an increasingly popular means of storage, it is the intention of the Township to regulate the use of standard cargo containers (20 ft. by 8 ft. or 40 ft. by 8 ft.) to protect the public health, safety, and welfare, and promote positive aesthetics in the Township.
2. Permitted Locations: The placement of a cargo container as an accessory storage use is allowed in all zoning districts. A zoning permit is required for cargo containers exceeding 200 square feet.
3. Development Standards:
 - a. Cargo containers shall be well-maintained so as not to be a nuisance to neighboring property owners.
 - b. Cargo containers must be accessory to the permitted use of the property and meet the setback requirements of the underlying zone.

- c. Cargo containers shall not be stacked; unless they are located in a manufacturing or agriculture district, in which case they cannot be stacked above the height of two containers.
- a. Cargo containers shall be included in the calculation of overall lot coverage.
- b. Cargo containers shall be placed on a level, stable surface.

Section 4.28 Marihuana Establishments

1. The establishment and/or operation of any and all types of a “marihuana establishment,” as that term is defined and used in Michigan Initiated Law 1 of 2018, commonly known as the Michigan Regulation and Taxation of Marihuana Act, is prohibited throughout the jurisdictional boundaries of Banks Township per local ordinance No. 1 of 2019. This prohibition includes, but is not limited to, the following types of marihuana establishments:
 - a. Marihuana grower
 - b. Marihuana safety compliance facility
 - c. Marihuana processor
 - d. Marihuana microbusiness.
 - e. Marihuana retailer
 - f. Marihuana secure transporter
2. This Section does not limit any privileges, rights, immunities or defenses of a person as provided in the Michigan Medical Marihuana Act, Michigan Initiated Law 1 of 2008, MCL 333.26421, et seq.
3. This Section does not restrict or prohibit the transportation of marihuana through the Township by
 - a. A marihuana secure transporter who is licensed to operate in another municipality, or
 - b. A means otherwise authorized by state.

Section 4.29 Short Term Rentals

Short term rentals, as defined in this Ordinance, shall be a permitted use within any single family dwelling in all zoning districts.

Section 4.30 Solar Energy Installations

Intent and Purpose: To allow and promote the use of solar energy within the Township as a clean alternative energy source and to provide associated placement, land development, installation, and construction regulations for ground-mounted and structure-mounted solar installations subject to reasonable conditions that will protect residents’ public health, safety and welfare. These regulations establish the minimum requirements for solar energy installations, while promoting a renewable energy source in a safe, effective, and efficient manner.

1. Ground-mounted solar installations shall be permitted as an accessory use in all zoning districts.
2. Structure-mounted solar installations shall be permitted by right in all zoning districts.
3. Standards Based on Type of Solar Installation
 - a. Ground-mounted Solar Installations
 - i. Height: The maximum height of a ground-mounted solar installation shall be twelve (12) feet above grade at maximum tilt.

- ii. Setbacks: Ground-mounted solar installations shall comply with all district required setbacks.
- iii. Placement: Ground-mounted solar installations shall only be allowed in the rear or side yard on a property with an established permitted principal use.
- iv. Coverage: The area of the ground-mounted solar installation energy collection system shall count towards the maximum area allowed for accessory buildings on property with a principal use.
- v. Visibility and Glare: Ground-mounted solar installations shall be mounted or oriented so that concentrated solar glare will not be directed toward or onto nearby properties or right-of-ways at any time of the day. Systems designed to track the maximum sun angle throughout the day shall be programmed to prevent positioning at any point that would result in glare directed toward nearby properties or right-of-ways. Support structures shall be of a single non-reflective matte finish that is consistent throughout the project.
- vi. Energy Sales: Excess energy generated by ground-mounted solar installations may be sold to utility company and returned to the grid.

b. Structure-mounted Solar Installations

- i. Height: The height of the structure-mounted solar installation shall not exceed the maximum allowed height for the structure it is mounted on in any zoning district.
- ii. Setback: Structure-mounted solar installations shall be considered part of the building and meet all applicable building setbacks.
- iii. Placement: Structure-mounted solar installations may be permitted on principal or accessory buildings. The color of the solar collector is not required to be consistent with other roofing or building materials.
- iv. Coverage: Structure-mounted solar installations on roofs shall be allowed to cover the entire roof upon which they are mounted.
- v. Visibility and Glare: Structure-mounted solar installations shall be mounted or oriented so that concentrated solar glare will not be directed toward or onto nearby properties or right-of-ways at any time of the day. Support structures shall be of a single, non-reflective matte finish that is consistent throughout the project.
- vi. Energy Sales: Excess energy generated by structure-mounted solar installations may be sold to utility company and returned to the grid.

Section 4.31 Utility-Scale Solar Energy

1. Intent and Purpose: The intent and purpose of this section is to allow the use of solar energy within the Township as a clean alternative energy source and to provide associated placement, land development, installation, and construction regulations for utility-scale solar energy systems subject to reasonable conditions that will protect residents' public health, safety and welfare. These regulations establish the minimum requirements for solar energy systems, while allowing a renewable energy source in a safe, effective, and efficient manner.

2. Authorized Use; Standards: Utility-scale solar energy systems shall be allowed as Uses Subject to Special Approval (Section 8.02) in the Agricultural (A) and Conservation/Recreation (C/R) zoning districts only, subject to compliance with all of the following specific standards:

a. Setbacks: All components of Utility-Scale Solar Energy Systems shall comply with a one-hundred fifty (150) feet front, rear, and side setback. Solar panels shall be kept at least two-hundred fifty (250) feet from an existing residential dwelling, measured to the nearest point on the residential structure. Any additional setback requirements in this Ordinance that exceed these requirements shall be adhered to, including but not limited to setbacks from streams, lakes, and wetlands.

b. Minimum Lot Size: The minimum lot size for Utility-Scale Solar Energy Systems is ten (10) acres.

c. Maximum Lot Size: The maximum lot size for Utility-Scale Solar Energy Systems is eighty (80) acres.

d. Maximum Lot Coverage: Lot coverage for Utility-Scale Solar Energy Systems shall be no greater than twenty-five percent (25%) of the subject parcel. Any other regulated structures on the parcel are subject to the maximum lot coverage restrictions of the underlying zoning district.

e. The maximum lot coverage of Utility-Scale Solar Energy Systems may be increased to no greater than thirty-five (35%) of the subject parcel if the site plan demonstrates and contains an assurance that the property will also remain actively engaged in agricultural operations that comprise at least thirty-five (35%) of the subject parcel.

f. Wetlands, Flood Zones, and Soils: Utility-Scale Solar Energy Systems shall not be sited onto Soils of Local Importance nor Prime Soils as identified on USDA Soil Survey maps. Utility-scale solar systems and their associated accessory structures shall also not be sited onto officially designated wetlands, hydric soils, or flood zones as identified by the National Wetland Inventory conducted by the United States Fish and Wildlife Service and the United States Department of Agriculture, Natural Resource Conservation Service.

g. Height Restrictions: All photovoltaic solar panels and support structures located in Utility-Scale Solar Energy Systems shall be restricted to a maximum height of sixteen (16) feet when orientated at maximum tilt.

h. Noise: No Utility-Scale Solar Energy System shall generate noise or sound that annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any reasonable person of normal sensitivities.

i. Glare: Utility-Scale Solar Energy Systems shall be located or placed so that concentrated solar glare shall not be directed toward or onto nearby properties or rights-of-way at any time of the day. Support structures shall be of a single, non-reflective matte finish that is consistent throughout the installation.

j. Safety/Access: A chain-link, welded wire, or similar design security fence of black metal with a height of six (6) feet, and properly electrically grounded shall be placed around the perimeter of the Utility-Scale Solar Energy System and electrical equipment and which shall be kept locked. Knox boxes and keys shall be provided at locked entrances for security personnel access. Security fences shall be maintained and repaired as needed and shall adhere to Section 4.13 Fences, Wall and Hedges, and shall not utilize barbed or razor wire.

k. Landscaping: To address land management, soil conservation and regeneration practices on the site so that it can be returned to agricultural or conservation/recreation use at the end of the Utility-Scale Solar Energy System use period; and to screen the Utility-Scale Solar Energy System from views from public and private roads and from adjacent properties the special use permit application for a Utility-Scale Solar Energy System shall include a proposed landscape plan that is specific to the local area and utilizes native species based on guidance and consultation provide by the USDA's National Resources Conservation Service, Antrim Soil Conservation District, MSU Extension Service, or some other entity approved by the Planning Commission. This plan will be reviewed through the special use permit approval process to assure that the proposed facility is appropriately landscaped in relation to adjacent land uses and road rights-of-way. A landscape plan shall meet the following standards:

i. Plans: A plan view drawing illustrating the location, layout, and spacing of solar panels, and all equipment related to the utility-scale solar energy system, the identification and location of vegetation, driveways, public roads and right of ways, and lines or notes showing site topography at no more than five (5) foot contour intervals of the subject property and adjacent properties within 500 feet.

ii. Land Management: Landscape Plans shall employ one or more of the following land management and conservation practices throughout the coverage area of the project site.

- Conservation Cover: Solar sites that focus on restoring native plants, grasses, and prairie with the aim of protecting specific species (e.g., bird habitat) or providing specific ecosystem services (e.g., carbon sequestration, soil health).
- Forage: Solar sites that incorporate rotational livestock grazing and forage production as part of an overall vegetative maintenance plan.
- Agrivoltaics: Solar sites that combine raising crops for food, fiber, or fuel, and generating electricity within the project area to maximize land use.
- Pollinator Habitat: Solar sites designed to meet a score of 76 or more on the Michigan Pollinator Habitat Planning Scorecard for Solar Sites.

iii. Species: A list of species of all vegetative plantings within and surrounding portions of the property containing solar panels. This list may be attached as an addendum on a separate document.

iv. Buffer: A twenty-five (25) foot wide landscape buffer shall consist of two (2) staggered rows of evergreen trees that at planting shall be a minimum of four (4) feet in height. If a utility-scale solar energy system is adjacent to a residential dwelling or district, then the minimum height shall be eight (8) feet at the time of planting. The evergreen trees shall be spaced no more than fifteen (15) feet apart

on center, measured from the central trunk of one tree to the central trunk of the next tree. The buffer shall also consist of native grasses, wildflower, or plants which will provide wildlife and pollinator habitat, soil erosion protection, and/or aid in strengthening the soil structure. The buffer shall be required when any of the following conditions exist:

1. Along the property line adjacent to all residential zoning district or residential occupied properties.
2. If solar panels are located within two hundred (200) feet of a public road rights-of-way.
3. Along the property line for the portion of the subject parcel within a two hundred (200) foot radius of a residential dwelling in a non-residential zoning district.

v. Credit for Existing Conditions: Existing topographical features and existing wooded areas may be accepted in lieu of or in combination with the above by approval of the Planning Commission.

vi. Planting Timeline: The required trees shall be planted according to a schedule proposed by the applicant, submitted with the application, and approved by the Planning Commission.

vii. Performance Guarantee for Plantings: To ensure faithful completion of plantings indicated with the site plan, a performance guarantee as outlined in Section 9.04 of the Zoning Ordinance, shall be provided payable to Banks Township in the amount equal to one and one-half (1.5) times the cost of the required plantings as estimated by a professional landscaper and approved by the Planning Commission.

viii. Maintenance: The applicant shall assure that the required plantings shall be continuously maintained in a healthy condition, and that dead evergreen foliage shall be replaced.

k. Local, State, and Federal Permits: Utility-Scale Solar Energy Systems shall be required to obtain all necessary permits and licensing from Antrim County, State of Michigan, and the United States Federal Government as applicable prior to construction and shall maintain any necessary approvals as required by the respective jurisdictions or agencies.

l. Electrical Interconnections: All electrical interconnections or distribution lines shall comply with all applicable codes and standard commercial large-scale utility requirements. Use of above ground transmission lines shall be prohibited within the site.

m. Proximity to Substations: The Solar panels of a utility-scale solar energy system facility shall be located within two (2) miles of an electric substation as defined by the United States Department of Labor's Occupational Safety and Health Organization.

n. Proximity to waterfront: Utility-scale solar energy systems shall be entirely located at least one-fourth (1/4) mile, one thousand three hundred twenty (1,320) feet from any Great Lake or inland lake as defined in Act 451 of 1994, Natural Resources and Environmental Protection Act.

o. Land Clearing: Land disturbance or clearing shall be limited to the extent of an approved site plan by the Planning Commission. Topsoil distributed during site preparation (grading) on the property shall be retained on site. Sand and gravel excavation is subject to Section 8.03, subsection 12: Sand and Gravel Extraction.

p. Application Requirements: In addition to the site plan review criteria in Article VII and the use subject to special approval criteria in Article VIII, the applicant shall address and comply with all of the following topics in the application for a utility-scale solar energy system:

- i. Project Description and Rationale: Identify the type, size, rated power output, performance, safety and noise characteristics of the system including the transmission line/grid connection for the project. Identify the project construction timeframe, project life, development phases (and potential future expansions) and likely markets for the generated energy.
- ii. Environmental Analysis: Identify impacts on surface and ground water quality and any impacts to established natural or constructed drainage features in the area. Applicant shall provide plans for remediation in the instance of negative environmental impacts on surface and ground water quality.
- iii. Lighting: No lights other than required and necessary safety lights and equipment lights are permitted. No light may adversely affect adjacent parcels. All lighting must be shielded from adjoining parcels. Light poles are restricted to a maximum height of eighteen (18) feet.
- iv. Safety Planning: An application for a Utility-Scale Solar Energy System shall be accompanied by a safety plan. Such plan shall address and comply with all of the following at a minimum:
 1. A statement certifying that the electrical wiring between panels, and other components, and the utility right-of-way does not pose a fire hazard.
 2. The landscape plan accompanying the application shall be designed to avoid spread of fire from any source on the panels or equipment; such preventative measures may address the types and locations of vegetation below the solar energy system and on the site.
 3. A listing of any hazardous materials that may be used on site and applicable material safety data sheets shall be provided.
 4. A statement certifying that the system has been designed to meet National Electrical Code requirements.
 5. A statement of assurance that the panels and equipment shall be routinely inspected to ensure that they shall remain in safe working order.
 6. Emergency and normal shutdown procedures.
 7. Identification of potential hazards to adjacent properties, public rights-of-way, and to the general public.
- v. Telecommunications Interference. All Utility-Scale Solar Energy Systems shall be designed and constructed so as not to cause electromagnetic telecommunications interference. The applicant shall make assurance that if it is determined that the utility scale solar energy systems is causing electromagnetic interference, the applicant shall take the necessary corrective action to eliminate this interference.
- vi. Battery Storage: On-site storage of batteries is prohibited.
- vii. Non-functional systems: If a Utility-Scale Solar Energy System is nonfunctional or inoperative for a continuous period of one year, the system shall be deemed to be abandoned. The owner/operator shall remove the abandoned system at their expense. Removal of the system includes the entire structure, collector panels and

related equipment from the property. Should the owner/operator fail to remove the system, the utility scale solar energy system will be considered a public nuisance and will be subject to abatement as such.

viii. Life of Project and Final Reclamation: Describe the decommissioning and final reclamation plan after the anticipated useful life of abandonment and/or termination of the project. This includes supplying evidence of an agreement with the underlying property owner that ensures proper removal of all equipment and restoration of the site to its original use within six (6) months of decommissioning or abandonment of the project. To ensure proper removal of the project upon abandonment/termination, a bond, letter of credit or cash surety shall be:

1. In an amount approved by the Planning Commission to be no less than the estimated cost of removal and may include a provision for inflationary cost adjustments.
2. Based on an estimate prepared by the engineer for the applicant, subject to approval of the Planning Commission.
3. Provided to the Township Zoning Administrator prior to the issuance of a zoning permit.
4. Used in the event the owner of the project or the underlying property owner fails to remove or repair any defective, abandoned or terminated project. The Township, in addition to any other remedy under this Ordinance, may pursue legal action to abate the violation by seeking to remove the project and recover any and all costs, including attorney fees.
5. In the event of a transfer or sale of the utility-scale solar system, the Township shall be notified and the Special Use permit may be amended by the Planning Commission.
 - a. Change in ownership alone shall be considered a minor amendment to the Special Use and may be approved without a public hearing.
 - b. Any proposed changes to the operating procedure or approved site plan shall be amended and resubmitted for Township Planning Commission review according to the procedures for all utility-scale solar systems as outlined herein, including a public hearing.
 - c. Upon transfer or sale, the bond, letter of credit, or cash surety shall be maintained at all times, the estimated costs of decommissioning shall be resubmitted, and the security bond adjusted to account for the new estimate.

ARTICLE V: ZONING DISTRICTS AND MAP

Section 5.01 Classification of Zoning Districts

For the purpose of this Ordinance, the following Zoning Districts shall be established in Banks Township:

A	Agricultural District
C/R	Conservation / Recreation District
R-1	Low density Residential District
MH	Mobile Home District
V	“Village” District
M	Manufacturing District
VM	Village Manufacturing District

Section 5.02 Zoning Map

The areas assigned to each Zoning District and the boundaries thereof shown on the map entitled "Banks Township Zoning Map, Antrim County, Michigan" are hereby established, and said map and all proper notations and other information shown thereon are hereby made a part of this Zoning Ordinance.

Section 5.03 Boundaries of Districts

Unless otherwise specified, the boundary lines of the Zoning Districts shall be interpreted as following along section lines, or customary subdivisions of sections, or centerlines of highways or streets, or the shoreline of waterways, or property lines of legal record at the office of the Antrim County Register of Deeds on the date of the enactment of the Zoning Ordinance. The official Zoning Map shall be the final authority in any dispute concerning district boundaries. The official map shall be kept up to date, with any amendments to the Ordinance involving changes to the official map noted and portrayed on said map.

The official zoning map, including legally adopted amendments, shall be designated as such by the signature of the Township Clerk. Where uncertainty exists as the exact district boundaries, the following shall prevail:

1. Where boundary lines are indicated as approximately following streets, alleys, or highways; the center lines of the said streets, alleys, or highways shall be considered to be exact boundary lines.
2. Boundaries indicated as approximately following lot lines shall be considered to follow said lot lines.
3. Where the application of the above rules leave a reasonable doubt as to the exact location of a district boundary, the provisions of the more restrictive district shall govern the entire parcel in question, unless determined otherwise by the Zoning Board of Appeals.

Section 5.04 Zoning of Vacated Areas

Whenever any street, alley, highway, or other public right-of-way within the Township have been abandoned by official government action, such right-of-way lands attach to and become part of the land adjoining. Such right-of-way property shall automatically acquire and be subject to the provisions of the Zoning District of the abutting property. In the case of an abandoned right-of-way which also serves as the district boundary, the centerline of the right-of-way shall be the district boundary.

Section 5.05 Zoning of Filled Areas

Whenever, after appropriate permits are obtained, any fill material is placed in any lake or stream so as to create a usable or buildable space, such fill area shall take on the Zoning District and accompanying provisions of the land abutting said fill area. No use on any lake or stream shall be allowed which does not conform to the Ordinance provisions on the property from which said property emanates. No fill material shall be placed in any lake or stream within the Township unless appropriate permits are obtained from the Michigan Department of Environmental Quality.

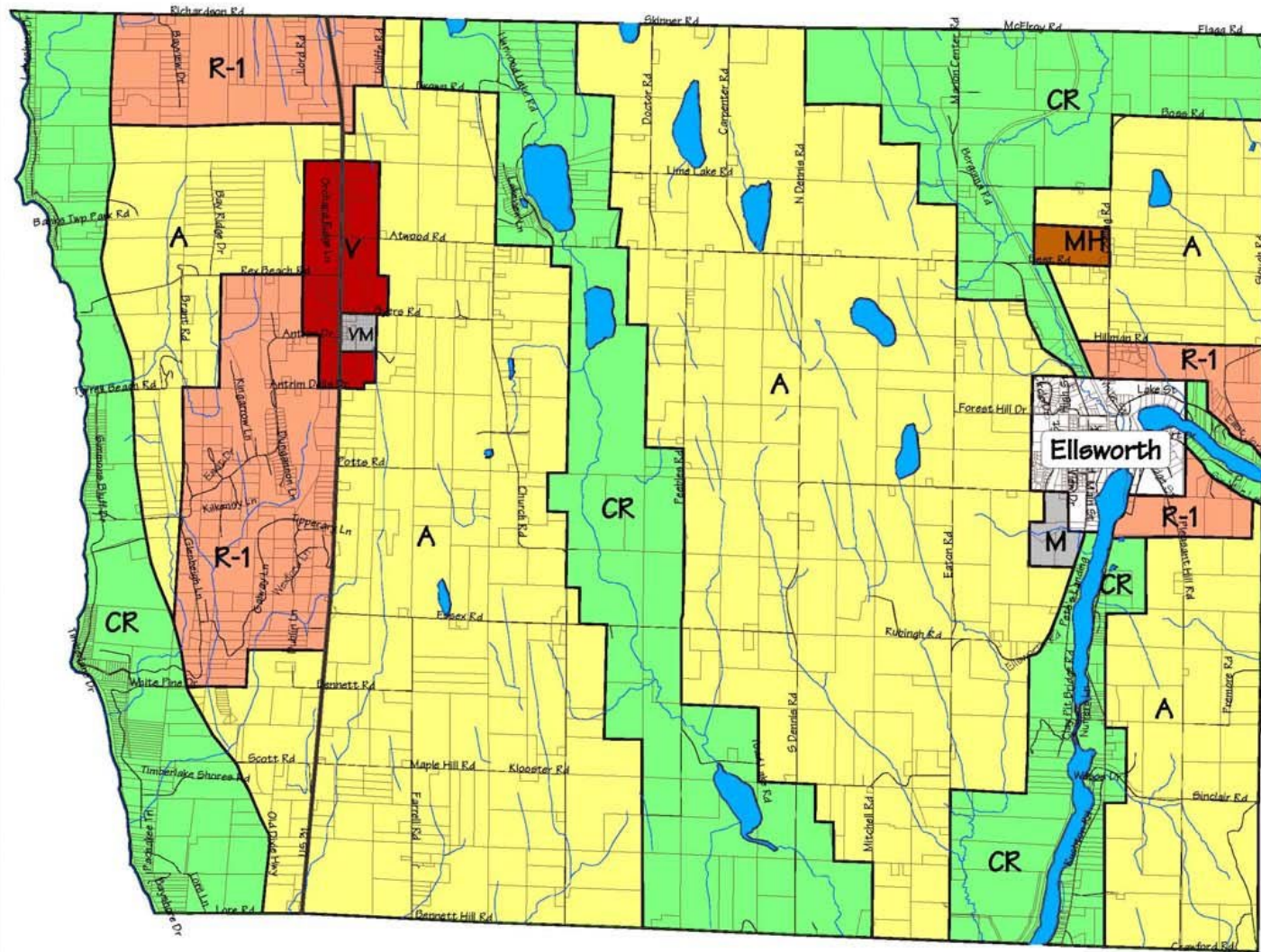
Section 5.06 Zoning District Changes

When district boundaries change, any non-conforming use may continue subject to all other applicable provisions of this Ordinance.

Banks Township

Antrim County, Michigan

Zoning Map



Map Legend

- State Road
- Roads
- Lakes
- Rivers, Streams and Creeks
- Banks Parcels

Zoning Districts

- A - Agricultural District
- CR - Conservation / Recreation District
- M - Manufacturing
- VM - Village Manufacturing
- V - Village District
- MH - Mobile Home District
- R-1 - Low Density Residential
- Ellsworth Village - excluded

0 2,000 4,000 6,000
Feet

Amended: May 23, 2005
Effective date: June 10, 2005

Base Files Source: MIRIS

Map Prepared by: M. C. Planning & Design

ARTICLE VI: DISTRICT REGULATIONS

Section 6.01 Agricultural (A)

The following provisions shall apply to the Agricultural District (A).

Section 6.01.1 Intent

The predominant land uses in this District are primarily agricultural and rural in character, including agricultural uses mixed with water bodies, forestlands, and open lands. It is the intent of this Ordinance to conserve and promote the general continuance of these uses, where suitable conditions exist. The other land use prominent in the agricultural district is rural residential, which is compatible with the agricultural uses and will be allowed to continue. The provisions of this section also recognize the gradual extension of other property uses into the district, and the importance of adopting good standards to guide such developments, if properly integrated, the inclusion of such uses is provided by special approval.

Section 6.01.2 Permitted Uses

Except as otherwise provided by Section 1.05 Limitations of Zoning Ordinance, the use of all lands and premises, and the erection and use of all buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses.

1. Single-family dwellings.
2. Child or adult daycare facilities serving six (6) or fewer clients.
3. Agriculture, including both general and specialized farming, tree farms and forestry.
4. Agricultural warehouses and non-animal agricultural processing plants.
5. Plant nurseries and greenhouses.
6. Home occupations conducted completely inside the residence, subject to the provisions of Section 4.12.1 Home Business.
7. Agricultural Tourism.
8. Accessory buildings and uses customarily incidental to the above permitted uses.
9. Child or adult daycare facilities serving more than six (6) clients.
10. Economy Efficiency Units

Section 6.01.3 Uses Subject to Special Approval

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of Section 8.02 Uses Subject to Special Approval.

1. Clustered residential development, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
2. Public buildings and facilities.
3. Churches and related religious buildings.
4. Cemeteries.
5. Golf courses and country clubs.
6. Public and private campgrounds.
7. Private airports and landing strips.
8. Fire control structures.
9. Kennels, veterinary clinics, and animal hospitals.

10. Non-domestic furbearing animals when confined in cages not less than two hundred (200) feet from any property line.
11. Animal processing facilities, subject to United States Department of Agriculture and local District Health Department regulations.
12. Planned Unit Developments
13. Additional farm employee dwellings, provided the property is at least 20 acres in size. The additional dwellings must be sited such that the property could be split in the future with all setbacks met for all parcels created.
14. Migratory labor dwellings, provided the property is at least 20 acres in size and subject to the provisions of Section 8.03 Supplemental Site Development Standards.
15. Forest product processing and sales.
16. Commercial Wind Turbine Generator and Anemometer Towers, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
17. Cottage industries conducted outside the residence in the yard, garage or accessory structure, subject to the provisions of Section 4.12.2 Home Business.
18. Agricultural Assembly Space.
19. Accessory buildings and uses customarily incidental to the above special approval uses.
20. Telecommunication Towers, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
21. Accessory Dwelling Units
22. Firearms Training Facility

Section 6.01.4 Dimensional Regulations

Structures and uses in the Agricultural District are subject to the area, height, bulk and placement requirements in Section 6.09 Schedule of Regulations.

Section 6.02 Conservation / Recreation (C/R)

The following provisions shall apply to the Conservation / Recreation District (C/R).

Section 6.02.1 Intent

The land uses in this district are intended to promote the proper use, enjoyment and conservation of water, land, topographic and forest resources of the Township particularly adapted to recreational and forest uses. The provisions of this section also recognize the gradual extension of other property uses into the district, and the importance of adopting good standards to guide such developments, if properly integrated, the inclusion of such uses is provided by special approval.

Section 6.02.2 Permitted Uses

Except as otherwise provided by Section 1.05 Limitations of Zoning Ordinance, the use of all lands and premises, and the erection and use of all buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses.

1. Single-family dwellings.
2. Bed and breakfast facilities.
3. Child or adult daycare facilities serving six (6) fewer clients.
4. Agriculture, including both general and specialized farming, tree farms and forestry.
5. Public or non-commercial private parks, playgrounds, and recreation areas. Hunting and fishing.

6. Home occupations conducted completely inside the residence, subject to the provisions of Section 4.12.1 Home Business.
7. Agricultural Tourism.
8. Accessory buildings and uses customarily incidental to the above permitted uses.
9. Economy Efficiency Units

Section 6.02.3 Uses Subject to Special Approval

Except as otherwise provided by Section 1.05 Limitations of Zoning Ordinance, the use of all lands and premises, and the erection and use of all buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses.

1. Clustered residential development, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
2. Forest products, processing, and sales.
3. Private resorts and clubs.
4. Summer camps.
5. Fire control structures.
6. Campgrounds, not less than 10 acres.
7. Snowmobile trails (public and commercial).
8. Marina and boat launch areas.
9. Planned Unit Developments
10. Commercial Wind Turbine Generator and Anemometer Towers, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
11. Cottage industries conducted outside the residence in the yard, garage or accessory structure, subject to the provisions of Section 4.12.2 Home Business.
12. Agricultural Assembly Space.
13. Accessory buildings and uses customarily incidental to the above special approval uses.
14. Child or adult daycare facilities serving more than six (6) clients.
15. Telecommunication Towers, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
16. Accessory Dwelling Units
17. Firearms Training Facility

Section 6.02.4 Dimensional Regulations

Structures and uses in the Conservation / Recreation District are subject to the area, height, bulk and placement requirements in Section 6.09 Schedule of Regulations.

Section 6.03 Low Density Residential (R-1)

The following provisions shall apply to the Low Density Residential District (R-1).

Section 6.03.1 Intent

The land uses in this District are intended to encourage an environment of predominantly low-density residential structures located on individual lots along with other residential related facilities which serve the residents within the District.

Section 6.03.2 Permitted Uses

Except as otherwise provided by Section 1.05 Limitations of Zoning Ordinance, the use of all lands and premises, and the erection and use of all buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses.

1. Single-family dwellings.
2. Two-family dwellings.
3. Public parks, playgrounds or recreation facilities.
4. Child or adult daycare facilities serving six (6) or fewer clients.
5. Agriculture, including both general and specialized farming, tree farms and forestry.
6. Home occupations conducted completely inside the residence, subject to the provisions of Section 4.12.1 Home Business.
7. Accessory buildings and uses customarily incidental to the above permitted uses.
8. Economy Efficiency Units

Section 6.03.3 Uses Subject to Special Approval

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of Section 8.02 Uses Subject to Special Approval.

1. Clustered residential development, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
2. Multi-family dwellings.
3. Bed and breakfast facilities.
4. Convalescent or nursing homes.
5. Senior citizen housing facilities.
6. Public buildings and facilities.
7. Churches and related religious buildings.
8. Cemeteries, on a minimum of twenty (20) acres.
9. Golf courses or country clubs.
10. Public and private campgrounds, not less than 10 acres.
11. Planned Unit Developments
12. Commercial Wind Turbine Generator and Anemometer Towers, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
13. Cottage industries conducted outside the residence in the yard, garage or accessory structure, subject to the provisions of Section 4.12.2 Home Business.
14. Accessory buildings and uses customarily incidental to the above special approval uses.
15. Child or adult daycare facilities serving more than six (6) clients.
16. Telecommunication Towers, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
17. Accessory Dwelling Units

Section 6.03.4 Dimensional Regulations

Structures and uses in the Low Density Residential District are subject to the area, height, bulk and placement requirements in Section 6.09 Schedule of Regulations.

Section 6.04 Reserved for Future Use

Section 6.05 Mobile Home Park District (MH)

The following provisions shall apply to the Mobile Home Park District (MH).

Section 6.05.1 Intent

The purpose of the provisions of this District is to preserve the interests of the various types of residential developments which should be permitted in every community for the protection of residents of any mobile home type development, these regulations are considered as a minimum standard to be applied to all mobile home park developments in the Township.

Section 6.05.2 Permitted Uses

Except as otherwise provided by Section 1.05 Limitations of Zoning Ordinance, the use of all lands and premises, and the erection and use of all buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses.

1. Single-family dwellings.
2. Child or adult daycare facilities serving six (6) fewer clients.
3. Public parks, playgrounds or recreation facilities.
4. Manufactured or mobile home developments.
5. Home occupations conducted completely inside the residence, subject to the provisions of Section 4.12.1 Home Business.
6. Accessory buildings and uses customarily incidental to the above permitted uses.
7. Economy Efficiency Units

Section 6.05.3 Uses Subject to Special Approval

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of Section 8.02 Uses Subject to Special Approval.

1. Public buildings and facilities.
2. Churches and related religious buildings.
3. Planned Unit Developments.
4. Commercial Wind Turbine Generator and Anemometer Towers, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
5. Cottage industries conducted outside the residence in the yard, garage or accessory structure, subject to the provisions of Section 4.12.2 Home Business.
6. Accessory buildings and uses customarily incidental to the above special approval uses.
7. Telecommunication Towers, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
8. Accessory Dwelling Units

Section 6.05.4 Dimensional Regulations

Structures and uses in the Mobile Home Park District are subject to the area, height, bulk and placement requirements in Section 6.09 Schedule of Regulations.

Section 6.06 "Village" District (V)

The following provisions shall apply to the "Village" District (V).

Section 6.06.1 Intent

The purpose in creating the “Village” District (V) is to provide a compatible mix of commercial and residential uses in the unincorporated area of Atwood. The requirements are intended to protect and stabilize the basic qualities of the District, and to provide suitable and safe conditions for family living and small commercial businesses.

Section 6.06.2 Permitted Uses

Except as otherwise provided by Section 1.05 Limitations of Zoning Ordinance, the use of all lands and premises, and the erection and use of all buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses.

1. Single-family dwellings.
2. Two-family dwellings.
3. Public parks, playgrounds or recreation facilities.
4. Child or adult daycare facilities serving six (6) or fewer clients.
5. Restaurants and bars, except drive-through restaurants.
6. Retail sales, within an enclosed building, and without a drive through window.
7. Banks and financial services, except facilities with drive-through windows.
8. Business and personal services.
9. Professional offices.
10. Veterinary clinic and animal hospital
11. Funeral Homes.
12. Public utility buildings without storage yards.
13. Public buildings and facilities.
14. Civic, social and fraternal organization facilities.
15. Motels and resorts.
16. Bed and breakfast facilities
17. Agriculture, including both general and specialized farming, tree farms and forestry.
18. Roadside stands for the sale of farm product, provided that not less than fifty (50) percent of the goods offered for sale shall have been produced on the premises; and provided further, that the facilities for entry to and exit from the premises and adequate off-street parking are available.
19. Agricultural warehouses and non-animal agricultural processing plants.
20. Plant nurseries and greenhouses.
21. Home occupations conducted completely inside the residence, subject to the provisions of Section 4.12.1 Home Business.
22. Accessory buildings and uses customarily incidental to the above permitted uses.
23. Economy Efficiency Units

Section 6.06.3 Uses Subject to Special Approval

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of Section 8.02 Uses Subject to Special Approval

1. Multiple-family dwellings.
2. Residential dwellings on the second floor of commercial structures.
3. Gasoline / Service Station.
4. Sale of motor vehicles.

5. Outdoor sales facilities.
6. Any use permitted in the “Village” district with a drive-through window.
7. Churches and related religious buildings.
8. Child or adult daycare facilities serving more than six (6) clients
9. Group foster care facilities.
10. Convalescent or nursing homes.
11. Building materials sales.
12. Carpentry, plumbing and electrical sales, services and contracting offices.
13. Machine shop.
14. Warehouses and storage buildings, but not including commercial bulk storage of flammable liquids and gases.
15. Car Wash Facilities, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
16. Transmission and Communication Towers, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
17. Commercial Wind Turbine Generator and Anemometer Towers, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
18. Cottage industries conducted outside the residence in the yard, garage or accessory structure, subject to the provisions of Section 4.12.2 Home Business.
19. Accessory buildings and uses customarily incidental to the above special approval uses.
20. Telecommunication Towers, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
21. Accessory Dwelling Units

Section 6.06.4 Dimensional Regulations

Structures and uses in the “Village” District are subject to the area, height, bulk and placement requirements in Section 6.09 Schedule of Regulations.

Section 6.07 Manufacturing District (M)

The following provisions shall apply to the Manufacturing District (M).

Section 6.07.1 Intent

The Manufacturing (M) District is designed to provide for a variety of manufacturing and light industrial uses, in areas of the Township which afford direct access to all-weather highways. All uses, except the co-location of antenna on existing towers or structures in the Manufacturing District are subject to Special Approval.

Section 6.07.2 Permitted Uses

Except as otherwise provided by Section 1.05 Limitations of Zoning Ordinance, the use of all lands and premises, and the erection and use of all buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses.

1. There are no uses explicitly permitted by right in the Manufacturing (M) District.

Section 6.07.3 Uses Subject to Special Approval

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of Section 8.02 Uses Subject to Special Approval.

1. Building materials sales.
2. Carpentry, plumbing and electrical sales, services and contracting offices.
3. Machine shop.
4. Warehouses and storage buildings, but not including commercial bulk storage of flammable liquids and gases.
5. Production, processing, assembly, manufacturing or packaging of goods or materials which do not emanate noise, smoke, odors, dust, dirt, noxious gases, glare, heat, vibration, electrical, or any similar nuisances. Such facilities may include testing, repair, storage, distribution and sale of such products.
6. Outdoor storage facilities, including self-storage facilities.
7. Sexually Oriented Businesses, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
8. Gas and Oil Processing Facilities, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
9. Commercial Wind Turbine Generator and Anemometer Towers, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
10. Accessory buildings and uses customarily incidental to above special approval uses.
11. Telecommunication Towers, subject to the provisions of Section 8.03 Supplemental Site Development Standards.

Section 6.07.4 Dimensional Regulations

Structures and uses in the Manufacturing District are subject to the area, height, bulk and placement requirements in Section 6.09 Schedule of Regulations.

Section 6.08 Village Manufacturing District (VM)

The following provisions shall apply to the Village Manufacturing District (VM).

Section 6.08.1 Intent

The Village Manufacturing (VM) District is designed to provide for a variety of manufacturing, light industrial uses and retail, with direct access to all-weather highways and compatible with the surrounding Village District.

Section 6.08.2 Permitted Uses

Except as otherwise provided by Section 1.05 Limitations of Zoning Ordinance, the use of all lands and premises, and the erection and use of all buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses:

1. Retail sales, within an enclosed building, and without a drive through window.
2. Banks and financial services, except facilities with drive-through windows. Business and personal services.
3. Professional offices.
4. Public utility buildings without storage yards.
5. Public buildings and facilities.

6. Plant Agriculture.
7. Accessory buildings and uses customarily incidental to the above permitted uses.

Section 6.08.3 Uses Subject to Special Approval

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of Section 8.02 Uses Subject to Special Approval.

1. Building materials sales.
2. Carpentry, plumbing and electrical sales, services and contracting offices.
3. Machine shop.
4. Warehouses and storage buildings.
5. Production, processing, assembly, manufacturing or packaging of goods or materials which, do not emanate noise, smoke, odors, dust, dirt, noxious gases, glare, heat, vibration, electrical, or any similar nuisances. Such facilities may include testing, repair, storage, distribution, and sale of such products.
6. Gasoline / Service Station.
7. Sale of motor vehicles.
8. Outdoor sales facilities.
9. Any use permitted in the "Village Manufacturing" district with a drive-through window.
10. Outdoor storage facilities, including self-storage facilities.
11. Commercial Wind Turbine Generator and Anemometer Towers, subject to the provisions of Section 8.03 Supplemental Site Development Standards
12. Transmission and Communication Towers, subject to the provisions of Section 8.03 Supplemental Site Development Standards.
13. Accessory buildings and uses customarily incidental to above special approval uses.

Section 6.08.4 Dimensional Regulations

Structures and uses in the Manufacturing District are subject to the area, height, bulk, and placement requirements in Section 6.09 Schedule of Regulations.

Section 6.09 Schedule of Regulations

Zoning District	District Name	Minimum Lot Area		Maximum Height of Structure (I)		Minimum Yard Setbacks			Min. D. U. Width	Max % of Lot Coverage
		Area s.f.	Width	Stories	Feet	Front	Side	Rear		
A	Agricultural	20,000 (a) (f)	150' (m) (n)	2.5	35' (i)	35' (b) (g)	20'	25'	14'	20%
C/R	Conservation / Recreation	20,000 (f)	150'	2.5	35' (i)	50' (b) (g)	20' (h)	35'	20'	30%
R-1	Low Density Residential	20,000 (c) (f)	100'	2.5	35' (i)	50' (b) (g)	10'	35'	20'	35%
MH	Mobile Home District	12,000	100'	2.5	35'	20'	10'	15'	14'	35%
V	Village	10,000 (c)	---	2.5	35' (i)	20' (b)	5' (d)	10' (e)	20'	35%
M	Manufacturing	S.I. 2 ac I.P. 40 ac	150'	2.5	35'	50'	25'	25'	----- ---	-----
VM	Village Manufacturing	-----	150"	2.5	35"	20"	15"	25"	--- ---	-----

Footnotes to Schedule of Regulations:

- a. The maximum density shall be two (2) lots per twenty (20) acres. Thus the maximum number of lots that may be created from the lot of record, as of the effective date of this provision, shall be equal to the total acres divided by ten (10). Fractions of lots resulting from this computation shall be rounded up to the next whole number.
 - I. The project density of a clustered residential development or planned unit development shall not exceed one unit/lot per ten (10) acres, based on gross parcel area.
- b. For lots which border a lake or a stream, the minimum structure setback on the waterfront side shall be fifty (50) feet from the ordinary high water mark.
- c. The following Minimum Lot Area shall be required for residential uses in the "R-1" and "V" Districts:

One Family	As provided for in the Schedule of Regulations Table (Section 6.09)
Two Family	7,000 square feet for each dwelling unit.
Multiple Family	8,000 square feet for the first dwelling unit, plus 5,000 square feet additional for each additional 3 or more bedroom units and 4,000 square feet additional for each additional two-bedroom unit and 3,000 square feet for each additional one-bedroom or efficiency unit. Lot sizes subject to Section 4.14 Water Supply and Sewage Disposal Facilities.
Tourist or Lodging Houses	10,000 square feet, plus an additional 500 square feet for each nonresident person accommodated.

- d. Side yards shall be increased in the Village District (V), where adjacent to any Conservation/Recreation or Residential District. In such cases, the adjacent District regulations will apply.
- e. Rear yards shall be increased in the Village District (V), where a rear lot abuts any Conservation/Recreation or Residential District. In such cases, the adjacent District regulations will apply.
- f. The minimum lot size shall be used as the basis for determining the density for clustered residential developments and planned unit developments. The allowable density for clustered residential development and planned unit developments shall be calculated by dividing the parcel size by the minimum lot area allowed in the specific zoning district. The resulting number shall be rounded down to the whole number for the maximum number of dwelling units allowed.
- g. Clustered Residential developments located on a major thoroughfare or collector road shall be setback at least seventy (70) feet from the road right-of-way.
- h. For lots of record, less than one hundred fifty (150) feet wide, the side yard setback shall be reduced to ten (10) feet.
- i. Exceptions to height standards for agricultural-related uses. The maximum height of permitted agricultural related accessory structures that are essential and customarily used in agricultural operations shall be forty-five (45) feet, except that the maximum height of silos, similar agricultural storage structures and agricultural-related structures shall be one hundred (100) feet, provided that all such accessory structures shall be located at least one hundred (100) feet from any residential dwelling other than the dwelling on the lot or parcel where the accessory structures are located.
- j. Telecommunication towers, alternative tower structures, transmission and communication towers, utility microwaves, and public utility T.V. or radio transmitting towers shall not be subject to the height regulations of this Section, but shall be regulated pursuant to Section 8.03.13.m of this ordinance.
- k. Commercial Wind Turbine Generators or Anemometer Towers shall not be subject to the height regulations of this Section, but shall be regulated pursuant to Section 8.03.14.c of this ordinance.
- l. Non-Commercial Wind Turbine Generators and associated anemometer towers shall not be subject to height regulations of this section, but shall be regulated pursuant to section 4.06 of this ordinance.
- m. Each lot shall have a depth of not more than four (4) times its width.
- n. A waterfront lot shall have a minimum lot width of one hundred (100) feet.

ARTICLE 7: SITE PLAN REVIEW

Section 7.01 Site Plan Review (All Districts)

Site plans give the Planning commission an opportunity to review development proposals in a concise and consistent manner. The use of the site plan ensures that the physical changes in the property meet with local approval and that development actually occurs as it was promised by the developer.

1. Circumstances Requiring a Site Plan: Site plans are required for the following uses:
 - a. All new uses except one-family or two-family residential units.
 - b. Expansion or renovation of an existing use, other than one-family or two-family residential use, which increases the existing floor space more than twenty-five (25) percent.
 - c. Changes of use for an existing structure or lot.
 - d. Other uses as required by this Ordinance.
2. Site Plan Data Required: Each site plan submitted shall contain the following information unless specifically waived, in whole or in part by the Township Planning Commission.
 - a. The name and address of the property owner.
 - b. The date, north arrow, scale, and name of the individual or firm responsible for preparing said plan. The scale must be at least one (1) inch = fifty (50) feet for parcels under three (3) acres. For parcels greater than three (3) acres, the portion of the property pertaining to the application, plus two hundred (200) feet in each direction, shall be at a scale of at least one (1) inch = fifty (50) feet (area enlargement). The full property shall be drawn to scale, and shall indicate the location of the area of enlargement.
 - c. The boundary lines of the property, to include all dimensions and legal description.
 - d. The location of all existing and proposed structures on the site, including proposed drives, walkways, signs, exterior lighting, adequate parking for the proposed uses (show the dimensions of a typical parking stall and parking lot), loading and unloading areas, if necessary, common use areas and recreational areas and facilities.
 - e. The location and width of all abutting rights-of-way.
 - f. The location of existing environmental features, such as streams, wetlands, shorelands, mature specimen trees, wooded areas or any other unusual environmental features.
 - g. The location and identification of all existing structures within a two hundred (200) foot radius of the site.
 - h. The existing zoning district in which the site is located and the zoning of adjacent parcels. In the case of a request for a zoning change, the classification of the proposed new district must be shown.
 - i. The location of all existing and proposed landscaping as well as all existing and proposed fences or walls.
 - j. A location sketch of the proposed use or structure.
 - k. The type, location, and size of all existing and proposed utilities.
 - l. The location, size, and slope of all surface and subsurface drainage facilities.
 - m. Summary tables, cross-sections and/or floor plans should be included with site plans for proposed structures, giving the following information:
 - i. The number of units proposed, by type, including a typical floor plan for each unit.
 - ii. The area of the proposed units in square feet, as well as area dimensions of driveways and staging areas.
 - iii. Typical elevation drawings of the front and rear of each building.

- n. The topography of the existing and finished site shall be shown by contours or spot elevations. Where the existing slope on any part of the site is ten percent (10%) or greater, contours shall be shown at height intervals of two (2) feet or less.
 - o. Anticipated hours of operation for the proposed use. The Planning Commission may impose reasonable limits to hours of operation as a condition of site plan approval when warranted to assure compatibility with surrounding land uses.
 - p. The Planning Commission can waive any or all of the above site plan requirements when it finds those requirements are not applicable to the proposed development.
3. Submittal and Approval Procedures: Eight (8) copies of the proposed site plan, including all required additional or related information, shall be presented to the Zoning Administrator's office by the petitioner or property owner or his designated agent at least thirty (30) days prior to the Planning Commission meeting where the site plan will be considered. The Zoning Administrator shall review the application and information submitted under all requirements of this Ordinance to determine if all required information was supplied. If the Zoning Administrator determines that all required information was not supplied, he or she shall send written notification to the Applicant of the deficiencies. The application cannot proceed until all required information has been supplied. Once all required information is submitted, the Zoning Administrator shall cause the submittal to be placed on the agenda of the next regular Planning Commission meeting.

The Planning Commission shall have the responsibility and authorization to approve, disapprove or approve with modifications, the Site Plan in accordance with requirements of the zoning district in which the proposed use is located and shall further consider the following criteria:

- a. The sewage disposal and water systems meet the applicable health and sanitary codes and ordinances.
- b. The location and nature of the use will not be in conflict with any principal permitted use of the district or neighborhood.
- c. The use will not create any major traffic problem or hazard.
- d. The use will not be any more objectionable to adjacent and nearby properties than would be any permitted principal use of the district by reason of traffic, noise, vibration, dust, fumes, smoke, odor, fire hazard, glare, flashing lights, or disposal of waste and sewage.
- e. The use will not discourage or hinder the appropriate development and use of adjacent premises and the neighborhood.

Any conditions or modifications desired by the Planning Commission shall be recorded in the minutes of the appropriate Planning Commission meeting.

4. Site Plan Amendments:
An approved Site Plan may be submitted following the provisions of Subsection 3 "Submittal and Approval Procedures" shall be followed.
5. Administrative Fees: Any Site Plan application shall be accompanied by a fee, in an amount to be determined by the Township Board of Trustees, as per Section 9.03 Fees. Such fee shall be for the purpose of payment for the administrative costs and services expended by the Township in the implementation of this Section and the processing of the application. Such fee may be used to reimburse another party retained by the Township to provide expert consultation and advice regarding the application. The Township may return any unused portion of the fee to the applicant. Any costs of special meetings called to review site plans shall be paid by the applicant.

ARTICLE 8: USES SUBJECT TO SPECIAL APPROVAL AND SUPPLEMENTAL SITE DEVELOPMENT STANDARDS

Section 8.01 General Requirements

Uses requiring special approval shall be subject to the general provisions of the zoning district where located in addition to applicable provisions of this Article to prevent conflict with or impairment of the other uses or uses permitted by right of the district. Each use shall be considered an individual case.

Section 8.02 Uses Subject to Special Approval

1. Application shall be submitted through the office of the Zoning Administrator, to the Planning Commission, on a special form provided for that purpose.
 - a. An application shall include the following:
 - i. Site plan prepared under the requirements of Section 7.01 (2) Site Plan Review (All Districts) - Site Plan Data Required.
 - ii. Name and address of applicant and owner of the premises.
 - iii. Description of proposed use, including parking facilities, if required, and any exceptional traffic situation the use may occasion.
 - iv. A statement by applicant appraising the effect on the neighborhood.
 - v. The application shall be accompanied by the fee established by the Township Board of Trustees.
 - b. Zoning Administrator's Review
 - i. The Zoning Administrator shall review the application and information submitted under Article VII and VIII of this Ordinance to determine if all required information was supplied. If the Zoning Administrator determines that all required information was not supplied, he or she shall send written notification to the Applicant of the deficiencies. The application for the special use permit cannot proceed until all required information has been supplied.
 - ii. Once all required information is submitted, the Zoning Administrator shall forward the application to the Planning Commission for its review under the procedures of this Ordinance.
2. A public hearing shall be held for all special approval requests. A notice of the special approval request and public hearing as required by the Michigan Zoning Enabling Act, Act 110 of 2006 as amended, shall be provided. The notice shall be given not less than 15 days before the date the application will be considered. The notice shall describe the nature of the special approval request; indicate the subject property, state when and where the special approval request will be considered, and when and where the written comments will be received concerning the request. Notices shall be provided as follows:
 - a. One notice shall be published in a newspaper which circulates generally in the Township.
 - b. Notice shall be sent by mail or personal delivery to the owners of the subject property.
 - c. Notice shall be sent by mail or personal delivery to the owners of property within 300 feet of the boundary of the subject property.
 - d. Notice shall be sent by mail or personal delivery to all the occupants of structures within 300 feet of the boundary of the subject property. If a structure contains more than one dwelling unit or spatial area, 1 occupant of each dwelling unit or spatial area shall receive notice. In the case of a structure containing more than 4 dwelling units or other distinct spatial areas, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure.

3. Standards for granting Special approval:

Approval of a special approval proposal shall be based on the determination that the proposal, will comply with all applicable requirements of this Ordinance, including site plan review criteria set forth in Section 7.01, applicable site development standards for specific uses set forth in Section 8.03, and the following standards:

- a. Compatibility with Adjacent Land Uses: The proposed special approval shall be designed, constructed, operated and maintained to be compatible with uses on surrounding land. The site design of the proposed special approval shall minimize the impact of site activity on surrounding properties. In determining whether this requirement has been met, consideration shall be given to:
 - i. The location and screening of vehicular circulation and parking areas in relation to surrounding development.
 - ii. The location and screening of outdoor storage, outdoor activity or work areas, and mechanical equipment in relation to surrounding development.
 - iii. The hours of operation of the proposed use. Approval of a special approval request may be conditioned upon operation within specified hours considered appropriate to ensure minimal impact on surrounding uses.
 - iv. The bulk, placement, and materials of construction of the proposed use in relation to surrounding uses.
 - v. Proposed landscaping and other site amenities. Additional landscaping over and above the requirements of this Ordinance may be required as a condition of the special approval.
- b. Public Services: The proposed special approval shall be located so as to be adequately served by essential public facilities and services, such as highways, streets, emergency services, drainage systems, water and sewage facilities, and schools unless the proposal contains an acceptable plan for providing necessary services or evidence that such services will be available by the time the special approval is established.
- c. Impact of Traffic: The location of the proposed special approval within the zoning district shall minimize the impact of the traffic generated by the proposed use. In determining whether this requirement has been met, consideration shall be given to the following:
 - i. Proximity and access to major thoroughfares.
 - ii. Estimated traffic generated by the proposed use.
 - iii. Proximity and relation to intersections.
 - iv. Adequacy of driver sight distances.
 - v. Location of and access to off-street parking.
 - vi. Required vehicular turning movements.
 - vii. Provisions for pedestrian traffic.
- d. Detrimental Effects: The proposed special approval shall not involve any activities, processes, materials, equipment, or conditions of operation, and shall not be located or designed so as to be detrimental or hazardous to persons or property or to public health, safety, and welfare. In determining whether this requirement has been met consideration shall be given to the level of traffic noise, vibration, smoke, fumes odors, dust, glare, and light.
- e. Economic Well-Being of the Community: The proposed special approval shall not be detrimental to the economic well-being of those who will use the land or residents, businesses, landowners, and the community as a whole.

- f. Compatibility with Natural Environment: The proposed special approval shall be compatible with the natural environment and conserve natural resources and energy.
- 4. The Planning Commission may deny, approve, or approve with conditions, requests for special approval, based on the standards above.
- 5. The Zoning Administrator shall have the right to inspect any special approval use, to ensure continued compliance with the conditions of the special approval.

Section 8.03 Supplemental Site Development Standards

Those permitted uses and uses allowed by Special Approval enumerated in any zoning district, if included below, shall be subject to the following conditions and requirements, in addition to the standards specified in Section 8.02.3:

- 1. Businesses with Drive-Through Services, including Restaurants
 - a. The main and accessory buildings shall be set back a minimum of forty (40) feet from any adjacent right-of-way line or residential property line.
 - b. There shall be provided on the sides abutting or adjacent to a residential district or use a six (6) feet completely obscuring wall, fence or landscape screen, measured from the surface of the ground on the abutting residential district or use.
- 2. Campgrounds
 - a. A minimum lot size shall be ten (10) acres.
 - b. The lot shall provide direct vehicular access to a public street or road. The term "lot" shall mean the entire campground or travel trailer park.
 - c. Each lot shall be provided with at least one (1) public phone.
 - d. All sanitary stations, privies, or any sanitary facilities shall be located not less than one hundred (100) feet from property lines.
 - e. Campground perimeter shall be completely screened by natural terrain, neatly finished and well maintained wooden fence or masonry wall, or by well-maintained live evergreens.
 - f. Campsites shall be located not less than fifty (50) feet from property lines.
- 3. Car Wash Facilities
 - a. Vacuuming activities may be carried out in the rear yard and at least fifty (50) feet distance from any adjoining residential use. In lieu of providing this requirement, a five (5) foot masonry wall may be erected in a manner that will shield residential uses from undue noise pollution due to said vacuuming activities.
 - b. The entrances and exits of the facility shall be from within the lot and not directly to or from adjoining street or alley. A street or alley shall not be used as maneuvering or parking spaces for vehicles to be serviced by the subject facility.
- 4. Clustered Residential Development/Open Space Preservation Option

The intent of Open Space Preservation Option is to allow single-family dwellings to be developed with varied yard and setback requirements on parcels of land which have natural assets that should be preserved or that have characteristics which would make development difficult to accomplish under the usual land development approach. The Open Space Preservation Option provision is intended to provide flexibility in the regulation of land development; encourage innovation in land use and variety in design, layout, and type of structures constructed; achieve economy and

efficiency in the use of land, natural resources, energy, and preserve at least fifty (50%) of the parcel in an undeveloped state.

Since preservation of natural resources and the protection of the natural environment are important objectives, great care and much diligence must be taken when evaluating the potential development under the Open Space Preservation Option of a parcel of land and application of the provisions contained herein.

Approval Standards: A proposed development under the Open Space Preservation Option shall be approved by the Planning Commission when all of the following standards are met:

- a. Dwelling Units. Single-family dwelling units permitted within the Cluster Housing Option may be attached and/or detached, or any combination thereof within the limitations of the requirements set forth herein. No more than four (4) attached single-family units may be contained within one structure.
- b. Attached Dwelling Unit Design. So as to prevent the development of attached cluster housing units that are not compatible in terms of general character or layout with the surrounding development and natural environment, the following design guidelines shall be complied with:
 - i. In the case of attached cluster units that are generally rectangular in shape, the common walls of the adjoining dwelling units shall not overlap by more than thirty (30) percent. However, common garage wall may overlap for their full distance on both sides.
 - ii. In the case of attached cluster units that are irregular in shape, the applicant shall demonstrate to the satisfaction of the Planning Commission that the building layout effectuates an offset between units and results in a design that is compatible with the natural environment and existing surrounding development.
- c. The Open Space Preservation Option has not been exercised on the parcel of land on which the development will be located.
- d. Lot Standards.
 - i. Minimum lot area, minimum lot width, minimum setbacks, and maximum lot coverage standards may be reduced with Planning Commission approval, provided the total project density is no greater than allowed according to Section 6.09 Schedule of regulations.
 - ii. All setbacks shall be measured from the edge of the proposed right-of-way of any street which is abutting, adjacent, or within the cluster development. The minimum setback from the right-of-way line of a major thoroughfare or collector road shall be seventy (70) feet. In no instance shall a dwelling unit directly access onto a major thoroughfare or collector road.
- e. Density. The maximum density of development (dwelling units per acre) shall be based on the standards set forth in Section 6.09. Underwater areas, such as lakes, streams, ponds, and similar watercourses shall not be included as part of the total lot area in the calculation of density, except where such underwater areas are proposed to be constructed by the applicant, in which case fifty (50) percent of the proposed underwater area can be included in the calculation of density.
- f. Off-street Parking. The minimum number of parking spaces shall be based on the requirements of Section 8.04.
- g. Screening or Buffering: A landscape buffer, landscaped berm or fence (per Section 4.13) shall be provided along the entire property line abutting a major thoroughfare or collector

road. The landscape buffer, landscaped berm or fence shall not be within a required side or rear yard setback.

- h. Open Space.
 - i. At least fifty (50) percent of the total land area shall be designated as permanent open space and remain in an undeveloped state. The open space may consist of areas which contain physical characteristics that limit the development potential such as steep slopes or wetlands.
 - ii. The required open space shall be set aside by the developer in a conservation easement or a deed restrictions placed on the property, whereby the open space shall be developed according to an approved site plan, and shall never be changed to another use. Said conveyance shall specify that the open space is an integral component in the overall development for the use and enjoyment of the residents within the cluster housing development.
- i. Landscaping. Any site plan submitted for approval under the Open Space Preservation Option shall retain as much natural vegetation as practicable.
 - i. All trees and other vegetation which the applicant does not intend to remove shall be indicated on the site plan. All such natural vegetation so designated shall be left remaining on the site in a living condition upon completion of the development.
 - ii. If any natural vegetation so designated to be retained is not living or is destroyed as a result of any action related to construction or land development, said vegetation shall be replaced with landscaping that the Planning Commission determines is substantially similar to the designated natural vegetation. Said landscaping must be replaced prior to issuance of a Certificate of Occupancy unless, upon approval of the Planning Commission and Zoning Administrator, the applicant deposits a financial guarantee with the Township Clerk to ensure completion of required landscaping. The financial guarantee shall be deposited in accordance with the requirements set forth in Section 9.04.
- j. A proposed development under the Open Space Preservation Option shall comply with all other regulations of the Banks Township Zoning Ordinance.
- k. All lots created under the Open Space Preservation Option shall be required to have at least one shared boundary with another lot of the said development.

5. Gas and Oil Processing Facilities

- a. The facility shall comply with all federal, state and local building, environmental and health codes and regulations.
- b. The applicant shall provide copies of the application for permit to drill, survey record of well location, and plat, as provided to the Supervisor of Wells, Department of Natural Resources, as part of the permit process for the location and erection of oil and gas processing facilities.
- c. The facility may incorporate surface land owned or leased by the oil and/or gas company. If leased, the lease documents shall be submitted to the Planning Commission, and the Township Board of Trustees shall be informed of the length of the lease.
- d. Because the subject facilities are industrial in nature, the required site plan shall also show adequate visual and sound privacy from adjacent property and public roads. Forested greenbelt, berms, attractive fence screen, landscaping, mufflers, insulation, or other contrivances may be used to ensure compliance with visual and sound privacy of the adjacent properties.

- e. In the event the facility is no longer required or is not used for two (2) years, the existing facility shall be removed and the area restored to its original state.
- f. The sound level of the facility shall not exceed sixty (60) decibels as measured four hundred and fifty (450) feet in any direction from the facility.
- g. The facility shall be built no closer than four hundred and fifty (450) feet from an existing dwelling.
- h. The facility shall be built no closer than one hundred (100) feet from any public road.

6. Gasoline / Service Station

- a. Minimum lot size shall be fifteen thousand (15,000) square feet for a Service station or repair garage and twelve thousand (12,000) square feet for a filling station.
- b. Minimum lot width shall be one hundred twenty (120) feet for a service station or repair garage and one hundred (100) feet for a filling station.
- c. An automobile service station building, repair garage or main building for a filling station shall be located not less than forty (40) feet from the street right-of-way or less than twenty-five (25) feet from the side or rear lot line of any adjoining residential property or less than ten (10) feet from the side or rear lot line of adjoining commercial or industrial property.
- d. No ingress or egress to an automobile service station, public garage or filling station, shall be closer than twenty-five (25) feet from any intersection or residential property line abutting the property on which such facility is located.
- e. The entire lot, excluding those areas occupied by a building or landscaped areas, shall be hard-surfaced with concrete or a plant mixed bituminous material.
- f. All lubrication equipment, hydraulic hoists and pits shall be completely enclosed within a building. All gasoline pumps shall be located not less than twenty-five (25) feet from any lot line and shall be arranged so that motor vehicles may be provided easy egress and ingress to and from the adjoining street, and so that no portion of the vehicle while it is stopped for service, shall overhang onto a sidewalk, curb, street or public right-of-way.
- g. When adjoining residential property, a masonry wall shall be constructed parallel to the property line of such residential property as required in Section 4.16 Fences, Walls and Hedges. All masonry walls shall be protected by a fixed curb or other barrier to prevent vehicular contact.
- h. All outside storage areas for trash, used tires, auto parts and similar items shall be enclosed by a masonry wall at least five (5) foot high (Section 4.16 Fences, Walls and Hedges). Outside storage or parking of disabled, wrecked or partially dismantled vehicles shall be allowed for a period not to exceed fifteen (15) days.
- i. The sale or rental of used or new vehicles, including trailers or recreational vehicles on the premises, is prohibited.
- j. The property on which the automobile service station, repair garage or filling station is located shall be no closer than five hundred (500) feet from a vehicular entrance or exit to a hospital, library, museum, public or private school, playground, church or park.
- k. All exterior lighting, including signs, shall be hooded or shielded so that glare shall be shielded from the view of adjacent properties.
- l. On a corner lot, both street frontage sides shall conform to all applicable front yard regulations of this ordinance.

7. Kennels or Veterinary Hospital
 - a. All kennels or veterinary hospitals shall be operated in conformance with County and State regulations.
 - b. Animals shall be confined in a fenced area to preclude their approaching nearer than one hundred (100) feet to any dwelling on adjacent premises or nearer than fifty (50) feet from the property line, whichever is greater.
 - c. The facility shall be so constructed and maintained that odor, dust, noise or drainage shall not constitute a nuisance or hazard to adjoining premises.
 - d. All principal use activities shall be included within an enclosed main building.

8. Manufactured Home Developments: Manufactured home developments shall be permitted in the Mobile Home District, MH, after a hearing by the Planning Commission, provided the following conditions are satisfied:
 - a. Manufactured home parks for the location of three (3) or more manufactured or mobile dwelling units shall be developed pursuant to the requirements of The Mobile Home Commission Act, Public Act 96 of the State of Michigan, 1987, and shall be licensed by the State of Michigan according to the Act.
 - b. Internal roads in manufactured housing developments shall have access to a public thoroughfare or be connected to such road by a permanent easement, shall be hard surface, and shall follow additional requirements of Manufactured Housing Commission Rules 920-923. Each home site shall be provided with two (2) parking spaces. A minimum of one (1) additional parking space for every three (3) home sites for visitor parking shall be provided within five hundred (500) feet of the home sites. Additional parking requirements per Manufactured Housing Commission Rules 925-926 shall be followed.
 - c. The layout of the manufactured housing development and included facilities shall be in accordance with acceptable planning and engineering practices and shall provide for the convenience, health, safety and welfare of the residents.
 - d. An obscuring wall, fence or landscape screen not less than four (4) nor more than six (6) feet in height may be provided on all sides of the manufactured housing development, with the exception of that portion providing ingress and egress to the development.
 - e. Units shall be attached to a Michigan Manufactured Housing Commission approved foundation or basement and anchoring system, and shall be installed according to manufacturer's setup instructions.
 - f. Manufactured or mobile dwelling units shall be placed in such a manner as to provide minimum safe distance on all sides from neighboring units and other structures, according to the Manufactured Housing Commission Rules 941 and 944.
 - g. Recreation and/or open space:
 - i. A manufactured housing development that contains fifty (50) or more home sites shall have not less than two percent (2%) of the development's gross acreage designated as open space, but not less than twenty-five thousand (25,000) square feet. Such area (including accompanying equipment) shall be developed and maintained by the management to provide safe and healthful recreation for residents of the development.
 - ii. Any yard areas and open spaces shall be maintained in a clean, presentable condition at all times.

9. Migratory Labor Dwellings: Migratory labor dwellings as an accessory use to a farm, provided the following conditions are met in addition to the other requirements of the Agricultural District:
- a. Compliance with Michigan Public Health Code, being Act 368 of the Public Acts of Michigan of 1978, as amended, including any rules promulgated pursuant thereto;
 - b. The occupants are employed for farm labor by the owner of the property while they occupy the housing;
 - c. Mobile homes may be used to provide such housing per (Section 4.07 under General Provisions of the Banks Township Zoning Ordinance);
 - d. Migratory labor dwellings must be at least 100 feet from all side and rear property lines and must be at least 75 feet from the street right-of-way on which the property fronts. Migratory labor dwellings must also be at least 150 feet from any single-family residence located on a separate parcel of property owned by another individual or entity;
 - e. Migratory labor dwellings may be permitted as a principal use on a parcel which contains a minimum of one acre and which complies with all other requirements of this section. This parcel shall be adjacent to the farm parcel where laborers are employed and both parcels shall be under the same ownership.

10. Outdoor Sales Facilities

- a. Lighting should be installed in such a manner which will not create a traffic hazard on abutting streets or which will cause a glare or direct illumination to be cast onto adjacent properties.
- b. Parking area shall be provided on-site so as to prevent on-street parking.

11. Sexually Oriented Business

- a. No sexually oriented business shall be permitted in a location in which any principal or accessory structure, including signs, is within one thousand (1,000) feet of any principal or accessory structure of another sexually oriented business.
- b. No sexually oriented business shall be established on a parcel which is within one thousand (1,000) feet of any parcel zoned R-1, R-2 or MH.
- c. No sexually oriented business shall be established on a parcel within one thousand (1,000) feet of any residence, park, school, child care organization, or place of worship, or other sexually oriented business. This distance shall be measured in a straight line from the nearest property line upon which the proposed sexually oriented business is to be located to the nearest property line of the residence, school, child care organization, place of worship, or other sexually oriented business.
- d. The proposed use shall conform to all specific density and setback regulations, etc. of the zoning district in which it is located.
- e. The proposed use must meet all applicable written and duly promulgated standards of Banks Township and other governments or governmental agencies having jurisdiction, and that to the extent required, the approval of these governments and/or governmental agencies has been obtained or is reasonably assured.
- f. The outdoor storage of garbage and refuse shall be contained, screened from view and located so as not to be visible from neighboring properties or adjacent roadways.
- g. Any sign or signs proposed for the sexually oriented business must comply with the provisions of this Ordinance, and shall not otherwise include photographs, silhouettes,

- drawings, or pictorial representations of any type, or include animated or flashing illumination.
- h. Entrances to the proposed sexually oriented business must be posted on both the exterior and interior walls, in a location clearly visible to those entering and exiting the business, and using lettering no less than two (2) inches in height that: 1) "Persons under the age of 18 are not permitted to enter the premises", and 2) "No alcoholic beverages of any type are permitted within the premises unless specifically allowed pursuant to a license duly issued by the Michigan Liquor Control Commission."
 - i. No product or service for sale or gift, or any picture or other representation of any product or service for sale or gift, shall be displayed so as to be visible from the nearest adjoining roadway or a neighboring property.
 - j. Hours of operation shall be limited to 8:00 AM to 12:00 AM.
 - k. All off-street parking areas shall be illuminated during all hours of operation of the sexually oriented business, and until one hour after the business closes.
 - l. Any booth, room or cubicle available in any sexually oriented business, excepting an adult motel, used by patrons for the viewing of any entertainment characterized by the showing of Specified Anatomical Areas or Specified Sexual Activities:
 - i. Is handicap accessible to the extent required by the Americans With Disabilities Act;
 - ii. Is unobstructed by any door, lock or other entrance and exit control device;
 - iii. Has at least one side totally open to a public, lighted aisle so that there is an unobstructed view at all times from the adjoining aisle of any occupant;
 - iv. Is illuminated by a light bulb of wattage of no less than 25 watts;
 - v. Has no holes or openings in any side or rear walls.
 - m. Review Procedures for Sexually Oriented Businesses: The Planning Commission shall adhere to the following procedures when reviewing a special approval application for a sexually oriented business.
 - i. If the Planning Commission determines that a special approval application for a sexually oriented business is not complete when it is first presented to the Planning Commission, it shall provide written notice by first class mail within three (3) business days of said determination detailing the items required to complete the application. Upon payment of a new filing fee, the applicant may resubmit the amended application for review by the Planning Commission for completeness.
 - ii. If the Planning Commission determines that the application is complete, it shall within sixty (60) days of said determination make and adopt specific findings with respect to whether the proposed sexually oriented business is in compliance with the standards designated in Sections 8.02.3 and 8.03.11 (a-l). If the Planning Commission has not made and adopted findings of fact with respect to a proposed sexually oriented business and either approved or denied the issuance of a special approval for the same within sixty (60) days of its determination that a completed application has been filed, then the special approval shall be deemed to have been approved.
 - iii. Prompt judicial review of adverse determination: If the Planning Commission denies a special approval application for a sexually oriented business pursuant to the above paragraphs, then the applicant shall be entitled to prompt judicial review by submitting a written request to the Zoning Administrator. The Township shall within three (3) business days of the receipt of such written notice do the following:

- a) File a petition in the Circuit Court for the County of Antrim seeking a judicial determination with respect to the validity of such denial and, in conjunction therewith, apply for a preliminary and permanent injunction restraining the applicant from operating the sexually oriented business in violation of the Township Zoning Ordinance;
- b) Request that the application for issuance of a preliminary injunction be set for a show-cause hearing within five (5) business days or as soon thereafter as is possible after the filing of such petition. In the event the applicant appears at or before the time of such show-cause hearing, waives the notice otherwise provided by Michigan Court Rules, and requests that at the time set for such hearing the Court proceed to hear the case under applicable rules of civil procedure for the issuance of such permanent injunction on its merits, the Township shall be required to waive its application for preliminary injunction and shall join in such request.

In the event that the applicant does not waive notice and/or does not request any early hearing on the Township's application for permanent injunction, it shall never the less be the duty of the Township to seek the earliest possible hearing date under Michigan law and the Michigan Court Rules.

The filing of written notice of intent to contest the Planning Commission's denial of a special approval shall not in any way affect the validity of such denial, but such denial shall be deemed invalid and the special approval application automatically approved if, within fifteen (15) business days of the filing of the Township's petition, a show cause hearing has not been scheduled.

12. Reserved

13. Telecommunication Towers (Commercial)

- a. Telecommunication towers and facilities shall be permitted by the Planning Commission after a public hearing when all standards of this subsection are met. All guy wires/cables and anchors associated with a proposed tower shall comply with the setback regulations of the zoning district in which located. Safety markings and/or physical barriers for all guy wires and anchors may be required by the Planning Commission, upon a finding that such safety markings and/or physical barriers are necessary for the public safety or for the safety of the occupants of the property on which the guy wires or anchors will be located. In addition, except as provided herein, each such proposed tower shall be set back from a public or private road right-of-way and shall be setback from a lot line a distance equal to the tower safety zone. The Planning Commission, however, may reduce the setback distance, but in no event less than the applicable setback requirement for structures in the zoning district in which located, if it finds all of the following standards are met:
 - i. The established tower safety zone shall not extend into a public or private road right-of-way or onto an adjacent lot in an area where an existing residential structure is located under the requirements of this Ordinance.
 - ii. If any portion of the established tower safety zone is located on an adjacent lot, the owner(s) of the adjacent lot shall consent in writing to the reduced setback and shall

- agree to record deed restrictions acknowledging and accepting the potential increased risk, due to the reduced setback. Such deed restrictions shall run with the adjacent lot for as long as the tower is erected. The deed restrictions shall be in recordable form and shall be subject to the approval of the township attorney.
- iii. Due to existing topography, existing structures, vegetation or other existing natural or human-made features, the proposed location of the tower with the reduced setback shall be no more visually obtrusive than the location of the tower under the normal setback regulations.
 - b. Telecommunication towers shall be constructed as freestanding structures (monopole or lattice towers, as approved by the Planning Commission) unless the applicant can demonstrate that such a structure cannot accommodate the user or future co-locators. Towers shall have a neutral surface finish color to reduce the visual obtrusiveness, except as otherwise required by a state or federal agency.
 - c. Telecommunication towers shall not be used for advertising purposes. These restrictions shall not apply to any safety signs placed on the security fence or tower.
 - d. Telecommunication towers and facilities shall be enclosed by a security fence not less than six feet in height. The Planning Commission shall review the need for the installation of anti-climbing devices and make a determination based on adjacent land use and zoning patterns.
 - e. Telecommunication towers and facilities shall be effectively screened to obscure views of the tower base, shelter, security fencing or guy wire anchors from adjacent uses and public right-of-way.
 - f. Telecommunication towers shall not be artificially lighted unless required by the FAA or other applicable authority and shall cause the least disturbance possible.
 - g. The approval for any of the above mentioned towers shall cease when the tower is no longer used for the purpose for which the permit was initially granted.
 - h. The applicant shall be responsible for the maintenance of any permitted Tower, in a safe condition for as long as the tower remains in operation, and shall dismantle the tower within nine (9) months after operations cease. The applicant shall post a bond for the dismantling of the tower, the amount of which shall be based on the size and type of tower.
 - i. The multiple-use of each tower shall be encouraged to limit the number of towers within the Township. The Township reserves the right to deny a permit for a new tower if any existing tower can be adapted to serve the expressed need.
 - j. No antenna or similar sending/receiving devices appended to the tower, following its approved construction, shall be permitted if it exceeds the engineered design capacity of the tower thereby jeopardizing the tower's structural integrity.
 - k. The installation and/or operation of the above mentioned towers, antennas or facilities shall not interfere with normal radio/television reception in the area. In the event interference occurs, it shall be the sole responsibility of the owner to rectify the situation with the parties involved.
 - l. The maximum height for a Telecommunication tower shall be one-hundred and thirty (130) feet. The Planning Commission may approve an increased height for these towers, not to exceed three hundred (300) feet, if both of the following conditions are met:
 - i. The need for the increased height is the result of a stand of trees, existing landforms, or structures that would substantially hinder the reception/transmission of an antenna on the tower.

- ii. The increased height is the minimum necessary to achieve a reasonable level of antenna reception/transmission on the tower. A reasonable level of antenna reception is not equivalent to maximizing the antenna reception. The Planning Commission shall not grant the increased height if the reasonable level of antenna reception/transmission is not met due to the use of inefficient equipment that does not utilize current commercial technologies.
- m. There will be a one (1) year grace period after the effective date of this ordinance amendment for existing Telecommunication towers and facilities that were erected without a permit to apply for a Special Use Permit. During this one-year period, all associated permitting fees will be waived for existing and new towers.

14. Wind Turbine Generators and Anemometer Towers (WTG): Commercial wind turbine generators and anemometer towers shall comply with all of the following standards:

Commercial wind turbine generators and anemometer towers, both permanent and temporary, shall comply with all of the following standards, as applicable:

- a. Temporary Anemometer Towers: Anemometer towers temporarily installed for the purpose of initially documenting sufficient wind resources, shall meet all of the applicable standards for wind turbine generators and anemometer towers except that anemometer towers may be monopole-style construction, monotube-style construction or lattice-style tower, and may utilize guy wires provided such a tower, including any foundation to a minimum depth of five (5) feet below grade, is removed within three (3) years from the date approval is granted by the Planning Commission. Safety markings and/or physical barriers for all guy wires and anchors may be required by the Planning Commission, upon a finding that such safety markings and/or physical barriers are necessary for public safety or for the safety of the occupants of the property on which the guy wires or anchors will be located. This standard shall not apply to a permanent anemometer tower.
- b. Minimum Site Area: The minimum site area for a commercial wind turbine generator or an anemometer tower erected prior to a wind turbine generator shall be as necessary to meet required setbacks and any other standards of this ordinance.
- c. Setbacks:
 - i. All guy wires/cables and anchors associated with a wind turbine generator or anemometer tower and all structures accessory to the wind turbine generator shall comply with the setback regulations of the zoning district in which located. Except as provided in subsection 2) below, all commercial wind turbine generators and anemometer towers shall be located no less than the height of the wind turbine generator or the height of the anemometer tower from a public or private the road right-of-way and from all lot lines.
 - ii. At the request of the applicant the Planning Commission shall reduce the setback for a commercial wind turbine generator or anemometer tower from a public or private road right-of-way to not less than one rotor radius (for a commercial wind turbine generator) and to not less than one-half the height of an anemometer tower, and shall reduce the setback requirement from a lot line for a commercial wind turbine generator or anemometer tower to not less than the applicable district setbacks, if it finds, based on data provided by the applicant and prepared by a qualified professional, that all of the following applicable standards are met:

- a) For a reduced setback from a public or private road right-of-way, any potential tower/blade failure or ice shedding will be contained on the lot where the wind turbine generator or anemometer tower is located.
- b) For a reduced setback from a lot line, any potential tower/blade failure or ice shedding will be contained on the lot where the wind turbine generator or anemometer tower is located, or the owner(s) of all abutting lots directly impacted by the reduced setback requirements (regardless of whether the abutting lot(s) is/are under the same ownership as the lot on which the wind turbine generator or anemometer tower will be located) consent in writing to the reduced setback requirements and agree to impose deed restrictions on their properties acknowledging and accepting the potential increased risk of damage to their land as a result of the closer proximity of the wind turbine generator or anemometer tower to their properties. These deed restrictions shall run with the land, shall be in a form acceptable to the township attorney, and shall be recorded in the office of the Antrim County Register of Deeds.
- c) The reduced setback requirements will not permit the commercial wind turbine generator or anemometer tower to be more visually obtrusive to significant scenic views than the allowable location under the normal setback requirements.
- d. Maximum Height
 - i. The maximum wind turbine generator tower height or the height of an anemometer tower erected prior to the wind turbine generator shall be 400 feet.
 - a) The Planning Commission may approve an increased height for a wind turbine generator tower or an anemometer tower if the increased height will not result in increased intensity on lighting of the tower due to FAA requirements.
- e. Minimum Rotor Wind Vane or Blade Clearance. The lowest point of the arc created by rotating wind vanes or blades on a wind turbine generator shall be no less than fifteen (15) feet above ground level.
- f. Maximum Noise Levels.
 - i. Except as provided in subsection 2) below, any proposed wind turbine generator shall not result in sound levels in excess of sixty (60) decibels as measured on the dB(A) scale at the property lines of the site in question.
 - ii. At the request of the applicant the Planning Commission shall increase the maximum permitted sound levels resulting from a wind turbine generator to no more than seventy (70) decibels as measured on the dB(A) scale at the property lines of the site in question, if it finds, based on data provided by the applicant and prepared by a qualified professional that is specific to the proposed tower in the proposed location and takes into consideration prevailing winds, topography, existing vegetation, and other relevant factors that all of the following standards are met:
 - a) The increased sound levels will not have a substantial negative impact on the use and enjoyment of properties in the immediate area.
 - b) The owner(s) of all abutting lots directly impacted by the increased sound levels (regardless of whether the abutting lot(s) is/are under the same

ownership as the lot on which the wind turbine generator or anemometer tower will be located) consent in writing to the increased sound levels and agree to impose deed restrictions on their properties acknowledging and accepting the increased noise that will impact their land as a result of the close proximity of the wind turbine generator to their properties. These deed restrictions shall run with the land, shall be in a form acceptable to the township attorney, and shall be recorded in the office of the Antrim County Register of Deeds.

- g. Maximum Vibrations. Any proposed wind turbine generator shall not produce ground vibrations humanly perceptible beyond the property on which it is located.
- h. Transmission Lines. The electrical transmission lines connecting the wind turbine generator to the public utility electricity distribution system shall be located underground unless the Planning Commission finds that it is technologically infeasible or finds that the cost of placing those electrical transmission lines underground is unreasonably burdensome. If the Planning Commission allows overhead electrical transmission lines to connect the wind turbine generator to the public utility electricity distribution system, then those electrical transmission lines shall be placed at a height consistent with industry standards to ensure public safety.
- i. Interference with Residential Reception. Any wind turbine generators shall be constructed and operated so that they do not interfere with television, microwave, navigational or radio reception to neighboring areas.
- j. Landscaping. Each proposed wind turbine generator or anemometer tower erected prior to a wind turbine generator shall meet the following landscaping requirements; provided, however, the Planning Commission may reduce or waive such requirements if it finds that because of the remote location of the site, or other factors, the visual impact of the wind turbine generator would be minimal.
 - i. The base of the wind turbine generator or anemometer tower erected prior to a wind turbine generator shall be landscaped with a buffer of plant materials that effectively screens the view of the bases of these facilities from adjacent property used for residential purposes. The standard buffer shall consist of a landscaped strip at least four feet (4') wide outside the perimeter of the facilities.
 - ii. Existing natural landforms on the site which effectively screen the base of the wind turbine generator or anemometer tower erected prior to construction of a wind turbine generator from adjacent property used for residential purposes shall be preserved to the maximum extent possible.
 - iii. Landscaping shall be designed to counter the effects of "shadow flicker" on any neighboring residences or roadways caused by the rotor rotation in the sunlight.
 - iv. To ensure compliance with these landscaping standards, the Planning Commission may require additional landscaping on the site after the installation of the wind turbine generator or anemometer tower.
- k. State or Federal Requirements. Any proposed wind turbine generator anemometer tower shall meet or exceed any standards and regulations of the FAA, the Michigan Public Service Commission, National Electric Safety Code, and any other agency of the state or federal government with the authority to regulate wind turbine generators or other tall structures in effect at the time the special approval is granted.

- I. Soil Conditions. A proposal for any wind turbine generator or anemometer tower shall be accompanied by a report of the soils present on the site based on soil borings, and a description of the proposed foundation size, materials, and depth. Such foundation shall be installed to a depth of three (3) feet below grade or greater to allow for feasible future reuse of the land unless the applicant provides a financial assurance that the foundation will be removed in the event that the tower is removed.
- m. Aesthetics and Lighting. Any proposed wind turbine generator or anemometer tower shall meet the following requirements:
 - i. Each wind turbine generator or anemometer tower shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
 - ii. Each wind turbine generator, including all accessory structures, or anemometer tower shall, to the extent possible, use materials, and colors that will blend them into the natural setting and surrounding buildings. A medium grey shade is the preferred color for any wind generator or anemometer tower; however, the Planning Commission may approve an alternate color if the facility is suspected to be located within an avian migratory route or if an alternate color would otherwise benefit the community.
 - iii. Each wind turbine generator or anemometer tower shall not be artificially lighted unless required by the FAA or other applicable governmental authority. If lighting is required, the lighting alternatives and design chosen a) Shall be the lowest intensity allowable under FAA regulations.
 - a) Shall not be strobe lighting or other intermittent white lighting fixtures unless expressly required by the FAA. Such intermittent lighting shall be alternated with steady red lights at night if acceptable to the FAA.
 - b) May be a red top light that does not pulsate or blink.
 - c) All tower lighting required by the FAA shall be shielded to the extent possible and acceptable to the FAA to reduce glare and visibility from the ground.
 - iv. Each wind turbine generator or anemometer tower shall be sited on the property in a location that reduces to the maximum extent possible any adverse impacts on significant view corridors from adjacent properties, while at the same time maintaining contact with economically viable wind resources.
 - v. Each wind turbine generator or permanent anemometer tower shall be a monopole or monotube style construction (as distinguished from a latticestyle tower) and shall not utilize guy wires.
- n. Sign. A sign no more than four (4) square feet in area displaying an address and telephone number for emergency calls and informational inquires shall be posted at the proposed wind turbine generator or anemometer tower erected prior to a wind turbine generator. No wind turbine generator tower or anemometer tower or site shall include any advertising sign.
- o. Hazard Planning. An application for a wind turbine generator shall be accompanied by a hazard prevention plan. Such plan shall address the following at a minimum:
 - i. Certification that the electrical wiring between turbines, and between turbines and the utility right-of-way does not pose a fire hazard.

- ii. The landscape plan accompanying the application shall be designed to avoid spread of fire from any source on the turbine; such preventative measures may address the types and locations of vegetation below the turbine and on the site.
- iii. The following shall be submitted with the application for a special use permit for a wind turbine generator:
 - a) A listing of any hazardous fluids that may be used on site shall be provided.
 - b) Certification that the turbine has been designed to contain any hazardous fluids shall be provided.
 - c) A statement certifying that the turbine shall be routinely inspected to ensure that no fluids are released from the turbine.
 - d) A Hazardous Materials Waste Plan shall be provided.
- p. Removal of Abandoned Wind Turbine Generators or Anemometer Towers. Any wind turbine generator or anemometer tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The Planning Commission shall conduct a hearing following notice to determine whether it is abandoned. If the Planning Commission determines it is abandoned, the owner of such wind turbine generator or anemometer tower shall remove the same within ninety (90) days of receipt of notice from the Township regarding its determination of such abandonment. In addition to removing the wind turbine generator or anemometer tower, the owner shall restore the site of the wind turbine generator or anemometer tower to its original condition prior to location of the wind turbine generator or anemometer tower, subject to reasonable wear and tear. Any foundation associated with a wind generator or anemometer tower shall be removed to a minimum depth of three (3) feet below the final grade and site vegetation shall be restored. Failure to remove an abandoned wind turbine generator or anemometer tower within the ninety (90) day period provided in this subsection shall be grounds for the Township to remove the wind turbine generator or anemometer tower at the owner's expense. The Planning Commission may require the applicant to file a bond equal to the reasonable cost of removing the wind turbine generator or anemometer tower and attendant accessory structures as a condition of a special use permit given pursuant to this section.

15. Agricultural Assembly Spaces

- a. The minimum lot size shall be twenty (20) acres
- b. The property must be actively engaged in agricultural operations that comprise at least sixty percent (60%) of the lot.
- c. Noise levels shall not exceed 65 decibels at any lot boundary or road right-of-way.
- d. Hours of operation and estimated number of events allowed per year shall be subject to Planning Commission review and approval.

16. Agricultural Tourism

- a. The minimum lot size shall be ten (10) acres.
- b. The property must be actively engaged in agricultural operations that comprise at least fifty percent (50%) of the lot.
- c. The following agricultural or agriculturally-related uses and activities constitute agricultural tourism:
 - i. Seasonal "U-Pick" fruit and vegetable operations.

- ii. Roadside market stands
- iii. Outdoor mazes of agricultural origin such as straw bales or corn.
- iv. Value-added agricultural products or activities such as education tours, classes, lectures, seminars, or processing demonstrations.
- v. Bakeries selling baked goods containing produce grown primarily on site.
- vi. Playground equipment and other passive outdoor recreation activities, not including motorized vehicles and rides, except those stated.
- vii. Petting farms, animal displays and pony rides.
- viii. Wagon, sleigh and hayrides.
- ix. Nature trails.
- x. Open air or covered picnic area with restrooms.
- xi. Historical agricultural exhibits.
- xii. Kitchen facilities processing/cooking items for sale on or off premises.
- xiii. Gift shops for agricultural or agriculturally related products.
- xiv. Gift shops for non-agricultural products such as antiques and crafts.

17. Accessory Dwelling Units

Accessory dwelling units (ADUs) are intended to support a flexible range of housing options in the Township by allowing homeowners to establish a second dwelling unit on a property with a single-family dwelling unit. ADUs shall remain secondary and subordinate to the single-family dwelling unit and are subject to the following standards:

- a. ADUs shall only be established on lots with an established single-family dwelling unit as the principal use.
- b. One (1) accessory dwelling unit shall be allowed per lot.
- c. An ADU shall be constructed as one of the following formats:
 - i. A partitioned area within the single-family dwelling unit structure located on the lot.
 - ii. An addition to a one-story garage that is detached from the principal single-family structure.
 - iii. The second floor of a garage that is attached or detached to the principal single-family structure.
 - iv. A detached accessory structure not exceeding one (1) floor in height.
- d. An ADU constructed as a detached accessory structure shall be located in either a rear or side yard.
- e. The owner of the property shall live on site, either in the single-family dwelling unit or the accessory dwelling unit.
- f. If the accessory dwelling unit is rented or leased, the tenants of the accessory dwelling unit shall be permanent residents rather than transients.
- g. The ADU shall have its own entrance, kitchen, sleeping area, and full bathroom facilities separate from those associated with the principal dwelling unit.
- h. A minimum of one (1) additional parking space shall be provided on the lot.
- i. The use of a mobile home built prior to June 15, 1976, camper trailer, recreational vehicle, or other temporary and/or other non-permanent structures shall be prohibited from being used as an ADU.

- j. The ADU shall be adequately served by an on-site septic system. The Health Department of Northwest Michigan shall verify that adequate on-site septic service is provided.
- k. The ADU shall meet applicable building, sanitation, and fire code.
- l. Building materials and designs used on ADU's shall be of similar style as that of the principal dwelling as determined by the Planning Commission.
- m. An ADU shall not include more than two bedrooms.
- n. The maximum size of a one-bedroom ADU shall be 800 square feet. The maximum size of a two-bedroom shall be 1,000 square feet.
- o. The square footage dedicated solely for storage that is included in the same structure as the ADU shall not be included in the computation of square footage for the ADU.

18. Firearms Training Facilities

All firearm training facilities shall comply with the following standards:

- a. Shot Containment. Firearms training facilities shall be designed to contain all the bullets or shot, or any other debris on the facility based on the Table 1 (Maximum Range of Small Arms Ammunition), Figure 1 (Surface Danger Zone with Impact Berm for Small Arms Firing) and Figure 2 (Impact Berm for Open and Partially Baffled Shooting Ranges).
- b. SDZ Design. A basic SDZ consists of three parts: impact area, ricochet area, and secondary danger area (Figure 1).
 - i. The primary danger area established for the impact of all rounds extends 5° to either side of the left and right limits of fire and downrange to the maximum range of any ammunition to be used on the shooting range.
 - ii. The ricochet area is 5° to either side of the impact area and extends downrange to the maximum range of any ammunition to be used on the shooting range.
 - iii. The secondary danger area is that area paralleling, and 100 yards outside of, the outermost limits of the ricochet area and extending downrange to the maximum range of any ammunition to be used on the shooting range.
 - iv. Boundaries of SDZs must be posted with permanent signs warning persons of the danger of the live-fire shooting range and prohibiting trespassing. The signs must be posted in a way that will ensure a person cannot enter the SDZ without seeing at least one legible sign (i.e., usually 100 feet distant or less)
 - v. Limit of fire markers, both external and internal, must be placed to denote right and left limits of fire. Where cross firing is to be conducted, internal limit markers must be emplaced to denote internal right or left limits of fire from specific firing positions.
 - vi. For open shooting ranges, the top elevation of the earth impact berm shall be 26 feet above the shooting range surface for shooting ranges 100 yards long or longer and 16 feet above the shooting range surface for shooting ranges 50 yards long or less. The impact berm shall extend 50 yards beyond where the target line ends for 100-yard-long shooting ranges or until joining with the side containment, if provided for shooting ranges 50 yards long or less.
 - vii. The slope of the impact berm face shall be 1 to 1 or steeper. The steeper the slope, the more likely the berm is to absorb projectiles. The top shall be 10 feet

wide. The impact slope shall be constructed with a 3-foot layer of easily filtered soil (to reclaim the lead projectiles) free of boulders, trees, rocks, stones, or other materials that will cause ricochet. The rear slope shall be appropriate to the native soil and maintenance requirements.

- viii. The thickness of earth material used to construct the impact structures for positive protection against the ammunition shall be no less than 6 feet. The design of the impact berm for open and partially baffled shooting ranges shall be designed as referenced in Figure 2.
- c. Noise Mitigation. Noise level measured at the property line where the firearms training facility is maintained or, in the case of leased land, at the property line of any leased parcel shall not exceed sixty-five (65) dBA when located adjacent to residential or commercial property or seventy-five (75) dBA when adjacent to industrial property.
- d. Landscaping. Landscaping may be required to provide for erosion control, noise abatement, maintenance, appearance, fire protection, and safety.
 - i. Berms shall be planted with grass to prevent erosion. Ground cover is acceptable on existing berms that have been maintained and where erosion is not an issue.
 - ii. Heavy landscaping may be used to cut down on noise transmission. Plants and trees may be planted behind the firing position shelters to alleviate noise transmission.
- e. Setbacks. All shooting stations on a firearms training facility shall be located a minimum of two hundred (200) feet from any property line. The Planning Commission has the discretion to reduce the setbacks to no less than fifty (50) feet from the property line based on a review of conditions, such as, but not limited to, location of structures, direction of the Surface Danger Zone, direction of the Firing Line to the Target Line, natural vegetation, topography, and noise contours.
- f. Warning Signs. Warning signs meeting National Rifle Association (NRA) guideline for shooting ranges shall be posted at one hundred-foot intervals along the entire perimeter of the firearms training facility.
- g. Distance from Occupied Dwelling. A firearms training facility shall be located at least one-fourth (1/4) mile (one thousand three hundred [1,320] feet) from any existing occupied dwelling; not including the applicant's dwelling. The Planning Commission has the discretion to reduce this distance to no less than five hundred (500) feet based on a review of conditions, such as, but not limited to, location of structures, direction of the Surface Danger Zone, direction of the Firing line to the Target Line, natural vegetation, topography, and noise contours.
- h. Instructor Supervision. A firearms training instructor shall be on-premise of a firearms training facility to directly oversee any active shooting at a firearms training facility.
- i. Hours of Operation. The shooting range of the firearms training facility shall be allowed to operate between 10 AM and 7 PM, Monday through Saturday only during the months of January 1 through September 30, and between 10 AM and 2 PM, Monday through Saturday only from October 1 through December 31.
- j. Liability Insurance. The permittee shall be required to carry a minimum of one million dollars (\$1,000,000.000) of liability insurance paid on an annual basis and annually

provide the Township with a copy of the insurance renewal. Such insurance shall name Banks Township as an additional insured party and shall save and hold Banks Township, its elected and appointed officials, and employees acting within the scope of their duties harmless from and against all claims, demands, and causes of action of any kind or character, including the costs of defense thereof, arising in favor of a person or group's members or employees of third parties on account of any property damage or injury or loss of life arising out of the acts or omissions of the permittee, his/her group, club, or its agents or representatives. The required insurance policy shall contain a provision that the policy cannot be terminated, canceled, or substantially altered without thirty (30) days written notice to the Township.

- k. Application and Site Plan Requirements.
 - i. Permit Application. An application for a permit to establish and operate a firearms training facility shall be submitted by the legal property owner(s) or owner's agent to Banks Township. Such permit shall be secured prior to issuance of any other building or improvement permit by Banks Township.
 - ii. Required Information. The applicant shall provide sufficient information as required by these provisions to properly evaluate the permit application. In addition, copies of any written agreements from the adjoining property owners and a letter from the insurance company to provide liability insurance shall accompany the permit application.
 - iii. Site Plan. A site plan for the entire firearms training facility which shows the following applicable information drawn to an appropriate scale, shall accompany the permit application:
 - a) Property lines for any parcel upon which the firearms training facility is to be located, north arrow, plan scale, date, and ownership information for the site.
 - b) Complete layout of each range, including, shooting stations, or firing lines, target areas, shot-fall zones or safety fans, backstops, berms, and baffles.
 - c) Projected noise contours.
 - d) Existing and proposed structures; occupied dwellings within one-fourth (1/4) mile (one thousand three hundred twenty [1.320] feet); roads, streets, or other access areas; buffer areas; and parking areas for the firearms training facility.
 - e) Lines or notes showing site topography at no more than five-foot contour intervals of the subject property and adjacent properties within 500 feet.
 - f) Any other appropriate information related to the specific type of range(s) being proposed as requested by the Planning Commission.
- l. Technical Information.

Table 1: Maximum Range of Small Arms Ammunition

Caliber	Maximum Range of Small Arms Munitions	
	Meters	Yards
.38 Revolver	1900	2077
.40 Pistol	1908	2086
.45 Pistol	1500	1640
.357 Magnum	2160	2362
9mm Pistol	1740	1902
12 Gauge Shotgun	600	650
.223 / 5.56 Rifles	3100	3390

Source: U.S. Department of Energy; Office of Health, Safety and Security; Range Design Criteria, DOE O 473.3, 06/04/2012

Figure 1: Surface Danger Zone with Impact Berm for Small Arms Firing at Fixed Ground Targets

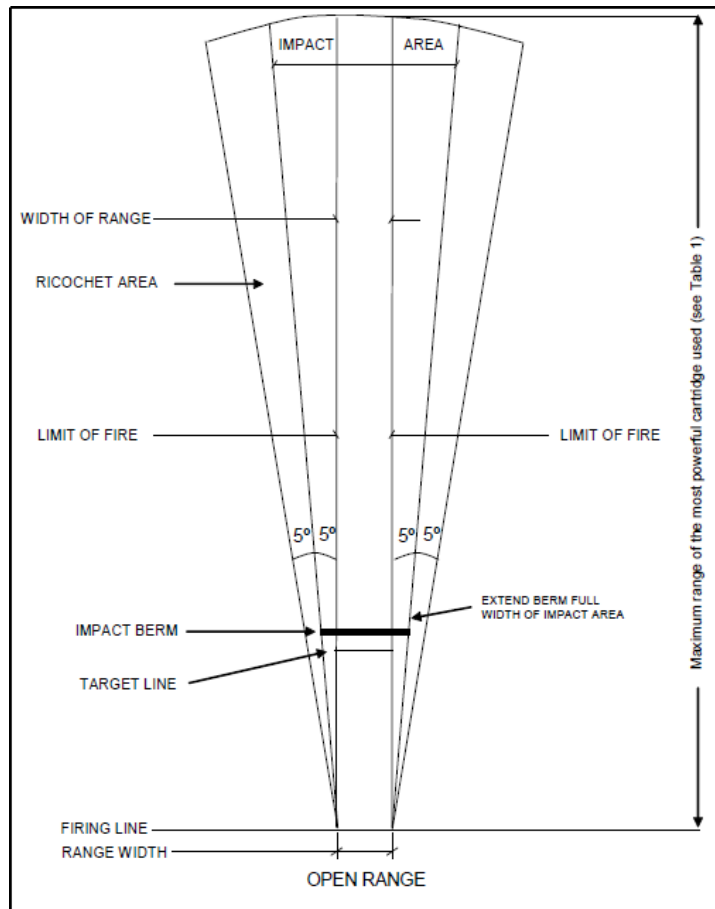
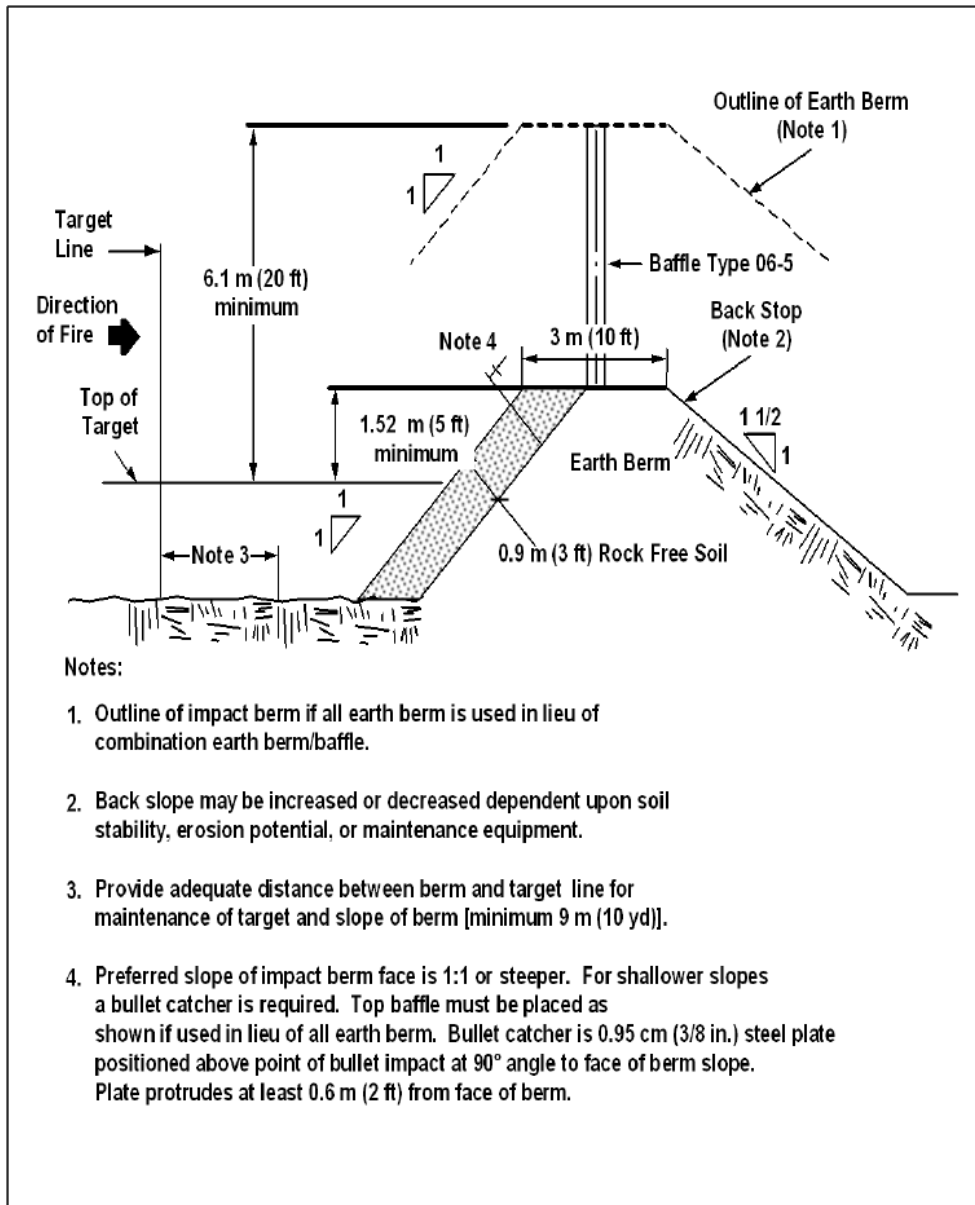


Figure 2: Impact Berm for Open and Partially Baffled Shooting Ranges



- m. Best Practice Management. Shooting range impact berms and shortfall zones are a source of residual lead materials from expended ammunition. Left in the environment, lead materials can migrate to the surface and groundwater. Further, abandonment of the residual lead materials may constitute a hazardous waste and require mitigation through the Resource Conservation and Recover Act (RCRA). Best management practices for lead must be selected to meet site-specific conditions in order to achieve maximum success.
 - i. An application for a firearms training facility with shooting range shall be accompanied by a separate written plan for Management Practices for Lead. At a minimum, such plan shall address site specific conditions outlined by the United States Environmental Protection Agency in their manual *Best*

Management Practices for lead at Outdoor Shooting Ranges, which is EPA-902-B-01-001 Revised, which at a minimum includes all of the following:

- a) Description and identification of a facility's site-specific conditions including, but not limited to:
 1. Range Size;
 2. Soil Characteristics;
 3. Topography and Runoff Direction;
 4. Annual Precipitation;
 5. Depth to Ground Water;
 6. Distance to Surface Water;
 7. Vegetation and Ground Cover;
 8. Accessibility to Reclamation Practices;
 9. Lead Volume;
 10. Size/Caliber of Shot/Bullets;
 11. Operating Schedule;
 12. Shooting Direction and Pattern of Range; and
 13. Range Life Expectancy
 - b) Description of how each of the following practices will be addressed based on these site-specific conditions:
 1. Control and containment of lead shot, bullets, and fragments.
 2. Prevention and migration of lead to the subsurface water and/or surrounding surface water bodies.
 3. Regular recovery or reclamation of lead from the range
 4. Documentation and record keeping of lead recovery, reclamation, control or containment activities as well as soil monitoring, treatment and/or restoration activities.
 - c) Description of any other measures planned to mitigate or minimize the impact of any site-specific conditions listed in this subsection (Section 8.03.18.M).
 - d) A statement certifying that impact soils will be routinely and regularly monitored and inspected, and remediated when required.
 - e) A statement certifying that any and all lead recovery, reclamation, control or containment activities as well as soil monitoring, treatment and/or restoration activities will be recorded and maintained, and that an up-to-date copy of such records shall be provided to the Township upon request.
- ii. Closure of Firearms Training Facility. The following action shall occur when the firearms training facility permanently ceases operation.
 - a) The impact berm shall be demolished, and the dirt shall be disposed in a certified landfill that accepts residual lead materials. The owner shall provide the Township with documentation that confirms the disposal of the material.
 - b) Soil samples shall be conducted in the location of the former impact berm to determine the levels of lead. Based on the sample test results, the firm conducting the samples shall determine if any additional soil remediation is needed to adjust the soil to normal ranges. A copy of the soil samples and soil remediation plan shall be provided to the Township.

- c) Performance Bonds: To ensure compliance with the demolition and removal of the firearms training facility, the Township may require a deposit (cash, certified check, irrevocable bank letter of credit, or security bond), to cover the estimated cost of demolition and removal. The performance guarantee shall be deposited with the Township Clerk, at the time of the issuance of the permit authorizing the activities or project. The Township may not require the deposit of performance guarantee before the Township is prepared to issue the permit.

Section 8.04 Off-Street Parking, Loading and Unloading Requirements and Standards

Off-street parking space with adequate access to all spaces shall be provided and maintained in all zoning districts at the time of erection or alteration of any main building, that is adequate for parking, loading, and unloading of vehicles according to the requirements listed below, and including at least the minimum number of spaces required by the table in Section 8.04.2 Minimum Number of Parking Spaces per Unit.

Section 8.04.1 Parking Requirements

1. Parking for other than residential use shall be either on the same lot or within three hundred (300) feet of the building it is intended to serve, measured from the nearest point of the building to the nearest point of the off-street parking lot.
2. Residential off-street parking space shall consist of a parking strip, driveway, garage or any combination located on the premises they are intended to serve. In a residential district, a licensed commercial vehicle may be parked provided it is owned or operated by someone residing on the premises.
3. Adequate space should be provided in all parking, loading and unloading areas to facilitate turning around of vehicles so that the entry on to streets and county roads may be in a forward manner and not by backing. Furthermore, in parking, loading and unloading areas where internal movement of vehicles is necessary, adequate aisle space shall be provided to ensure vehicular and pedestrian safety.
4. A minimum of one hundred sixty-two (162) square feet shall comprise one (1) vehicular parking space or nine (9) feet by eighteen (18) feet.
5. Computation of floor area of buildings shall be exclusive of basements, cellars or attics where these areas are used for storage or utilities; calculated using the outside perimeter of building. In the case of a single-story structure, the floor area may be reduced by ten (10) percent to accommodate storage or utilities.
6. The Township Planning Commission shall determine the required parking space not specified in Section 8.4.2 Minimum Number of Parking Spaces per Unit.
7. Adequate area must be provided for snow piling and on-site drainage. Handicap parking must be provided as required by State and Federal regulations. Designation of parking area must be clearly identifiable for use by the public.

Section 8.04.2 Minimum Number of Parking Spaces per Unit

Establishment Type	Requirement
Agricultural tourism or agricultural events	One (1) space for every three (3) attendees or workers and attendees at peak capacity, whichever is greater.

Banks, business offices, studios and professional offices of architects, lawyers, etc.	Three (3) parking spaces; plus one (1) additional parking space for each three hundred (300) square feet of floor area
Barber shops and beauty parlors	Two (2) parking spaces for each operator chair; plus one (1) parking space for each two (2) employees.
Bowling establishments	Five (5) parking spaces for each bowling lane.
Churches, theaters and auditoriums except schools	One (1) parking space for each four (4) seats; plus one (1) parking space for each two (2) employees.
Community center, library, museum or art center	One (1) parking space for each two hundred (200) square feet of floor area.
Dwellings	Two (2) parking spaces for each dwelling unit.
Hospitals, clinics, and similar establishments	One (1) parking space for each bed and/or examining room; plus one (1) parking space for each two (2) employees on maximum working shift; plus one (1) parking space for each two hundred (200) square feet of floor area.
Laundromats	One (1) parking space for each two (2) washing machines and/or dry-cleaning machines.
Hotels, motels, tourist homes and lodging house.	One (1) parking space for each sleeping; plus one (1) parking space for each two (2) employees on the maximum working shift.
Manufacturing or industrial establishments, warehouse or similar establishment	Two (2) parking spaces for each two (2) on maximum working shift; plus space to accommodate all vehicles used in connection with the operations of the establishment.
Plumbing, printing and similar service shops and businesses	One (1) parking space for each employee; plus one (1) parking space for each three hundred (300) square feet of floor area.
Private clubs, night club, dance halls and similar recreational establishments	One (1) parking space for each one hundred (100) square feet of floor area.
Professional offices of doctors, dentists, and similar professions	One (1) parking space for each one hundred (100) square feet of floor area or a minimum of four (4) parking spaces, whichever is greater.
Restaurants, and establishments for sale and service of food / drink, except liquor and drive-ins.	One (1) Parking space for each one hundred (100) square feet of floor space.
Retail Stores	One (1) parking space for each one hundred fifty (150) square feet of floor area.
High Schools	One (1) parking space for each six (6) seats in main auditorium or one (1) parking space for each employee; plus one (1) parking space for each four (4) students, whichever is greater.
Schools (except high schools)	One (1) parking space for each ten (10) seats in main assembly room, or one (1) parking space for each employee plus two (2) parking spaces for each classroom, whichever is greater.
Home occupations	Two (2) parking spaces for dwelling use; plus additional parking spaces as determined by Planning Commission to accommodate customers or clients.
Auto repair and service stations	Two (2) parking spaces for each service bay; plus one (1) parking space for each employee on maximum working shift.
Bed and Breakfast establishments	Two (2) parking spaces for the operator; plus one (1) parking space for each guest room; plus one (1) parking space for each nonresident employee

Section 8.04.3 Loading and Unloading Space

Every building or structure engaged in loading and unloading goods shall provide space on the premises in addition to that required for parking, for the loading, unloading, and standing of all vehicles to avoid undue interference with public use of the highway.

Section 8.05 Conditions on Special Approvals

The Planning Commission has the authority to impose reasonable conditions on any special approval granted.

ARTICLE IX: ADMINISTRATION AND ENFORCEMENT OF ORDINANCE

Section 9.01 Zoning Administrator

The provisions of this Ordinance shall be administered and enforced by a Township Zoning Administrator, appointed by the Township Board of Trustees for such term and subject to such conditions and at such rate of compensation as said Board shall determine as reasonable.

Section 9.02 Zoning Permit

1. No building or structure subject to the provisions of this Ordinance shall hereafter be erected, structurally altered, reconstructed, used, or moved, nor shall any excavation of land commence until a Zoning Permit application has been filed with the Township Zoning Administrator and a Zoning Permit has been issued by the Zoning Administrator. No Zoning Permit shall be required for any lawful use of any building or structure in existence as of the adoption date of this Ordinance. The Zoning Administrator shall review the application to determine if all required information was supplied. If the Zoning Administrator determines that all required information was not supplied, he or she shall send written notification to the Applicant of the deficiencies. The application for a zoning permit cannot proceed until all required information has been supplied.
2. The application shall be signed by the owner of the premises or his agent and shall certify that all provisions of this Ordinance and other applicable laws and requirements are to be complied with. Any application requiring approval from the Planning Commission must be submitted not less than thirty (30) days prior to a scheduled meeting for consideration at that Planning Commission meeting. The application shall be accompanied by:
 - a. A site plan, if required, or a sketch to scale in duplicate showing the location and dimensions of the premises including the boundary lines of all parcels of land under separate ownership contained therein; the size, dimensions, location on the premises, and height of all buildings, structures or other impervious surfaces in existence, to be erected and/or altered; the width and alignment of all abutting streets, highways, alleys, easements and public open spaces; the front yard dimensions of the nearest building on both sides of the proposed building or structure; the location and dimensions of sewage disposal facilities both on adjoining land or lots and those to be erected on the lot under consideration; and the location of all wells on adjoining lands or lots and those to be erected on the lot under consideration.
 - b. Copies of permits or waivers of permits by other agencies as may be required by statute and/or by the Zoning Administrator or this Ordinance.
 - c. Such other information as may be required to determine compliance with the Ordinance.
3. A Zoning Permit shall not be issued until all other necessary permits required by statute have been obtained or waived with exception of those permits issued by the Antrim County Building Department.
4. Any Zoning Permit under which no work is done within twelve (12) months from date of issuance shall expire. No permit shall be transferable.
5. The Zoning Administrator shall have the power to revoke or cancel any Zoning Permit: in case of failure or neglect to comply with the provisions of the Ordinance, or in the case of a false statement or misrepresentation made in the application. The owner shall be notified of such

revocation in writing. The Zoning Administrator shall have the authority to issue a stop work order on work in progress when that work violates the zoning ordinance provisions.

6. For each Zoning Permit, a fee shall be paid to the Township Zoning Administrator who shall turn over the funds to the Treasurer. No Zoning Permit shall be valid until the required fees have been paid. No separate fee shall be required for accessory buildings or structures when application thereof is made at the same time as the principal building or structure. Applications and petitions filed pursuant to the provisions of this Ordinance shall be accompanied by the filing fees as specified by the Township Board of Trustees.

Section 9.03 Fees

1. To assist in defraying the costs of investigating, reviewing, and administering zoning applications, appeals, rezoning requests from individual property owners, and other types of decisions which result in extra costs to the Township, the Township Board may from time to time adopt by resolution a fee schedule establishing basic zoning fees related to the following:
 - a. Zoning permits.
 - b. Special use permits.
 - c. Appeals to or requests for interpretations by the Zoning Board of Appeals.
 - d. Appeals and requests for interpretations initiated by the Township Board, the Planning Commission, or the Zoning Administrator shall not be subject to a zoning fee.
 - e. Classification of unlisted property uses.
 - f. Requests to change a nonconforming use to another nonconforming use.
 - g. Requests for variances from the Zoning Board of Appeals.
 - h. Requests for rezoning of property by individual property owners or amendments to the zoning ordinance text. Rezoning of property or text amendments initiated by the Township Board, the Planning Commission, or the Zoning Administrator shall not be subject to a zoning fee.
 - i. Site plan reviews.
 - j. Requests for a planned unit development (PUD).
 - k. Any other discretionary decisions by the Planning Commission or Zoning Board of Appeals.

The amount of these zoning fees shall cover the costs associated with the review of the application or appeal, including but not limited to the costs associated with conducting public hearings, publishing notices in the newspaper, sending required notices to property owners, postage, photocopying, mileage, time spent by zoning staff, and time spent by the members of the Planning Commission and/or Zoning Board of Appeals. The basic zoning fees shall be paid before any application required under this Ordinance is processed. The basic zoning fees are non-refundable, even when an application or appeal is withdrawn by the applicant.

2. If the Planning Commission or Zoning Board of Appeals determines that the basic zoning fees will not cover the actual costs of the application review or appeal, or if the Planning Commission or Zoning Board of Appeals determines that review of the application and/or participation in the review process or appeal by qualified professional planners, engineers, attorneys, or other professionals is necessary, then the applicant shall deposit with the Township Treasurer such additional zoning fees in an amount determined by the Planning Commission or Zoning Board of Appeals equal to the estimated additional costs. The additional zoning fees shall be held in escrow in the applicant's name and shall be used solely to pay these additional costs. If the

amount held in escrow becomes less than ten percent (10%) of the initial escrow deposit or less than ten percent (10%) of the latest additional escrow deposit and review of the application or decision on the appeal is not completed, then the Planning Commission or Zoning Board of Appeals may require the applicant to deposit additional fees into escrow in an amount determined by the Planning Commission or Zoning Board of Appeals to be equal to the estimated costs to complete the review or decide the appeal. Failure of the applicant to make any escrow deposit required under this Ordinance shall be deemed to make the application incomplete or the appeal procedurally defective thereby justifying the denial of the application or the dismissal of the appeal. Any unexpended funds held in escrow shall be returned to the applicant following final action on the application or the final decision on the appeal. Any actual costs incurred by the Township in excess of the amount held in escrow shall be billed to the applicant and shall be paid by the applicant prior to the issuance of any permit or the release of a final decision on an appeal.

Section 9.04 Posting of Financial Guarantee

The Township is empowered to require a performance bond, letter of credit or certified check in an amount equal to the estimated cost of road, lighting, utility, sidewalk, landscaping and drainage improvements associated with the project. Such performance guarantee shall be deposited with the Clerk of the Township at the time of the issuance of the permit authorizing the activity or project to ensure faithful completion of the improvements indicated with the approved site plan; if not, said performance guarantee shall be forfeited. The Township shall rebate a proportional share of cash deposits only when requested by the depositor, based on the percent of improvement completed, as attested to by the depositor and verified by the Zoning Administrator. In cases where provisions of this Ordinance have not been met, the amount of the aforementioned performance guarantee shall be used by the Township to complete the required improvements; and the balance, if any, shall be returned to the applicant.

Section 9.05 Violations and Penalties

Section 9.05.1 Nuisance per se

Any land, dwellings, buildings or structures, including tents and trailer coaches, used, erected, altered, razed or converted in violation of this Ordinance or in violation of any regulations, conditions, permits or other rights granted, adopted or issued pursuant to this Ordinance are hereby declared to be a nuisance per se.

Section 9.05.2 Inspection

The Zoning Administrator shall have the duty to investigate each alleged violation and shall have the right to inspect any property for which a zoning permit has been issued to ensure compliance with the plans and conditions of the zoning permit or approved site plan.

Section 9.05.3 Penalties

1. Any person, partnership, limited liability company, corporation, or association who creates or maintains a nuisance per se or who violates or fails to comply with this Ordinance or any permit issued pursuant to this Ordinance shall be responsible for a municipal civil infraction as defined in Public Act 12 of 1994, amending Public Act 236 of 1961, being Sections 600.101-600.9939 of the

Michigan Compiled Laws, and shall be subject to a fine of not more than Five Hundred and 00/100 (\$500.00) Dollars. Every day that such violation continues shall constitute a separate and distinct offense under the provisions of this Ordinance. Nothing in this section shall exempt the offender from compliance with provisions of this Ordinance.

2. The Township Zoning Administrator is hereby designated as the authorized Township official to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court.
3. In addition to enforcing this Ordinance, as a municipal civil infraction, the Township may initiate proceedings in the Circuit Court to abate or eliminate the nuisance per se or any other violation of this Ordinance.

Section 9.05.4 Conflicting Regulations

In the interpretation of this Ordinance, this Ordinance shall rule unless there exists a conflict with a regulation, deed restriction or private covenant which is more stringent, in which case the more stringent regulations will rule.

ARTICLE X: BOARD OF APPEALS

Section 10.01 Creation and Membership

There is hereby established a Zoning Board of Appeals which shall perform its duties and exercise its powers as provided in Michigan Zoning Enabling Act, Act 110 of 2006, as amended, and in such a way that the objectives of this Ordinance shall be observed, public safety secured, and justice done. The Board shall consist of the following five (5) members.

1. The first member shall be a member of the Township Planning Commission for the terms of his/her office.
2. And, remaining members must be selected from the electors of the Township residing outside of incorporated cities and villages and shall be representative of the population distribution and of the various interests present in the Township. One (1) member may be a member of the Township Board.
3. An elected officer of the Township shall not serve as chairman. An employee or contractor of the Township Board may not serve as a member or an employee of the Board of Appeals.
4. The Township Board may appoint not more than two (2) alternate members for the same term as regular members to the Zoning Board of Appeals. An alternate member may be called to sit as a regular member of the Zoning Board of Appeals in the absence of a regular member if a regular member is absent from or unable to attend two (2) or more consecutive meetings of the Zoning Board of Appeals or for a period of more than thirty (30) consecutive days. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member having been appointed shall serve in the case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals.

Section 10.02 Meetings

Meetings of the Board of Appeals shall be held at the call of the Chairman and at such other times as such Board may determine or specify in its rules or procedure. All hearings conducted by said Board shall be open to the public. The Board of Appeals shall adopt its own rules of procedure and keep a record of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating said fact; and shall file a record of its proceedings in the office of the Township Clerk, and shall be a public record. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of an applicant any matter upon which they are required to pass under this Ordinance or to affect any variation of this Ordinance.

The Board of Appeals shall not conduct business unless a majority of those Board of Appeals members qualified to sit for a particular matter are present to constitute a quorum, regardless of whether the members are regular members or alternate members.

Section 10.03 Appeal

1. An appeal concerning the administration of the provisions of this Ordinance may be taken to the Board of Appeals within the timeframe defined in the general rules and procedures adopted by the

Zoning Board of Appeals. If such a timeframe is not specified, appeals shall be filed within sixty (60) days of the decision of the Zoning Administrator from which the appellant seeks relief.

2. The ZBA may hear appeals made by and grant variances to any person who alleges he or she has been aggrieved by a decision of the Zoning Administrator. The ZBA may also interpret the location of zoning district boundaries and may interpret the provisions of this Ordinance.
3. An appeal may be made by any person, firm or corporation, or by any Officer, Department or Board of the Township. The appellant shall file with the Board of Appeals, on blanks or forms to be furnished by the Zoning Administrator, a notice of appeal specifying the grounds for the appeal.
4. The Zoning Administrator shall transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken. The final decision of such appeal shall be in the form of a resolution either reversing, modifying or affirming, wholly or partly, the decision or determination appealed from. Reasons for the decision must be stated.
5. In rendering a decision, the ZBA may, by a concurring vote of a majority of its members, reverse or affirm in whole or in part a decision or determination made by the Zoning Administrator or may grant a variance from the Ordinance provision(s) from which the appeal was sought.
6. Any person may appear and testify at the hearing either in person or by duly authorized agent or attorney.

Section 10.04 Limitations on Authority

The ZBA has no authority to overrule a Planning Commission decision on applications for Site Plan Review, Special Uses, or Planned Unit Developments.

Section 10.05 Stay

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Appeals after notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by the Circuit Court, on application, on notice of the Zoning Administrator and on due course shown.

Section 10.06 Variances

1. Dimensional Variances: The ZBA may grant dimensional variances when the applicant demonstrates in the official record of the hearing that the strict enforcement of this Ordinance would result in practical difficulty. To establish practical difficulty, the applicant must establish all of the following:
 - a. The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.
 - b. The need for the requested variance is not the result of action of the property owner or previous property owners (self-created).
 - c. That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose or will render conformity with those regulations unnecessarily burdensome.
 - d. Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than

- requested would give a substantial relief to the property owner and be more consistent with justice to other property owners.
- e. That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district.
2. Use Variances: The ZBA may grant use variances when the applicant demonstrates in the official record of the hearing that the strict enforcement of this Ordinance would result in unnecessary hardship. To establish unnecessary hardship, the applicant must establish all of the following:
- a. The building, structure or land cannot be reasonably used for any of the uses permitted by right or by special approval in the zoning district in which it is located.
 - b. The need for the requested variance is due to unique circumstances peculiar to the applicant's property and not due to general neighborhood conditions.
 - c. The proposed use of applicant's property will not alter the essential character of the neighborhood.
 - d. The need for the requested variance is not the result of actions of the property owner or previous property owners (self-created).

Section 10.07 Zoning Board of Appeals Approval

The ZBA may require an appellant to submit surveys, plans, or other information deemed reasonably necessary to making an informed decision on his or her appeal. The ZBA may impose such conditions or limitations in granting a variance as deemed necessary to protect the character of the area.

Section 10.08 Exercising Powers

In exercising the above powers, the Board of Appeals may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Zoning Administrator from whom the appeal is taken.

Section 10.09 Notice of Hearing

The Board of Appeals shall make no recommendations except in a specific case and after a public hearing is conducted by the Zoning Board of Appeals. A notice of the time and place of such hearing shall be published in a paper of general circulation in the Township. Such notice shall contain the address, if available, and location of the property for which the variation or other ruling by the Board of Appeals is sought, as well as a brief description of the nature of the appeal.

Additionally, a notice stating the time, place and object of the hearing to be served personally or by mail addressed to the parties making the request for appeal and to all property owners within three hundred (300) feet of the property in question, not less than fifteen (15) days prior to the date of the scheduled hearing. Such notices shall be served personally or sent to the respective owners and tenants at the address given on the last assessment roll. The Zoning Board of Appeals may recess such hearings from time to time and reconvene as per provisions of the Open Meetings Act.

Section 10.10 Miscellaneous

No order of the Board of Appeals permitting the erection or alteration of a building shall be valid for a period longer than one (1) year, unless a building permit for such erection or alteration is obtained

within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

No order of the Board of Appeals permitting the use of a building or premises shall be valid for a period longer than one (1) year unless such use is established within such period; provided, however, that where such use permitted is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for said erection or alteration is obtained within such period of erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

Section 10.11 Denial and Resubmittal

No application for a variance which has been denied wholly or in part by the Zoning Board of Appeals shall be submitted for a period of one (1) year from the date of the last denial, except on grounds of newly discovered evidence or when the township's attorney certifies in writing that a procedural error occurred in the original hearing.

ARTICLE XI: AMENDMENTS AND ENACTMENT

Section 11.01 Amendment to this Ordinance

1. The Township Board is authorized and empowered to cause this Ordinance to be amended, supplemented, or changed, pursuant to the authority and according to the procedures set forth in the Michigan Zoning Enabling Act, Act 110 of 2006, as amended.
 - a. The regulations and provisions stated in the text of this Ordinance and the boundaries of zoning districts shown on the Banks Township Zoning Map may be amended, supplemented or changed by action of the Township Board following a recommendation from the Township Planning Commission.
 - b. Proposals for amendments, supplements or changes may be initiated by the Township Board on its own motion, by the Township Planning Commission, Zoning Board of Appeals, Zoning Administrator, or by petition of one (1) or more owners of property to be affected by the proposed amendment.
 - c. The procedure to be followed for initiating and processing an amendment shall be as follows:
 - i. Each petition by one (1) or more persons for an amendment shall be submitted by application to the Zoning Administrator on a standard form provided and shall be accompanied by the fee as prescribed by the Township Board. No part of such fee shall be returnable to a petitioner if the public hearing is held.
 - ii. The Zoning Administrator shall notify, in writing, the Township Clerk and Chair of the Planning Commission at or before the time s/he transmits the amendment request to the Planning Commission.
 - iii. The Planning Commission shall consider each proposal for amendment on particular factors related to the individual proposal and in terms of the likely effect on the community's physical development. The Planning Commission may recommend any additions or modifications to the original proposal.
 - iv. Before ruling on any proposal the Planning Commission shall conduct at least one (1) public hearing, notice of the time and place of which shall be given by one (1) publication in a newspaper of general circulation in the Township, to be printed not less than fifteen (15) days before the date of such hearing and by notifying all property owners within three hundred (300) feet of any land proposed for rezoning. Not less than fifteen (15) days notice of the time and place of such hearing shall also be given by mail to each public utility company and railroad within the zone affected who have registered to receive such notices. The notices shall include the places and times at which the tentative text and any map of the Zoning Ordinance may be examined and shall be verified by an affidavit of mailing or personal service.
 - v. Following the public hearing the Planning Commission shall submit the proposed amendment including any zoning map changes to the County Planning Commission. If the recommendation of the County Planning Commission has not been received within 30 days after the receipt of the Ordinance by the County, it shall be conclusively presumed that the County has waived its right for review.
 - vi. The Planning Commission shall submit a final report/recommendation to the Township Board along with a summary of the comments received at the public hearing.

- vii. After the Township Board receives the summary and recommendation from the Planning Commission (and after the County Planning Commission report has been submitted or after the 30-day prior has expired, whichever comes first), the Township Board may act on the Zoning Ordinance amendment.
 - a) If a property owner requests a public hearing on the Zoning Ordinance amendment (by sending the request by certified mail addressed to the Township Clerk), the Township Board must hold the public hearing following the procedures outlined below. The Township Board shall request the Planning Commission to attend this public hearing.
 - b) If the Township Clerk does not receive a request for a public hearing, the Township Board may still elect to hold additional public hearings if it considers it necessary. If the Township Board holds public hearings, the following procedure must be observed.
 - 1) The notice of public hearing must be published not less than 15 days before the hearing in a newspaper of general circulation in the Township.
 - 2) If the Township Board considers revisions to the proposed text or a Zoning Ordinance advisable, it must refer those revisions back to the Planning Commission for a report thereon within a time specified by the Township Board.
 - c) If the Township Board does not hold a public hearing or after any public hearing(s) are held, the Township Board, at a regular meeting or a special meeting called for that purpose, may adopt by a majority vote of its membership the Zoning Ordinance amendment.
 - 1) The Township Board may consider amendments that have previously been considered by the Planning Commission and for which the Planning Commission has held a public hearing.
 - 2) Subject to the right to a referendum, the Zoning Ordinance amendment shall take effect upon the expiration of 7 days (i.e. effective on the 8th day) after publication or at such later date after publication as may be specified by the Township Board.
- viii. Once adopted by the Township Board, amendments to this Ordinance shall be filed with the Township Clerk, and one (1) notice of adoption shall be published in a newspaper of general circulation in the Township within fifteen (15) days after adoption. Any amendments to this Ordinance shall take effect eight (8) days after publication or at a later date as may be specified by the Township Board at the time of adoption.
 - a) The notice of Ordinance adoption must contain the following information:
 - 1) Either a summary of the regulatory effect of the Zoning Ordinance amendment, including the geographical area affected, or the text of the Zoning Ordinance amendment.
 - 2) The effective date of the Zoning Ordinance amendment
 - 3) The place and time where a copy of the Zoning Ordinance amendment may be purchased or inspected.
- ix. No application for a rezoning which has been denied by the Township shall be resubmitted for a period of one (1) year from the date of the last denial, except on

grounds of newly discovered evidence or proof of changed conditions found upon inspection by the Township Planning Commission to be valid.

- d. The following procedures must be followed to obtain a referendum on a zoning amendment:
 - i. Within seven (7) days after publication of a zoning ordinance amendment, a registered elector residing in the township outside of any incorporated village may file with the township clerk a notice of intent to file a petition for a referendum.
 - ii. Upon filing the notice of intent, the zoning ordinance amendment shall not take effect until one of the following occurs:
 - a) The expiration of thirty (30) days after publication of the zoning ordinance amendment, if a petition for a referendum is not filed within that time.
 - b) If a petition is filed within thirty (30) days after publication of the zoning ordinance amendment, the township clerk determines that the petition is inadequate.
 - c) If a petition is filed within thirty days after publication of the zoning ordinance amendment, the township clerk determines that the petition is adequate and the ordinance is approved at an election. (Only township electors residing outside the limits of incorporated villages or cities can vote in this election.)
 - iii. The petition must be signed by a number of registered electors in the township outside the limits of the villages and cities equal to not less than ten percent (10%) of the total votes cast for all candidates for governor in the last election in the township.
 - iv. The township board shall provide the manner of submitting the zoning ordinance amendment or a portion of the zoning ordinance amendment to the electors for their approval or rejection and determining the results of the election.

Section 11.02 Enactment and Effective Date

1. This Ordinance was adopted on May 15, 2000 by the Banks Township Board of Trustees and will be effective eight (8) days after publication of a notice of adoption, which must be published within fifteen (15) days of its adoption. The Zoning Ordinance effective date is June 1, 2000. The foregoing Zoning Ordinance and Zoning Map were presented at public hearings on October 21, 1999 and April 13, 2000.
2. Amendments or revision to this Ordinance or Map of Zoning Districts shall become effective eight (8) days after publication of a notice of adoption of said amendments or revisions within fifteen (15) days of adoption in accordance with the Michigan Zoning Enabling Act, Act 110 of 2006, as amended.

ARTICLE XII: TRANSITORY EXTRACTION OF NATURAL RESOURCES USE

PART I. INTRODUCTION

Section 12.01. General Intent

This Article XII of the Zoning Ordinance is intended to provide the procedure and standards for review and approval of applications seeking permission to conduct the land use of extracting natural resources in Banks Township ("Transitory Extraction of Natural Resources Use") in accordance with MCL 125.3205(3), *et seq.* enacted by Act 113, PA 2011, as amended ("Gravel Statute"). As described and explained in this Article, Transitory Extraction of Natural Resources Use in Banks Township shall require legislative approval of a planned unit development ("Transitory Extraction Use Planned Unit Development") under Part III of this Article. As a condition to being entitled to file an application under Part III, an applicant must first seek and obtain administrative approval under Part II, which imposes the requirements specified in subsections (3) and (4) of the Gravel Statute, MCL 125.3205(3) and (4), and requires an applicant to demonstrate such pre-conditions in order to be entitled to apply for the extraordinary zoning treatment provided under the Gravel Statute.

In conformance with the Gravel Statute, the application and approval process under this Article XII shall be divided into two parts.

A. Part II provides an administrative review process to determine whether the applicant has demonstrated a sufficient property interest in the natural resource, whether valuable natural resources are located on the applicant's property, and whether there is a need for the natural resource sought to be extracted. Part II shall consist of an administrative proceeding. The Planning Commission shall conduct an initial public hearing and make findings and a recommendation to the Township Board, and the Township Board shall make the final Part II administrative determination.

B. Once an applicant has received approval under Part II, a legislative review and approval process is provided in Part III for an application for classification of the applicant's property to Transitory Extraction Use Planned Unit Development. This process is intended to determine whether the applicant has demonstrated that the applicant's proposed extractive use would result in "no very serious consequences" as determined under the Michigan Zoning Enabling Act.

Section 12.02 Legislative Findings by Township Board for this Article XII

The Michigan Supreme Court observed the following points in *Kyser v Kasson Township*, 486 Mich 514, 518 (2010) ("*Kyser*"):

A. Referring to MCL 125.3201, the Zoning Enabling Act ("ZEA") directs that the power of local government units to regulate the use of land is to be exercised by dividing the community into uniform zoning districts:

1. A local unit of government may provide by zoning ordinance for the regulation of land development and the **establishment of 1 or more districts within its zoning jurisdiction** which regulate the use of land and structures to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, ... to ensure that use of the land is situated in appropriate locations and relationships, ... to facilitate adequate and efficient provision for transportation systems, ... and to promote public health, safety, and welfare.
2. Except as otherwise provided under this act, the regulations shall be **uniform** for each class of land or buildings, dwellings, and structures **within a district**.
3. A local unit of government may provide under the zoning ordinance for the regulation of

land development **and the establishment of districts** which apply only to land areas and activities involved in a special program ... and the **establishment of districts** in areas subject to damage from flooding or beach erosion. (Emphasis supplied)

B. The exercise of the zoning authority under MCL 125.3201(1) and (3) (quoted above) is an empowerment of local legislative bodies (e.g., township boards) to plan and zone for a broad range of purposes. These provisions reveal the comprehensive nature of the ZEA. It defines the fundamental structure of a zoning ordinance by requiring a zoning plan to take into account the interests of the entire community and to ensure that a broad range of land uses is permitted within that community. These provisions empower localities to plan for, and regulate, a broad array of land uses, taking into consideration the full range of planning concerns that affect the public health, safety, and welfare of the community.

C. The provisions of Gravel Statute read in light of the ZEA as a whole create an exception to the general rule of intended authority and discretion of municipalities clarified in *Kyser*. Thus, under the customary rules of statutory construction, an exception to a general rule of zoning and planning as contained in the Gravel Statute must be construed narrowly, and the applicant must satisfy the burden to prove each of the required showings under this Article, including:

1. The burden to prove the three elements identified in the Preliminary Administrative Procedure subsection of this Article; and if it is found that the applicant has met this burden;
2. The burden to prove that no very serious consequences would result from the proposed natural resource extraction on the property, *i.e.*, the change in the land use authorization on the subject property established by the Township that prohibits such use, a prohibition relied upon by Township property owners in zoning districts throughout the Township consistent with the doctrine of average reciprocity of advantage (*see, Penn Central Transportation Co. v City of New York*, 438 US 104,139-140 (1978)).

D. The Gravel Statute specifies that the standards in *Silva v Ada Township*, 416 Mich. 153 (1982) "*Silva*") shall be applied in reviewing an application to permit the extraction of natural resources. As dictated by Michigan Supreme Court the existing zoning ordinance shall be presumed to be reasonable for purposes of substantive due process.

E. By reference to *Silva*, the Gravel Statute directs an alternative due process analysis exclusively for natural resource extraction use. However, the Gravel Statute remains within the context of land use decision making established in the ZEA as a whole. Accordingly, reading the ZEA as a whole in the manner directed in *Kyser*, any decision to approve natural resource extraction under this ordinance must consider the decision's effect not only on a specific project or property, but also upon the impact upon the surrounding area, future planning and all land use in the Township.

F. Based on the history, tradition, and underlying basis for the authorization of zoning by the Supreme Court of the United States in *Village of Euclid v Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 54 A.L.R. 1016, 71 L.Ed. 303 (1926), the Planning Commission and Township Board make the legislative finding that the single most important purpose of zoning in Banks Township is to protect the public health and safety, and promote the public welfare, of families and children by the separation and organization of districts zoned to permit residential use and other uses predominantly for families and children. It is the further legislative finding that zoning in Banks Township is intended to serve as the basis for carrying out the functions and purposes clarified in the Michigan Supreme Court's *Kyser* case, including the authorization for the exercise of the police power to achieve the value judgments that must be made regarding aesthetics, economics, transportation, health, safety, and a community's aspirations, and values in general.

PART II. ADMINISTRATIVE DETERMINATION OF ENTITLEMENT TO APPLY FOR PLANNED UNIT DEVELOPMENT CLASSIFICATION FOR TRANSITORY EXTRACTION OF NATURAL RESOURCES

Section 12.03 Definition

There are certain terms stated in the Gravel Statute that require interpretation. There has been insufficient litigation and decision making that might otherwise provide a meaningful understanding of these terms. In order to provide guidance for purposes of proceedings conducted at the Township, the following definitions are provided.

A. As used in this Article, "*Need for the Natural Resources*," is intended to refer to the phrase in MCL 125.3205(4): "Need for the Natural Resources by the person or in the market served by the person," and shall include a demonstrable need for a commercially meaningful quantity of the natural resources proposed to be excavated on the applicant's property. To the extent included in the applicant's application, demonstrating such a need shall require the applicant to show the following in relation to the natural resources on applicant's property: a commercial need for the natural resources to satisfy a present and ongoing requirement by an active business operated principally by the applicant using the natural resources in the production of a new and different product for sale; or a present and ongoing commercial need by purchasers of such natural resources from the applicant's property within the market described in the application. For purposes of this definition of Need for the Natural Resources:

1. "commercial need" in relation to applicant's property will only be deemed to exist if and to the extent the need for the natural resources cannot otherwise be met from other viable sources within the commercial market.
2. "commercially meaningful quantity" shall mean that quantity, taking into consideration the quality and type of natural resources, that a person who is experienced and knowledgeable in the industry would require as a condition to investing the time and money necessary to commence and operate a mining enterprise that is expected to be profitable for a sustained period of time.
3. "commercial market" means that geographic area within which there would be a commercial demand for the natural resources from the applicant's property, considering factors including, but not limited to: the transportation expenses and other factors relevant to cost; and the actual or available alternative supply of the natural resources from active mining sites and vacant land classified to permit mining within the market area, *i.e.*, the supply from all other active mines, quarries, and vacant land classified for such purpose that could provide an alternative supply to meet such demand in whole or part within the market area.

B. As used in this Article, the phrase "sufficiency of applicant's property interest" shall mean a requirement that, with regard to the land which is the subject of the application, all persons who (a) file as applicant, and (b) consent in writing to the application, together are vested with all possessory property rights in the land, as understood in Michigan real property law, including all interests in the land that must be joined in the application in order to avoid a dispute with regard to whether the applicant is authorized to make application and conduct an extraction operation if approved under this Article XII.

Section 12.04 Part II Review Process: Three Factor Preliminary Administrative Determination

A. Review of an application to permit a Transitory Extraction Use Planned Unit Development shall begin with a preliminary administrative proceeding in which the applicant must demonstrate qualification to seek rezoning approval. This preliminary administrative proceeding shall be commenced by filing an application for an administrative determination with regard to the following, consistent with the terms defined above: the sufficiency of the applicant's property interest; a determination as to whether there are "valuable" natural resources on the applicant's property, that is, whether the applicant can receive revenue and reasonably expects to operate at

a profit if the natural resources are extracted; and the Need for the Natural Resources, including a determination on the duration of the need.

The application shall provide written documentation and evidence describing in detail and making the requisite demonstration with regard to each of the three determinations. The specific application form shall be developed by Township officials and representatives and presented to the Township Board for approval by Resolution.

For purposes of this preliminary administrative review process, the Planning Commission shall conduct an administrative hearing on the application, which shall be a public hearing. Prior to the hearing, the Township Zoning Administrator shall review the application and documentation submitted in support of the application, and report any deficiencies to the applicant and the Planning Commission within a reasonable time. The hearing shall not be noticed until the applicant has cured the deficiencies found to exist in accordance with this procedure. Public notice of the hearing shall be provided in the manner specified in the ZEA for public hearings for the review of a special land use.

B. At the hearing the applicant shall have the initial burden of showing:

1. The sufficiency of the applicant's property interest; and
2. The natural resources are "valuable," that is, the applicant can receive revenue and reasonably expects to operate at a profit if the natural resources are extracted; and
3. The Need for the Natural Resources. This determination shall include the duration of the Need for the Natural Resources, which should correspond with the duration of the disruption of the Township authorized only as a result of applying the special treatment specified in the Gravel Statute.

C. The public hearing shall begin with an introduction by the person designated by the Planning Commission chairperson. The applicant shall then be given the opportunity to make the three proofs required in paragraph (2), above. At the completion of the applicant's presentation the Township, through its representatives may address and offer evidence or argument on these issues. Members of the public shall then have the opportunity to address and offer evidence or argument on these issues. If requested, the applicant shall be provided with an opportunity to rebut evidence and argument presented, but for efficiency purposes shall not be permitted to duplicate evidence on matters included in applicant's earlier presentation. Likewise, any new matters addressed by the applicant may be rebutted by representatives of the Township and members of the public. The public hearing shall then be closed.

D. Following completion of the public hearing, either at the same meeting at which the public hearing was held, or at some later meeting, the Planning Commission shall, based on the record made, adopt findings and recommendations on whether the applicant has made a sufficient showing on each of the determinations in subparagraphs (1) through (3) of paragraph (B), above. Township representatives may assist the Planning Commission with the articulation of its findings and recommendations.

E. The Planning Commission shall forward its findings and recommendation to the Township Board which shall, taking into consideration the evidence from the public hearing and the Planning Commission's recommendation, then make its own findings and conclusions on each of the three determinations in subparagraphs (1) through (3) in paragraph (B), above. The Township Board may conduct an additional public hearing at its discretion. If the Township Board does schedule an additional public hearing, the notice requirement and proceedings conducted shall conform to the procedure set above for the Planning Commission public hearing.

F. Appeal. With regard to all findings and conclusions made by the Township Board, an aggrieved applicant or other interested party may appeal to the circuit court.

PART III - LEGISLATIVE DETERMINATION OF APPLICATION FOR REZONING TO PLANNED UNIT DEVELOPMENT CLASSIFICATION FOR TRANSITORY EXTRACTION OF NATURAL RESOURCES

An applicant for a transitory extraction of natural resources use as addressed in MCL 125.3205 may apply for legislative approval of a rezoning of its property to Transitory Extraction Use Planned Unit Development classification under this Part III of this Article XII only if the Township Board first makes the administrative determination that the applicant has demonstrated the administrative requirements specified in Part II of this Article.

Section 12.05 Part III Reconciliation of the Gravel Statute with the Zoning Enabling Act as a Whole; Creation of Planned Unit Development Classification for Extraction Use

The Gravel Statute (MCL 125.3205) directs that the Township shall not prevent the extraction, by mining, of valuable natural resources from any property in the entire Township if it is demonstrated that no very serious consequences would result from the extraction of those natural resources, referring to the standards in *Silva v Ada Township*, 416 Mich 153 (1982) ("the Silva Standard"). There are fundamental issues pertaining to the Silva Standard that require attention in this ordinance in order to reconcile the Silva Standard with the Zoning Enabling Act, MCL 125.3201, *et seq.*, as a whole ("ZEA"), and with the exercise of the zoning authority as approved by the courts:

Whether there are "very serious consequences" is a question ambiguous on its face. Although some attempt is made in the Gravel Statute to provide examples of more specific standards to determine very serious consequences, the Gravel Statute specifies that these more specific examples are in addition to the Silva Standard, and thus do not provide the needed clarification. Determining whether there are very serious consequences requires additional standards, and must consider local conditions and circumstances.

Implicit in the Silva Standard adopted by the Gravel Statute are important characteristics of Transitory Extraction Use, matters of both fact and law, that require clarification in order to reconcile the Gravel Statute with the ZEA as a whole, including (but not limited to):

A. Unlike most land uses, a Transitory Extraction Use amounts to a transitory use that will have a duration based on various circumstances such as the quantity and quality of resources to be extracted in a particular location, the extent and duration of 'need' for the resources from such location, and other factors. "Extraction of natural resources is frequently a temporary use of the land and that the land can often be restored for other uses and appropriate assurances with adequate security can properly be demanded as a precondition to the commencement of extraction operations." *Silva v Ada Township*, 416 Mich. 153, 160-161 (1982).

B. The Gravel Statute, read in isolation, *i.e.*, absent additional standards, purports to allow for Transitory Extraction Use in a manner entirely distinct from the planning and use district allocation specified in the ZEA as a whole, with the Legislature in the Gravel Statute directing the Courts to apply a specific Due Process standard to scrutinize a denial of a proposed use. Such mandated Due Process standard has not been adjudicated by the Courts; rather, the legislatively mandated standard is distinct from and foreign to the Due Process standard established by the Courts and applied in all other zoning considerations.

C. The Gravel Statute, read literally, *i.e.*, absent additional standards, authorizes approval for Transitory Extraction Use within any zoning district, even though the general rule applicable to the exercise of zoning authority is to separate uses based on use district classifications. This literal reading of the Gravel Statute creates particular issues in cases in which a heavy industrial use (such as Transitory Extraction Use) would be approved within a residential or other district, due to the direct conflict with achieving the objectives specified in the ZEA that provides that "[a] local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state's citizens for food, fiber, energy, and other natural

resources, ... to facilitate adequate and efficient provision for transportation systems, ... and to promote public health, safety, and welfare." As this zoning authority has been interpreted, the "scope of the power to protect the public health, safety, and welfare within the zoning context is not confined to elimination of filth, stench, and unhealthy places, but includes the authority to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974). In addition, a community is authorized to enact land-use regulations to enhance quality of life by preserving the character and desirable aesthetic features of a city. *Penn Central Transportation Co. v New York City*, 438 US 104 (1978).

D. Authorization and operation of a heavy industrial Transitory Extraction Use operation in residential or other zoning districts creates a significant regulatory challenge for the Township, particularly in comparison with the authorization of nearly any other use considering the distinct impacts of the Transitory Extraction Use on the immediate surrounding area, as well as the area along the haul route utilized by the Transitory Extraction Use. The need for additional standards is manifest.

E. Approval of a heavy industrial Transitory Extraction Use operation in residential or other zoning districts is directed by a literal reading of the Gravel Statute without expressly stated regard for, and in conflict with, a community's Master Plan in accordance with which zoning is to be established. The ZEA, MCL 125.3203, provides that "[a] zoning ordinance shall be based upon a plan designed to promote the public health, safety, and general welfare, ... to conserve natural resources and energy, to meet the needs of the state's residents for ... other natural resources, ... industry, ... and other uses of land, to ensure that uses of the land shall be situated in appropriate locations and relationships, ... to reduce hazards to life and property, to facilitate adequate provision for a system of transportation... A zoning ordinance shall be made with reasonable consideration of the character of each district, its peculiar suitability for particular uses, the conservation of property values and natural resources, and the general and appropriate trend and character of land, building, and population development." Accordingly, recognizing how each local government has formulated its master plan and system of zoning districts is an analysis that is inseparable from the authorized exercise of the zoning authority. There is a need for additional standards for decision making in order to achieve the necessary reconciliation among all sections of the ZEA.

F. In light of the fundamental issues described above relating to a literal reading of the Silva Standard, the courts may ultimately find the Gravel Statute invalid and unauthorized. In the meantime, the Township must attempt to exercise its zoning authority in the manner provided by existing law. In this regard, the Township has concluded that the only permissible exercise of zoning authority that could provide a reconciliation of a literal reading of the Gravel Statute with the ZEA as a whole, and with the common law of zoning, is an invocation of the planned unit development authorization in PICL 125.3503 for approving uses in residential and other zoning districts. This invocation would require classification of Transitory Extraction Uses as "planned unit developments." For the reasons spelled out in paragraphs 12.05 A and B of this Part III, above, the Gravel Statute standing alone fails to provide an express reconciliation with the ZEA as a whole, or with the common law of zoning under the judicially established standard of Due Process. The utilization of the planned unit development authorization is within the intent of the ZEA as a whole for providing a permissible means of achieving such reconciliation. The ZEA, in MCL 125.3503(3), provides that "[t]he planned unit development regulations need not be uniform with regard to each type of land use if equitable procedures recognizing due process principles and avoiding arbitrary decisions are followed in making regulatory decisions," thus affording the means of reconciliation. The standards in this Part III are intended to provide the needed equitable procedures recognizing due process principles and avoiding arbitrary decisions.

G. Accordingly, a Transitory Extraction Use Planned Unit Development zoning classification

("Transitory Extraction Use PUD") is hereby established, and an applicant for a Transitory Extraction Use must meet all of the requirements contained in this Part III, which are deemed to be within the authorization provided by PICL 125.3205 and MCL 125.3503. A property for which a Transitory Extraction Use PUD is approved shall be classified on the Zoning Map as "Transitory Extraction Use PUD."

H. Approval of a Transitory Extraction Use PUD shall require amendment of the zoning ordinance in accordance with this Part III, and shall not be deemed to be the subject of administrative approval.

Section 12.06 Application for Transitory Extraction Use PUD; Standards for Review

A. The application form for Part III of this Article XII shall be approved by resolution of the Township Board, and shall require the submission of sufficient information for use by the Township in reviewing the relevant issues, including:

1. The issues required to be considered based on the Silva Standard in the Gravel Statute; and
2. The more specific standards in the Gravel Statute specified in subparagraphs MCL 125.3205(5) (a)-(f).

As explained above, reconciliation of the Gravel Statute and the ZEA as a whole requires application of all standards contained in this Part III. The standards in this Part III provide necessary clarification for considering the Silva Standard and specific standards in the Gravel Statute. All of the standards in this Part III shall therefore be deemed to guide and reconcile the statutory standards of the Gravel Statute with the implicitly authorized authority contained in the Zoning Enabling Act as a whole and MCL 125.3503 in particular.

An application for Transitory Extraction Use, including haul route, shall include a Transitory Extraction Use Plan, which shall provide a detailed plan for the property which is the subject of the rezoning, and show the property along all haul routes within the Township. The Transitory Extraction Use Plan shall be prepared by a licensed professional civil engineer, or comparable professional, and shall show the location, size, height, design, architecture or other measure and feature for and of buildings, structures, improvements, operational plan, and other features on the subject property. The details offered by the applicant for inclusion within the Transitory Extraction Use Plan may be required to be modified if relevant for decision making by the Planning Commission or Township Board based on facts that have come to light during the course of the process of consideration, including preliminary review of the application.

B. The standards of this Article XII that shall guide and reconcile the statutory standards of the Gravel Statute with the authority contained in the Zoning Enabling Act as a whole shall be applied to both the Silva Standard and the more specific standards in the Gravel Statute referenced above. These standards shall not be deemed to be exclusive considerations, and the Silva Standards may be interpreted as being clarified based on the application of sound planning principles.

C. The Silva Standard of Review for Legislative Consideration

1. The Gravel Statute specifies that the Township shall not prevent the extraction, by mining, of valuable natural resources from any property unless very serious consequences would result from the extraction of those natural resources. The applicant must demonstrate that no very serious consequences would result from the extraction, by mining, of the natural resources. In determining under this Article whether very serious consequences would result from the extraction, by mining, of natural resources, the standards set forth in *Silva v Ada Township*, 416 Mich 153 (1982), shall be applied, as directed by the Gravel Statute.

2. *Silva v Ada Township* directs that the "no very serious consequences" test is a part of the Due Process "reasonableness" test, a constitutional test applied to determine whether a zoning regulation meets the demands of Due Process. The *Silva* opinion directs that the courts are to apply this different, and more rigorous Due Process standard for "reasonableness" only when the zoning would prevent the extraction of natural resources. The *Silva* opinion has been overruled, and thus has application only by reference by the Michigan legislature in the Gravel Statute. Accordingly, in the Gravel Statute, the Michigan legislative branch directs the Michigan judicial branch to apply a separate and different interpretation of the Due Process clause only for Transitory Extraction Use.

3. The Silva Standard that an applicant must meet for amendment of the zoning ordinance under this Part III requires an applicant to overcome the presumption of validity of existing zoning regulations, and imposes on such applicant the burden of demonstrating that the proposed Transitory Extraction Use, and all associated activities and haul route, would have "no very serious consequences" as provided in *Silva v Ada Township*, presumably including the holdings in cases interpreting *Silva v Ada Township*, e.g., *American Aggregates Corp. v. Highland Township*, 151 Mich App. 37 (1986). Application of this general standard shall be interpreted by the Planning Commission and Township Board on a case by case basis considering all relevant facts and circumstances.

4. While the Gravel Statute specifically addresses natural resource use, other sections of the Zoning Enabling Act do as well. MCL 125.3201 directs that municipalities are to exercise zoning authority by **dividing the community into districts** to achieve the purposes of zoning, including the objectives of meeting "the needs of the state's citizens for ... **natural resources**, ... to facilitate adequate and efficient provision for transportation systems, ... and to promote public health, safety, and welfare." MCL 125.3203 directs that a "zoning ordinance shall be **based upon a plan** designed to promote the public health, safety, and general welfare, ... to conserve natural resources and energy, to **meet the needs of the state's residents for ... other natural resources**, ... industry, ... and other uses of land, to ensure that uses of the land shall be situated in appropriate locations and relationships, ... to reduce hazards to life and property, to facilitate adequate provision for a system of transportation ... **A zoning ordinance shall be made with reasonable consideration of the character of each district, its peculiar suitability for particular uses, the conservation of property values and natural resources**, and the general and appropriate trend and character of land, building, and population development." (Emphasis supplied) These provisions of the ZEA may not be ignored in light of a single section of many sections of the ZEA. Unless and until the Gravel Statute is invalidated, the Gravel Statute must be reconciled with the Zoning Enabling Act as a whole.

5. Standards are provided in this Part III to reconcile the Gravel Statute with the Zoning Enabling Act as a whole, and shall be deemed implicit requirements of the Gravel Statute to be read into, and guide interpretation and decision making under, the Silva Standard that must be met by an applicant for amendment of the zoning ordinance to permit a Transitory Extraction Use. This Part III minimizes the ambiguity of the "no very serious consequences" rule by establishing more specific standards to facilitate understanding of the meaning of the Silva Standard within the context of the ZEA as a whole, applying the master planning component and other considerations compelled in order to place parties and review bodies on notice of the proofs needed in order to secure Transitory Extraction Use PUD approval. The Silva Standard of the Gravel Statute implicitly requires and directs clarification and interpretation based on recognized land use and zoning principles that are relevant to determining whether the applicant has proven that "no very serious consequences" would result from the applicant's proposed Transitory Extraction Use.

D. Specific Standards of Review for Township Legislative Consideration

The following specific standards are provided. These standards are presented within the framework provided in MCL 125.3205(5) (a)- (f) for the purpose of determining whether the applicant has proven that "no very serious consequences" would result from the applicant's proposed Transitory Extraction Use and associated activities and haul route. These standards are intended to assist the Township in reviewing an application in relation to both the general Silva Standard and the specific standards in PICL 125.3205(5). All of the standards in this Article shall be considered by the Planning Commission and Township Board in deliberating on the application, and shall guide decision making on the Township Board's ultimate legislative decision on whether the applicant has proven that "no very serious consequences" would result from the applicant's proposed Transitory Extraction Use and associated activities and haul route.

1. Existing Land Uses

- a. The relationship of applicant's proposed Transitory Extraction Use and associated activities with existing land uses anticipated to be impacted shall not produce unreasonable or inequitable results;
- b. The impact of applicant's proposed Transitory Extraction Use and associated activities on existing land uses in the vicinity of the property shall not produce unreasonable or inequitable results;
- c. The proposed Transitory Extraction Use, including haul route, shall be capable of being designed, located, planned and operated so that that the public health, safety and welfare shall be protected in relation to existing land uses, and that the proposal will achieve such results.

2. Property Values

- a. The impact of applicant's proposed Transitory Extraction Use and associated activities on property values in the vicinity of the property and along the proposed hauling route serving the property shall not produce unreasonable or inequitable results;
- b. The proposed Transitory Extraction Use, including use of the haul route, shall not cause injury to the value of other property in the neighborhood in which it is to be located, or along the haul route.
- c. The proposed Transitory Extraction Use, including use of the haul route, shall not unreasonably or inequitably affect the value of properties in the Township.
- d. The proposed Transitory Extraction Use, including use of the haul route, shall be such that the proposed vehicles (including number and type); machines and equipment used in the operation, location and height of buildings or structures; location, nature and height of walls, fences and landscaping; and all other aspects of the proposed use will not unreasonably or inequitably affect the value of other uses and properties.

3. Pedestrian and Traffic Safety

- a. The impact of the proposed Transitory Extraction Use and associated activities on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property shall not be unreasonable or inequitable.
- b. The proposed Transitory Extraction Use and haul route shall be consistent with and permissible under state, county, and/or local regulations that have been established for roadways, including regulations applicable to the use of roads for proposed haul routes.
- c. The proposed Transitory Extraction Use, including haul route, shall be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district(s) impacted, taking into consideration the number, size, weight, noise, and fumes of vehicles,

vehicular control, braking, and vehicular movements in relation to routes of traffic flow, proximity and relationship to intersections, adequacy of sight distances, location and access of off-street parking and provisions for pedestrian traffic, with particular attention to minimizing the interaction of heavy vehicles used for the Transitory Extraction Use with children, the elderly or the handicapped.

d. The proposed Transitory Extraction Use, including haul route, shall be of a nature that will make vehicular and pedestrian traffic no more hazardous to children attending schools or other activities within the Township.

e. Overall, the proposed Transitory Extraction Use, including haul route, shall not result in children, older persons, or handicapped persons being effectively required to forego or alter their activities.

4. Identifiable Health, Safety, and Welfare Interests

a. If the property has been designated in the Master Plan as an appropriate site for heavy industrial use, this shall weigh in favor of the applicant under this provision, subject to consideration of the specific scope and impact of the operation and associated activities. Similarly, if the property has been designated in the Master Plan for non-industrial use, this shall weigh in favor of determining that the proposed Transitory Extraction Use would result in a very serious adverse consequence.

b. The impact of applicant's proposed Transitory Extraction Use and associated activities on identifiable health, safety, and welfare interests in the Township shall not be unreasonable or inequitable. For purposes of this Article, "health, safety, and welfare" shall have the meaning attributed to such terms by the courts, e.g., *Berman v Parker*, 348 U.S. 26 (1954), *Village of Belle Terre v Boraas*, 416 US 1 (1974), *Kyser* (majority opinion), *Cady v City of Detroit*, 289 Mich. 499 (1939), and *Hess v Charter Township of West Bloomfield*, 439 Mich. 550 (1992), including the manner in which such meaning has been reasonably determined by the Planning Commission and Township Board in the Master Plan and Zoning Ordinance, read as a whole, including the crucial and material stability and quality of life (see, e.g. dissenting opinion of Judge (later Justice) Davis in the Court of Appeals opinion in *Kyser v Kasson Township*, 278 Mich. App. 743, 773 [referenced with approval by the Michigan Supreme Court in *Kyser*, 486 Mich. 514, 519 (2010)]).

c. The proposed Transitory Extraction Use, including haul route, shall not unreasonably or inequitably impact upon surrounding property in terms of noise, dust, fumes, smoke, air, water, odor, light, and/or vibration. In determining whether a proposed Transitory Extraction Use amounts to a very serious consequence, the standards for the stated impacts contained within the Township's regulatory ordinance, as the same may be amended, will apply. In addition, considering that a proposed Transitory Extraction Use may include one or a combination of components that have unique qualities relating to these impacts (e.g., crusher noise and vibration), compliance with the regulatory ordinance standards would not necessarily mean that the use would not amount to a very serious consequence with regard to these impacts (see paragraph k, below).

d. The proposed Transitory Extraction Use, including haul route, shall not have an adverse impact on economic development and 'placemaking' in the Township, or in other units of government that will be impacted by the Use, including haul route.

e. The proposed Transitory Extraction Use, including haul route, shall not be permitted to have impacts, or create a character, likely to render the applicable limitations of Township zoning on other property in the area and haul route unreasonable in terms of the limitations imposed by existing zoning regulations. For example, the heavy industrial nature of the proposed Transitory Extraction Use shall not be permitted to undermine reciprocity of

advantage by creating impacts and character that would raise a reasonable question whether residential zoning restrictions on area property would represent arbitrary limitations on the use and enjoyment of such area property.

f. The proposed Transitory Extraction Use operation, including the haul route, shall be such that the proposed location and height of buildings or structures and location, nature and height of walls, fences and landscaping, and all other proposed aspects of the overall use, will not interfere with or discourage the appropriate development and use of adjacent land and buildings.

g. The proposed Transitory Extraction Use, including haul route, shall not cause unreasonable or inequitable limitations on the use and enjoyment of other property in the vicinity (zoning district or districts, as impacted) in which it is to be located and along the haul route, and will not be detrimental to existing and/or other permitted land uses in the zoning districts impacted or unreasonably impact on future redevelopment in the manner specified in the Master Plan.

h. The proposed Transitory Extraction Use, including haul route, shall not be detrimental to the development of new land uses in the zoning districts impacted.

i. The proposed Transitory Extraction Use, including haul route, shall not unreasonably or inequitably burden the capacity of public services, infrastructure or facilities.

j. The proposed Transitory Extraction Use, including haul route, shall not unreasonably or inequitably burden retail uses, arts and culture, equestrian activities, non-motorized vehicle travel or recreation, school use, parks, playgrounds, residential uses, or result in the physical vulnerability or degradation of historic uses and resources, including the creation of the need for added public or private expenditures for maintenance of buildings, structures, and infrastructure.

k. The proposed Transitory Extraction Use, including haul route, shall not cause unreasonable diesel fumes, dust, truck noise or physical/mental health issues, including along the haul route.

l. The proposed Transitory Extraction Use, including haul route, shall not cause unreasonable impacts in relation to environmental resources in the Township, including air, ground water, surface water, soils, and wetlands. In determining whether impacts are unreasonable, the cumulative effect upon all environmental resources shall be evaluated.

5. Overall Public Interest in the Proposed Extraction

a. The overall public interest in the extraction of the specific natural resources on the property both in absolute terms and in relative terms shall be weighed in relation to the adverse consequences likely to occur, and unreasonable or inequitable consequences shall not be permitted.

b. Public interest in the proposed Transitory Extraction Use shall be measured against any inconsistencies with the interests of the public as are proposed to be protected in the Master Plan for the area to be impacted by the Transitory Extraction Use and haul route.

c. Public interest in the proposed extraction shall be measured against any inconsistencies with regard to physical, historic, and economic interests in relation to the Transitory Extraction Use and haul route.

d. Public interest in the proposed extraction shall be measured against any likely creation of valid environmental concerns, including without limitation impairment, pollution and/or destruction of the air, water, natural resources and/or public trust therein.

- e. Public interest in the proposed extraction shall be measured against public costs likely to be caused by the proposed Transitory Extraction Use, including haul route, considering alternative supplies of gravel.

Section 12.07 Determination of a Transitory Extraction Use Application to Rezone the Applicant's Property to Planned Unit Development

- A. The determination of a Transitory Extraction Use Application may consist of an approval of rezoning to Transitory Extraction Use Planned Unit Development, or an approval of such rezoning with conditions, or a denial of rezoning.
- B. An approval of rezoning, with or without conditions, shall include and incorporate a Transitory Extraction Use Plan as approved by the Township, and a Transitory Extraction Use Agreement, all as described below. Any conditions, if any, that may be required with the approval shall also be specified in such an approval.
- C. An approval of rezoning shall include:
 - 1. A specification of the duration of the rezoning, which will state a termination date for the effect of the approval. This specification shall be based on findings that balance the public interest in providing the natural resources to be extracted against the public interest of freeing the area of the Township and residents that will be adversely impacted by the Transitory Extraction Use, including use of the haul route, from the burdens and costs allowed under the Gravel Statute due to the finding that the resources to be extracted and transported are needed to a sufficient degree.
 - 2. Approval of a Transitory Extraction Use Agreement, which shall clarify for all interested persons, including the public, the rights and obligations of the Township and the applicant and owner(s) of the property.
 - 3. Other conditions that conform to the requirements of applicable law.
- D. A denial of rezoning shall include a statement of reasons why the applicant has failed to satisfy its burden of proof that approval of the application would result in "no very serious consequences."

Section 12.08 Transitory Extraction Use Agreement

A Transitory Extraction Use Agreement shall mean a written agreement approved and executed by the Township, the applicant, and all owners of the property to be rezoned, incorporating all relevant terms of the approval, the approved Transitory Extraction Use Plan, any and all Transitory Extraction Use Conditions, and any other terms relevant to the land and operation to which the rezoning will apply. A Transitory Extraction Use Agreement shall include the following as applicable to the facts and circumstances:

- A. Acknowledgment that the Rezoning to Transitory Extraction Use PUD classification is based on the application submitted and Transitory Extraction Use Plan, and that the duration of a Transitory Extraction Use will be temporary in nature, i.e., "extraction of natural resources is frequently a temporary use of the land and that the land can often be restored for other uses and appropriate assurances with adequate security can properly be demanded as a precondition to the commencement of extraction operations." *Silva v Ada Township*, 416 Mich. 153, 160-161 (1982). Thus, the Agreement shall specify the duration of the rezoning and the termination date, as found and determined by the Township Board based on its deliberations and balancing of public interests.
- B. Acknowledgment that the conditions and Transitory Extraction Use Agreement are authorized by all applicable state and federal law and constitution, and that the Agreement is valid and entered into on a voluntary basis and represents a permissible exercise of authority by

the Township.

C. Acknowledgment that the property in question shall not be developed or used in a manner inconsistent with the Transitory Extraction Use Agreement, including Transitory Extraction Use Plan, and that any material deviations in development and use from such Plan shall constitute a nuisance per se under MCL 125.3407.

D. Acknowledgment that the approval and Transitory Extraction Use Agreement shall be binding on and inure to the benefit of the applicant, the property owner(s) and Township, and their respective heirs, successors, assigns, and transferees.

E. Acknowledgment that, when the Transitory Extraction Use zoning authorization terminates, no development or use shall be undertaken or permits for development issued until a new zoning district classification of the property has been established, and that the Township will not unreasonably delay in acting on the establishment of a new zoning district classification.

F. Acknowledgment that each of the requirements and conditions in the Transitory Extraction Use Agreement represents a necessary and reasonable measure which, when considered with all other conditions and requirements, is roughly proportional to the increased impact created by the use represented in the approved Transitory Extraction Use Rezoning, taking into consideration the changed zoning district classification and the specific use authorization granted.

G. Affidavit in recordable form, signed by the applicant and all owners of the property to be rezoned, to be recorded for the purpose of providing notice of the approval as well as the restrictions and conditions to the approval. The rezoning to Transitory Extraction Use shall not be effective unless and until the affidavit is recorded with the office of the Antrim County Register of Deeds.

Section 12.09 Review Process-Planning Commission

A. To seek an amendment of the zoning classification applicable to the property to Transitory Extraction Use PUD classification, the applicant shall submit an application in the form approved by resolution of the Township Board.

B. The application shall provide written documentation and evidence describing in detail and making the requisite demonstration with regard to each of the criteria on the issue of whether "no very serious consequences" shall result in relation to the property and haul route, and in the community, as described in detail in this Part III. Prior to conducting a public hearing, the Township shall review the application and documentation submitted in support of the application and report any deficiencies to the applicant and the Planning Commission within a reasonable time. The public hearing on the application to amend the zoning classification shall not be noticed until the applicant has cured the deficiencies found to exist in accordance with this procedure. The Planning Commission may require the applicant to make a preliminary presentation for informational purposes prior to conducting a public hearing.

C. After providing the notice required for changing the zoning classification of a property, the Planning Commission shall conduct a public hearing on the application to determine whether the applicant can and does satisfy the applicant's burden of proof that "no very serious consequences" shall result from applicant's use of the property and haul route, as described in detail in this Part III. The hearing shall begin with an introduction by the Planning Commission chairperson, or a person designated by the chairperson. The applicant shall then be given the opportunity to make the showings required in this ordinance. At the completion of the applicant's presentation, either at the same meeting or at a subsequent meeting if additional time is needed in order to thoroughly address the subject matter, the Township, through its representatives, may

address and offer evidence or argument on the issues. Members of the public shall then have the opportunity to address and offer evidence or argument on the issues. If requested, the applicant shall be provided with an opportunity to rebut evidence and argument presented, but for efficiency purposes shall not be permitted to duplicate evidence on matters included in applicant's earlier presentation. Likewise, any new matters addressed by the applicant may be rebutted by representatives of the Township and members of the public. The public hearing shall then be closed.

D. After the public hearing has been closed, either at the same meeting at which the public hearing was completed, or at a later meeting held within a reasonable time, the Planning Commission shall, based on the evidence presented, adopt findings and recommendations on whether the applicant has made a sufficient showing on whether there would be "no very serious consequences" as a result of the proposed Transitory Extraction Use including haul route, applying the standards contained in this Part III and all other applicable principles and law. Township representatives may assist the Planning Commission with the articulation of such findings and recommendations.

E. Following all of the hearing procedures and requirements specified above, the Planning Commission shall forward to the County (if required) its findings and recommendations on whether to amend the zoning ordinance map to approve a rezoning of the property to the Transitory Extraction Use PUD classification, along with the Transitory Extraction Use Plan and Agreement.

Section 12.10 Review Process- County and Township Board

A. After any required action is taken by the County, the Planning Commission shall forward a summary of public hearing comments, along with its findings and recommendation, to the Township Board. The Planning Commission shall also forward to the Township Board the proposed Transitory Extraction Use Plan and Agreement.

B. The Township Board shall, taking into consideration the evidence from the public hearing, the Planning Commission's recommendation, and any additional evidence presented to the Township Board, act on the application for a rezoning of the property to Transitory Extraction Use PUD classification. The Township Board shall conduct a public hearing on whether the property should be rezoned and classified for Transitory Extraction Use Planned Unit Development, and may direct changes in the Plan and Agreement (including a direction for representatives of the applicant and Township to negotiate proposed changes and present them to the Board). The Board's action may then consist of approval of rezoning, approval of rezoning with conditions, or denial of rezoning.

C. If the Board acts to approve the rezoning to Transitory Extraction Use Planned Unit Development, or approve with conditions, the approval shall also include the Transitory Extraction Use Plan, Transitory Extraction Use Agreement, and a determination of the permitted duration of the rezoning, considering that that the duration of a Transitory Extraction Use will be temporary in nature, *i.e.*, "extraction of natural resources is frequently a temporary use of the land and that the land can often be restored for other uses and appropriate assurances with adequate security can properly be demanded as a precondition to the commencement of extraction operations." *Silva v Ada Township*, 416 Mich. 153, 160-161 (1982).

Section 12.11 Effect of Approval

A. Approval of a rezoning of property to Transitory Extraction Use PUD classification shall authorize the owner of the property to apply for permits for construction and operation of a

Transitory Extraction Use, including permits required under a separate Township Ordinance established for the regulation of extraction use operations. The approval shall become effective in the manner and on the date provided by law and after recordation of the Affidavit that is part of the Transitory Extraction Use Agreement, whichever is later (see Section 12.08, above).

B. The Transitory Extraction Use PUD classification shall expire following a period of two (2) years from the effective date of the rezoning unless:

1. The period for securing permits and commencing bona fide construction is extended by the Township Board for good cause within the effective period; or
2. Approved bona fide development of the property pursuant to building and other required permits issued by the Township commences within such two (2) year period and proceeds diligently and in good faith as required by ordinance to completion.

C. In the event that bona fide development has not commenced within the permissible period of time calculated under sub-paragraph (2) above, the Transitory Extraction Use classification shall be void and of no effect.

D. If development and/or actions are undertaken on or with respect to the property in material violation of the Transitory Extraction Use classification approved by the Township Board, including Transitory Extraction Use Plan, Transitory Extraction Use Agreement, and all conditions established with the approval, such development and/or actions shall constitute a nuisance per se. MCL 125.3407. In such case, the Township may issue a stop work order relative to the property and seek any other lawful remedies. Until curative action is taken to bring the property into compliance with the Transitory Extraction Use approval, Plan, Agreement and conditions, the Township may withhold or, following notice and an opportunity to be heard, revoke permits and certificates, in addition to or in lieu of other lawful action to achieve compliance.

E. At the end of the authorized duration of the Transitory Extraction Use, either or both of the following actions may be taken:

1. The property owner, at any time before or after the end of the authorized duration, may seek a new Rezoning of the property, including a new application for rezoning to Transitory Extraction Use classification, in which case the property owner shall have the obligation to newly demonstrate a "Need for the Natural Resources," taking into account the adverse impacts of the terminated Transitory Extraction Use endured already; and/or
2. The Township may initiate a new Rezoning of the property to a reasonable district classification in accordance with the procedure provided by law for rezonings in townships.

Until such time as a new zoning district classification of the property has become effective, no development or operations shall be undertaken or permits for development issued. The Township will not unreasonably delay in acting on the establishment of a new zoning district classification.

Section 12.12 Fee

The applicant for a rezoning Transitory Extraction Use classification under this Article shall pay as a fee the Township's costs and expenses incurred in the review and evaluation of the application and preparation of documents for approval. An escrow shall be established in an amount specified by Township Board resolution, and additional reasonable amounts shall be contributed as required in order to complete the process of review and approval. Any unexpended amounts from such escrow shall be returned to the applicant.

PART IV ADMINISTRATION AND ENFORCEMENT

Section 12.13 Operational Regulations

A. Approval of rezoning under this Article of the zoning ordinance shall be subject to separate Township ordinance established for the regulation of extraction use operations. Commencement of work for the operation, and any and all other operation activities, shall require permits for construction and operation of a Transitory Extraction Use, as specified in applicable Township ordinances.

B. Exemption: Usual and customary land balancing by cutting and filling in preparation for immediately planned and approved development in accordance with other applicable ordinance and law, not involving the extraction of natural resources for sale or use as contemplated under MCL 125.3205, shall be exempted from the provisions of this Article.

C. Enforcement: Violations of section 12 of this zoning ordinance is subject to the enforcement and penalties stated in section 9.05 of the Banks Township Zoning Ordinance.

