

**CHARTER TOWNSHIP OF ORION  
PLANNING COMMISSION REGULAR MEETING AGENDA  
WEDNESDAY, SEPTEMBER 7, 2022 - 7:00 PM  
ORION TOWNSHIP MUNICIPAL COMPLEX BOARD ROOM  
2323 JOSLYN ROAD  
LAKE ORION, MI 48360**

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<b>16. <u>ADJOURNMENT</u></b>	

*In the spirit of compliance with the Americans with Disabilities Act, individuals with a disability should feel free to contact Penny S. Shults, Clerk, at (248) 391-0304, ext. 4001, at least seventy-two hours in advance of the meeting to request accommodations.*

**CHARTER TOWNSHIP OF ORION PLANNING COMMISSION**

**\*\*\*\*\* A G E N D A \*\*\*\*\***

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**CHARTER TOWNSHIP OF ORION PLANNING COMMISSION**  
**\*\*\*\*\* MINUTES \*\*\*\*\***  
**REGULAR MEETING, WEDNESDAY, AUGUST 17, 2022**

The Charter Township of Orion Planning Commission held a regular meeting on Wednesday, August 17, 2022, at 7:00 p.m. at the Orion Township Municipality Complex Board Room, 2323 Joslyn Road, Lake Orion, Michigan 48360.

**PLANNING COMMISSION MEMBERS PRESENT:**

Scott Reynolds, Chairman  
Don Gross, Vice Chairman  
Kim Urbanowski, BOT Rep to PC  
Derek Brackon, Commissioner

Don Walker, PC Rep to ZBA  
Joe St. Henry, Secretary  
Jessica Gingell, Commissioner

**PLANNING COMMISSION MEMBERS ABSENT:**

None

**1. OPEN MEETING**

Chairman Reynolds opened the meeting at 7:00 p.m.

**2. ROLL CALL**

As noted.

**CONSULTANTS PRESENT:**

Rodney Arroyo, (Township Planner) of Giffels Webster  
Eric Pietsch, (Township Planner) of Giffels Webster  
Mark Landis (Township Engineer) of Orchard, Hiltz, and McCliment, Inc.  
Tammy Girling, Township Planning & Zoning Director

**OTHERS PRESENT:**

Steve Perlman	Pete Alshab
Jason Emerine	Darren Naimi
Gary August	Jim Whittenberg
Tom Martelle	

**3. MINUTES**

A. 8-03-22, Planning Commission Regular Meeting Minutes

B. 8-03-22, Planning Commission Public Hearing Minutes for PC-22-28, GM Orion BET 2, SLU

C. 8-03-22, Planning Commission Joint Public Hearing Minutes for PC-22-29, Baldwin Village PUD

Moved by Vice-Chairman Gross, seconded by Commissioner Gingell to **approve** all sets of minutes as presented. **Motion carried.**

**4. AGENDA REVIEW AND APPROVAL**

Moved by Trustee Urbanowski, seconded by Vice-Chairman Gross, to **approve** the agenda as amended. **Motion carried.**

**5. BRIEF PUBLIC COMMENT – NON-AGENDA ITEMS ONLY**

None.

**6. CONSENT AGENDA**

None.

Chairman Reynolds recessed the regular meeting and opened the public hearing for PC-22-31, 1112-1128 Lapeer Road Rezone, the request is to rezone 1112, 1116, 1120, 1124, 1128, & 1132 S. Lapeer Road (parcel #09-14-201-005) from Restricted Business (RB) to General Business (GB) at 7:05 pm and closed the public hearing at 7:09 p.m.

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## **7. NEW BUSINESS**

**A. PC-22-30, Waldon Reserve Site Condominium Wetland & Site Plan, located at 625 Waldon Rd. (parcel 09-27-276-038).**

Chairman Reynolds asked the applicant to state their name and number for the record and give an overview of the project.

Mr. Jason Emerine with Seiber Keast Lehner, 39205 Country Club Dr., Suite C8, Farmington Hills, MI 48331.

Mr. Emerine said that the applicant was also present, Mr. Steve Perlman with Waldon Reserve Development, LLC., and his business partner Pete Alshab, they are together with AP Builders who will be the builder on this project. The project as indicated is located at 625 Waldon Rd. It is between Giddings Rd. and Lapeer Rd. on the south side of Waldon Rd.

Mr. Emerine stated that it is an 18-unit single-family site condominium with 11.42 net site area acres. The proposed development meets the (R-2) existing zoning, so this is a straight zoning request. The (R-2) zoning has 10,800-sq. ft. minimum lot size, 80-ft. wide lots, and the 18 units on this site plan meet that requirement. The roads on this development will be public roads, they are 27-ft. wide and will meet all the Road Commission for Oakland County requirements. The approach out to Waldon Rd. has been reviewed on a preliminary basis with the Road Commission for Oakland County, it requires extending a westbound passing lane on Waldon Rd. It also requires extending the eastbound deceleration lane to Waldon Ridge Ct.

Mr. Emerine said that the wetlands on site, are regulated wetlands, they are Township regulated and EGLE regulated wetlands on site. They are proposing to fill 0.04 acres, which is very little. They have submitted an EGLE wetland permit application to do that which is regulated by part 303 of the state statute.

Mr. Emerine stated that the utilities on the project, they have a proposed sanitary sewer of 8-inches connecting to the existing 24-inch sanitary sewer in Waldon Rd. Waldon Rd. also has an existing 16-inch water main, they are proposing to connect to that with a 16x12 tapping sleeve gate valve and well. The water main is going to loop to the back side of the site to the dead-end stub road on Waldon Ridge Ct.

Mr. Emerine said that the stormwater on site will be collected and detained in accordance with Orion Township standards. It is not under the jurisdiction of the Oakland County Water Resource Commission, so Orion Township Storm Water Standards will govern this whole site. It will be detained and released at an agricultural rate. They are not proposing a sediment basin on this site, but they are proposing a sediment pretreatment device that will be reviewed and approved by Orion Township.

Mr. Emerine stated that in terms of the reviews they have submitted the site plan to all of the four to six different agencies required by the site plan. They didn't receive any comments from those different people with the exception of the Oakland County Water Resource Commission;

they said that they had no jurisdiction over the stormwater but do have jurisdiction over the sanitary and water, and that is normal practice for sanitary and water.

Mr. Emerine said they received a review letter from the Fire Department, they have issued approval on the project. The Department of Public Services for Orion Township said they had ample capacity within their system to support this development. Their reviewing Engineer OHM which he was sure will comment on this in a minute, has reviewed the plan and generally had said they were in substantial compliance with the Township ordinances. They did ask for a few things one of those being a firetruck turning plan which they will happily prepare and supply. That being said the radiuses on the cult-de-sacs, the roads, and the eyebrows all meet Road Commission standards, so there will be no problem at all fitting the Orion Township firetruck on that. OHM also asked for the sign location plan on this project, they will happily provide that. They do have public roads on this site and the Road Commission for Oakland County typically installs all signs within Road Commission right-of-way, they won't even let them install them. They will eventually install that themselves but will show the signage as requested by OHM.

Mr. Emerine stated that OHM recommended approval tonight, conditionally, assuming that they are going to meet the requirements of the Storm Water Ordinance, Soil Erosion Ordinance, they meet the Township Engineering Standards, and they provide a cost estimate for the project. They have no problem and had already planned on doing all of those things.

Mr. Emerine said in regard to the site condominium documents that they submitted. Giffels Webster submitted a letter to the Township saying that they were in substantial compliance on their site condominium condo docs. They shouldn't have any issues there if any issues do come up moving forward with the exhibit B documents they will happily make those changes. With regard to the site plan review by the Planner, Giffels Webster they had a few comments in there and he was sure that they will hear comments from Planner Arroyo and Giffels Webster on this. They asked for an irrigation plan, they will provide an irrigation plan, they haven't provided it at that time, but they will certainly provide that.

Mr. Emerine added that there were some replacement trees that were missing replacing the landmark trees. They will update their landscape plan to meet those requirements they have no problems meeting those requirements. Lastly, the last comment on the site plan review letter was they were requesting a waiver on lot 15 to encroach within the 25-ft. wetland buffer. He was sure that the Planning Commission will have comments on that along with Planner Arroyo and his client Mr. Perlman will also provide comments on that as well.

Chairman Reynolds turned it over to the professional consultants for their review.

Planner Arroyo read through his review letter date stamped August 9, 2022.

Engineer Landis read through his wetland review letter date stamped August 5, 2022, and the site plan review letter date stamped August 8, 2022.

Vice-Chairman Gross asked if the subdivision to the east were those roads also public roads? Engineer Landis replied that he believes that they were.

Vice-Chairman Gross questioned if they were showing sidewalks within this development? Mr. Emerine replied correct, 5-ft. sidewalks.

Vice-Chairman Gross asked if the client has had any contact with the HOA to the east? Mr. Steve Perlman on behalf of Waldon Development replied no he has not. Vice-Chairman Gross asked if they knew that they are going to have a road connected to their road? Mr. Perlman replied no they do not.

Commissioner Brackon asked about the encroachment on lot 15, how many feet or what size are they talking about into that buffer? Mr. Emerine stated that the proposed lot line is right up to the edge of the wetland boundary itself. The encroachment into the buffer is the entire 25-ft. width buffer. There is probably a likelihood of a retaining wall being built, not in the wetland in the buffer itself a minimal height retaining wall to go in that area. Commissioner Brackon asked who was going to build that. Mr. Emerine replied that it will be part of the plot plan for that site, the builder will. Commissioner Brackon asked if they could explain the wetland equalizer culvert? Engineer Landis replied that it was his understanding after reading through their application that EGLE was asking for them to maintain some hydraulic connectivity with the wetland near lots 6 and 7, and to the south for 14 and 15. Mr. Emerine added that they did perform an onsite EGLE pre-application meeting. Their original intention was to completely fill that wetland 0.04 acres, about 18,000-sq. ft. They were just going to fill it and build the road over it. During their onsite EGLE application, they were with their wetland consultant Mr. Jeff King from Barr Engineering, and Steve Perlman the applicant, the three of them attended the site walk. Their original intentions were to fill it entirely but by the request of the EGLE permitter, Mr. Robert Premo with EGLE wanted to try to maintain some hydrology to that existing wetland which is the larger one on the west side of the site. They were originally going to detain that area and put it through their storm sewer network out to the detention basin, but he requested them to leave some drainage in the rear yard of lot 7 and let it run off through that culvert down to that wetland. He added that was not their original intent, but they were happy to do whatever EGLE requested and that is why the culvert is there.

Commissioner Brackon asked when people buy that lot the builder and the owners are going to be aware of that wetland buffer and the requirement to have a retaining wall or something along those lines, in order to pass building inspection for the house? Engineer Landis replied that was his understanding that the Building Department would rely upon the approved site plan for those setbacks on the plot plan. Commissioner Brackon said his fear is the purchasers of that lot just continue to encroach on the wetland without regard to it being a wetland. Mr. Emerine said with regards to the wetland and not the buffer, the reason that the lot line is drawn outside the wetland is, that their limits of ownership are outside of the wetland boundary. While they don't know it yet with regard to the wetland, not the buffer, they don't know this for certain yet because their EGLE permit application is still being reviewed. Typically, when EGLE issues a permit for this they usually require a conservation easement to be placed over the existing wetland. He wasn't sure if they were going to require that here yet, but it typically is a requirement. Should EGLE require that conservation easement, as part of their EGLE permit application, they will be required to add that easement to the Condo docs and the easement would be recorded.

Trustee Urbanowski stated that her concern about lot 15 is for the wetland and it is also for the structure itself. She lives in a neighborhood where the person across the street from her has four sump pumps that go constantly. They have heard in previous meetings about water and being so close to wetlands. She asked if there will be a basement in this structure? Mr. Emerine said that will do groundwater testing out here to determine where the groundwater level is. That lot will have a basement, the basement elevation will be above the water level in that wetland. He will make sure that the sump pump and the footing drains, which are below the basement floor elevation of 18 inches will also be above it. He will hear from Mr. Perlman if he doesn't design that appropriately. He understood her concern and they will have to do testing out there. They have done some geotechnical work out there, but they have to do some groundwater testing on lots 14 and 15. Trustee Urbanowski said if it was not, would it be an option to not put in the basement? Her neighbors had 20 offers on their house before they were able to sell it, and they didn't know. She was just trying to be sure they are setting up, for whoever is going to live at 15, for success. Mr. Emerine said his biggest concern as an engineer is groundwater. Doing storm sewer systems and drainage is the easy stuff it is the groundwater that usually gets overlooked and missed. They will certainly do that here. He

added that if the basement is into the groundwater, he will have to talk to Mr. Perlman about it and let him know that they can't put the basement into the groundwater. They don't have the data now to prove it to them, if they wanted to make that a condition, they can submit data to Engineer Landis and his team and let him review the groundwater information, he would be happy to do that. He is going to do it anyways he is going to give him the data anyway during the engineering phase. He was totally comfortable with that. He said that it is probably going to be a walkout basement and that walkout is going to be 1.5 – 2 ft. above the groundwater level there.

Trustee Urbanowski said she used to live in Lake Forest and her backyard was a walkout basement on a nature preserve and each spring she had ducks swimming up to her backdoor. She was thinking from a homeowner's perspective on potential issues, and she didn't want that to be an issue.

Chairman Reynolds felt that the plan as submitted was fairly straightforward in a number of different ways. He didn't have a major issue with the small remediation of the wetlands the 0.04 acres. He was not a big fan of the setback waiver for the wetland. He didn't have a problem with the lot line being outside of that wetland buffer but thought that they have that 25-ft. setback buffer for a reason. That would make that buildable footprint within 5-ft. of that wetland. He thought overall the site plan was pretty straightforward there weren't major comments, but he was not a huge fan of the wetland setback waiver. Vice-Chairman Gross thought that they could easily just adjust their buildable lot line to be outside of the buffer.

Vice-Chairman Gross thought it was nice to see a development come in that is residential and that meets the ordinance. No waivers are really being requested. He asked if the purchaser of the lot are they purchasing just the unit or are they purchasing the lot also? Mr. Emerine replied that they are purchasing the lot also. Vice-Chairman Gross asked what was the responsibility for maintaining the lot, the owner's responsibility? Mr. Emerine replied yes. Vice-Chairman Gross asked if an HOA would be responsible for maintaining? Mr. Emerine replied not the property itself; the HOA would be responsible for the general common element which is everything outside of lot lines. The HOA will be responsible for any entrance landscaping, entrance signage, entrance lighting, and the park area. There is also a large park area in the back and the HOA will be responsible for that and the little strip on the side of lot 9. Everything on the lots itself will be the responsibility of the homeowners. Vice-Chairman Gross asked about the retention basin? Mr. Emerine replied that the HOA will be responsible for that as well.

Chairman Reynolds stated that there were additional reviews from other staff members and there was a site walk completed by the Site Walk Committee. Their Public Services reviewer had no additional comments along with the Fire Marshal. Obviously, there are some additional steps or reviews in a future sense. The condo docs are essentially reviewed later on. Per our order of operation, if people would like to discuss further items, they are welcome to once a motion is on the table and seconded there is the opportunity for public comment along with additional comments.

Commissioner Brackon said he liked Vice-Chairman Gross's idea and would like some other opinions on the wetland setback waiver being conditional upon that the building footprint cannot encroach within 25-ft. of the wetland. Chairman Reynolds stated that they would just not be granting the waiver. The waiver is allowing the buildable footprint to encroach into that 25-ft. Commissioner Brackon wondered if it was just the ownership of the property? Chairman Reynolds asked Engineer Landis if the waiver were to be not granted, the lot line could still proceed at the edge of that wetland, but the setback would be defaulted not to the side yard setback requirement of 5-ft. but rather 25-ft. because it is adjacent to a wetland? This would be pretty straightforward to a straight request that anyone else on a property if they had a wetland that they would have to build 25-ft. from that boundary. Engineer Landis replied yes; they are

requesting that they reduce their building envelop to not encroach within the wetland buffer.

Mr. Emerine stated that one other thing that the Planning Commission should be aware of with regard to this wetland. The wetland in question was delineated, it is under EGLE permit application right now. It is in their opinion right now and the opinion of their engineering that this wetland itself was actually kind of manmade. What they found in the field was the adjacent property owner at 751 Waldon Rd. has built a driveway, whether or not it was permitted by EGLE but there is a road that was filled there is no culvert in that area providing relief drainage from their wetland across this driveway. It appears that this driveway when this fill was placed across this culvert it created this manmade wetland here. If they look at the National Wetland Inventory Maps that are published on EGLE's website, there are no wetlands regulated on the National Wetland Inventory Maps. The applicant is willing to maintain this existing wetland that is here, in their opinion it shouldn't be there, and if this road was never built this wetland or this drainage area would sheet flow down into the large wetland complex along the existing ditch. The problem is the water can't get to the ditch because they built a driveway across this. Essentially, the pond shouldn't be there, it is because the neighbor built the driveway. The applicant is willing to maintain this existing wetland as it is, and maintain the hydrology coming across as EGLE requested but the presence of this wetland probably shouldn't be there, and now that area is encroaching on lot 15. They already have an odd, shaped parcel on lot 15 to begin with but that was basically done at the request of EGLE. They actually wanted to fill that wetland and bring the lot out, but EGLE suggested that they didn't do that, so they notched their lot out to satisfy EGLE. Moving this footprint outside of that wetland buffer would be problematic for lot 15 and wasn't sure they could make it a viable building footprint on lot 15.

Commissioner Brackon asked if they knew when the road was built? Mr. Emerine said he looked at historic aerials, but they couldn't tell because there were so many trees you can't see the two-track road going through there. He tried to do that evaluation, but they couldn't see. Commissioner Brackon asked if they talked to the property owner? Mr. Perlman replied no. Commissioner Brackon asked why? Mr. Perlman asked what they would be asking them? Commissioner Brackon replied when they built the road; how long the wetland has been there. He added if even what they are saying is correct, they have no evidence that that road caused that wetland, that is just speculation at this point and time. Mr. Perlman said that when they did the walk on the site a couple of issues came up and they did climb into that area, and even Robert Premo said this was absolutely manmade and it is being blocked because they looked for a culvert and there was none. Additionally, when they walked the other side where they wanted to fill, again, with Robert Premo where they were adjacent to the other property it was determined that this flow was caused by the neighbors behind there actually running across his property. They even looked to see if there was a catch basin there. EGLE agreed that this was caused by the runoff there and the lack of access from there, he did not ask about the road because EGLE at this point said that they agreed that is what caused it, manmade but it wasn't designated but now they are. They did not ask; for the last 5-10 years he didn't know because they are calling it a wetland now regardless. Mr. Emerine said wetlands get bigger or smaller depending on what is going on they get delineated. No wetland actually exists until it gets delineated by a wetland consultant. The only historical information that they could really look at is EGLE's wetland map viewer and there is no registered wetland on the national wetland inventory, and there are not even hydric soils on EGLE's wetland map.

Mr. Emerine stated one other thing that Mr. Perlman kind of mentioned is this development next door is supposed to have a rear yard swale and storm sewer network system, and they do, there is a rear yard storm sewer in this system. But the four lots, their rear yard storm sewer drains, and sheet flows straight off onto their property. That has created the ditch and wetland boundary. They talked to Robert Premo about this and asked him if he was going to regulate this and he is. Mr. Perlman as part of his wetland permit application is going to have to mitigate at a 1.5 to 1 ratio for this .04 acres and pay into an EGLE-approved wetland bank. There is

nothing they can do about it, they knew it, that is why they put the culvert in, they are paying into an EGLE wetland bank. He felt that the road is what created this whole system on site. It is there it exists, it is regulated, but they tried everything they could do to save the wetland itself; they did all the things that Robert Premo asked, and they will do all the things that the Planning Commission suggests. Moving the area out is going to make this lot too deep to build a house. This was what they were hoping to do to make this lot work.

Commissioner Gingell asked if there was a process that they need to go through to connect that road? Planning & Zoning Director Girling replied that it is a public road they are going to be working with the Road Commission. Commissioner Gingell asked if the homeowners get notified on the other side? Planning & Zoning Director Girling replied that it was left like it is anticipating a future connection.

Trustee Urbanowski stated that they are putting more homes here and she was concerned about if that wetland was manmade or if it is supposed to be there. She didn't think that was manmade, nature found a way to make a wetland. She was concerned about that lot encroaching on that wetland. She asked regarding the decks, would that be extending past that? Chairman Reynolds replied that if it was a wetland buffer then no, if it was from the lot line and there was a waiver granted then yes. Planning & Zoning Director Girling said if they are allowing a wetland setback waiver based on this plan and it is showing it so many feet into the 25-ft. wetland then anything has to be within that lot. If they build a house and they are able to build a house and the house goes right to that mark that they are giving the waiver that is as far as they can go. Again, they could then come in for a ZBA variance to go even further if they had the house go right to that mark and they then wanted to put a deck that went even further into that mark. Commissioner Brackon said or a shed? Planning & Zoning Director Girling replied that any structure has to be at the 25-ft. it is the requirement. Since this is a site plan, and they are showing their building envelope it is Planning Commission that is discussing it that can give a waiver. If the house is built and they want to come in with a shed and they want to put it within that 25-ft., then they have the right to go to the Zoning Board of Appeals asking to be within that 25-ft. If they want to add a deck to the house that is within the 25-ft. they go to the ZBA. Trustee Urbanowski said that is her only sticking point with this, everything else is right in line with the way it should be.

Chairman Reynolds said he echoed those concerns and as a point of reference he didn't think that they frequently grant this waiver. They have many wetlands permits that have different delineations and things especially in this corridor it is not something that he was in huge support for.

Moved by Vice-Chairman Gross, seconded by Commissioner Walker, that the Planning Commission **approves** the wetland permit for PC-22-30, Waldon Reserve, located at 625 Waldon Rd. (parcel 09-27-276-038) for plans date stamped received July 20, 2022. This approval is based on the following findings of fact: that the proposed minor impact on the overall wetlands will not have long-term negative effects; the proposed land use is consistent with the zoning of the property and the proposed minor impacts are consistent with typical developments to provide the required road access, utility networks, and stormwater management; the approval is based on the above findings: that the wetlands protection ordinance as being met, the applicant is providing the required stormwater management facilities impacting the least amount of wetland area possible given the location of the improvements.

**Roll call vote was as follows:** St. Henry, yes; Walker, yes; Urbanowski, yes; Brackon, yes; Gross, yes; Gingell, yes; Reynolds, yes. **Motion carried 7-0.**

Vice-Chairman Gross said he was concerned if that wetland buffer revision is really impacting the buildable portion of lot 15. If the setback area could be at the 25-ft. buffer line, he thought that would resolve that issue. Chairman Reynolds said he hears the concern about the buildable footprint of the lot. He thought it wasn't much different than a piece of property would be developed that would have to adhere to that setback, in his opinion. He understood that it is potentially creating a lot that is a small house footprint, but he was not a big fan of starting to break away or setting that determination that that is something that they are looking to entertain.

Commissioner Walker asked in the spirit of compromise would the petitioner be willing to decrease the size of that waiver from the 25-ft.? Mr. Perlman said they would have to see actually look at that how much that they could do. Mr. Emerine said that it is 10-ft. away from the wetland it is 15-ft. into the setback. Mr. Perlman said he understood that they don't want to set precedence when someone is encroaching on a setback. It makes sense if they are doing a one-off in his opinion. They are creating a one-off situation where they should know when they went to move forward and did their own due diligence, and he wasn't saying that it was anybody's responsibility but theirs prior to purchase, it wasn't shown as a wetland at that time. They actually have taken out another lot to try to create a situation where there is access to the open space in the back. If he had one site and he saw this, he probably wouldn't have done it but when they are trying to be consistent with the type of product, they are offering this community where they are hoping to do all homes colonials from 2,600-3,000-sq. ft., really nice plans. When you are doing a whole community like this as opposed to one-off and trying to create a plan for one, the concern is with the size, and what they are trying to do, they are creating a plan for one site, and it also can take away from home development. They are all trying to be consistent and have a good streetscape. He wasn't sure in terms of the viability compared to the homes around it, they could make it work. He understood if it was one alone but in terms of marketability when they create this situation it makes it really difficult. One of the things that Mr. Emerine said which should be addressed is most likely EGLE will put a conservation easement meaning that they know it is going to be protected. Regarding the basements and multiple sump pumps most of those are cases where they have a high-water table throughout the whole community. With this being almost manmade the likelihood is that they won't. Will they do borings, if need be, and do they disclose that, they would, they are building the house too. Prior to this company, he has been building homes for 42 years. Previously he was Ivanhoe Huntley, and they built a ton of communities a lot of them that were in very difficult sites like Chelsea Park. They have dealt with this before, and they disclose everything. He wouldn't let it be a surprise; it is not a situation really where they are going to get the flooding because it has been the same. He walked this with EGLE he even acknowledged that this was manmade, but he said what can I do. That is why another area he ignored. If it was a stand-alone it would be one thing but when you are trying to sell a community so it has to be compared to what is adjacent it would be very difficult to find someone that wants to buy something that has that type of variance compared to the surrounding homes. Would he consider it yes, he may be able to do a little bit less, but in order to maintain the consistency in the neighborhood that is why they went with it so they could offer something consistent with the surrounding homes.

Moved by Commissioner Brackon, seconded by Chairman Reynolds, that the Planning Commission **deny** a wetland setback waiver for PC-22-30, Waldon Reserve, located at 625 Waldon Rd. (parcel 09-27-276-038) for plans date stamped received July 20, 2022, based on the applicant not demonstrating the appropriateness of a lower setback and compliance with the following criteria: they have not demonstrated or discussed any habitat preservation, water quality preservation, stormwater quality retention. The Planning Commission had multiple discussions about water issues and that particular area with other developments; there has been a claim that his wetland is manmade although no evidence has been presented of that here tonight; they also said it would be very difficult to build a home where there is the setback but very difficult is not impossible.

Discussion on the motion:

Vice-Chairman Gross said he didn't want to try to solve the problem here tonight. Conceivably a 5-ft. setback waiver in the front could help alleviate the buffer setback at the rear. Granted they are dealing with other commissions involving that. If the front setback was 35 ft. instead of 40-ft. that could shift everything up 5 ft. and take a lot out of the buffer area. Chairman Reynolds said if there is a hardship demonstrating there is a possibility of that. What he keeps coming back to is 25-ft. from the wetland; this is not the first time they have run into the argument about whether it is manmade or not. Especially in this area a lot of these property's being expansive large lots there is going to be manipulation and a need to address the water as it sits, especially as it continues to develop.

Secretary St. Henry asked the applicant, for the record, if they were willing to compromise per Commissioner Walker's comments? Commissioner Brackon stated that the reason he made the motion was that he heard nothing to that effect. Mr. Perlman stated that he thought Commissioner Gross had an excellent suggestion, he didn't know that was something possible. He was open to compromise whether it be not requesting as much of an encroachment maybe in concert with adjusting the front setback that way it could be a win-win where they are not going to encroach that much, and they just get a 5-ft. relief on the front so that there would be less impact on the wetland setback. He thought it was a good idea and was not opposed to it.

Chairman Reynolds stated at this point and time they are just talking about a wetland waiver. He asked if there was hardship determined in the future would that be grounds for a variance even though it is a site condominium? Planner Arroyo replied that they have the ability to apply to the Zoning Board of Appeals for a variance. If they feel that they have a practical difficulty, yes.

**Roll call vote was as follows:** Urbanowski, yes; Gross, yes; Gingell, yes; Walker, yes; Brackon, yes; St. Henry, yes; Reynolds, yes. **Motion carried 7-0.**

Chairman Reynolds stated that they have a site plan review still in front of them this evening. He asked them to keep in mind that there were just a couple of minor items open between the Planner's review regarding irrigation planned trees and additional reviews of individual applications later on seeing how this is just the overall site. He believed that the OHM comment was in regard to final engineering. He didn't believe there were any wetland comments there. There would be additional items required as a condo development to adhere to the board and further condo documents to be reviewed by all parties at a later date.

Moved by Vice-Chairman Gross, seconded by Commissioner Walker, that the Planning Commission grants site plan approval for PC-22-30, Waldon Reserve, located at 625 Waldon Rd. (parcel 09-27-276-038) for plans date stamped received July 20, 2022, based upon: with the minor exception of lot 15 the building footprint being shown outside of the wetland buffer. This approval is based on the following conditions: that the condominium development is approved by the Board of Trustees as per Zoning Ordinance #78; that the condominium documents be approved by the Township Engineer, Planner, and Attorney; the issues of the Engineers review letter be addressed as appropriate, and he was pleased to see this residential development that comes forward to them meeting all other ordinance requirements.

Discussion on the motion:

Chairman Reynolds said he just wanted to clarify there are irrigation plans, trees, and future review of individualized building plans as part of the Planner's review. He added that irrigation plans were not provided, and he thought there were some issues with some trees

that were spoken to this evening. The applicant didn't have any issue addressing but would like those to be a part of the motion if he would be willing to amend.

Planning & Zoning Director Girling asked if it needed to come back with those conditions or can it be administratively approved by consultants?

Vice-Chairman Gross amended his motion, Commissioner Walker re-supported to include the issues of the Planners review letter be addressed and that this can be administratively approved by consultants.

**Roll call vote was as follows:** Gross, yes; St. Henry, yes; Urbanowski, yes; Brackon, yes; Gingell, yes; Walker, yes; Reynolds, yes. **Motion carried 7-0.**

B. PC-22-31, 1112-1128 Lapeer Road Rezone, request to rezone 1112, 1116, 1120, 1124, 1128 & 1132 S. Lapeer Road (parcel #09-14-201-005) from Restricted Business (RB) to General Business (GB).

Chairman Reynolds asked if the applicant had anything to add? If not, he will send it over to their professional consultants for their review. Mr. August said if there are any questions. He did want to stress that the consultant's one issue was the lot size. He wanted to again stress that they had a closing scheduled for Friday for the piece south of this and if they get the rezoning approval today then they will proceed with that closing so those pieces can be combined to better reflect the General Business (GB) classification in the Future Land Use plan.

Chairman Reynolds said he will now turn it over to Giffels Webster for their review of the rezone request. He asked the members of the public that this is a recommendation, and a rezone request also involves the Board of Trustees.

Planner Pietsch read through his review date stamped August 4, 2022.

Chairman Reynolds said it does exceed their minimum requirements for lot size, so it doesn't, in his perspective, go against their ordinance. It is consistent with the adjacent uses and seemed compatible not only with adjacent uses but also with the Master Plan.

Commissioner Brackon asked what was the parcel to the south? Commissioner Reynolds replied it was Glendale Auto. The parcel is occupied by an existing strip mall and then there is a small portion that essentially has the other retail development to the south. Vice-Chairman Gross asked if the sports bar was to the north? Chairman Reynolds replied no, the sports bar is to the south of it. Secretary St. Henry said it was adjacent to the Road Commission yard.

Moved by Secretary St. Henry, seconded by Trustee Urbanowski, that the Planning Commission forward a recommendation to the Board of Trustees to approve PC-22-31, 1112-1128 Lapeer Road Rezone, request to rezone 1112, 1116, 1120, 1124, 1128 & 1132 S. Lapeer (parcel 09-14-201-005) from Restricted Business (RB) to General Business (GB). This recommendation to approve is based on the following findings of facts: that this plan meets the objectives of the Master Plan in regard to further developing a commercial business zone in the area; that the existing uses of the property within the general area of the property in question are consistent with what is being proposed; the suitability of the property in question to the uses permitted, under the existing zoning classifications are met; in regard to this specific plan and the applicant's timetable for purchasing two pieces of property and combining them into an adjacent new development fits with their overall Master Plan objectives for that area; when the site plan is submitted it meets the Planners request to make sure that the setback requirements are followed.

<sup>12</sup>  
**Roll call vote was as follows:** Walker, yes; Brackon, yes; St. Henry, yes; Gross, yes;

Urbanowski, yes; Gingell, yes; Reynolds, yes. **Motion carried 7-0**

**8. UNFINISHED BUSINESS**

None.

**9. PUBLIC COMMENTS**

None.

**10. COMMUNICATIONS**

None.

**11. PLANNERS REPORTS**

**A. The Future of Transportation Article from Giffels Webster**

Planner Arroyo stated that this highlights electric vehicles and some of the changes that may be impacting their communities, as they know they are growing. One of the interesting questions deals with recharging; there is some new federal legislation that is going to provide some incentives for purchasing electric vehicles. The question is do they have the infrastructure to charge them properly? One of the things that are kind of the big picture is the potential to recharge them from the roadway itself through induction technology. There are some pilot projects that are going to be put in place. At the same time, a complex problem never has an easy solution, and a solution includes multiple levels of charging opportunities, so certainly providing for that. The ordinance provides for it. Some communities have gotten more aggressive in terms of actually requiring that a certain percentage of parking spaces have charging stations or at a minimum charging infrastructure. The thought is, being that putting a conduit under a parking lot before it is built is a lot cheaper than going in and later tearing the parking lot up to put the conduit in. These are all things to keep monitoring and considering. Also, considering if there would be other incentives such as if they were to have carpool lanes would you allow for people who have electric vehicle charging to use those even though they don't have more than one person in the car. There are all kinds of interesting things that government can do from a programming and policy perspective to impact how certain resources are being used in their community. It all goes to the whole concept of you want to have a goal of being greener and having opportunities for people and encourage people to use certain technologies. A lot of times when they are at the beginning of those technologies being introduced, they need to have incentives to encourage those. Right now, electric vehicles cost a lot more money so that is why they are seeing some incentives at the governmental level to purchase those. You happen to be a community that approved an electric vehicle assembly plant and a battery plant. He thought for several reasons let's keep monitoring it and see how they might react to those changes and prepare for those changes that are happening.

Chairman Reynolds asked if Planner Arroyo has seen ordinances starting to change to either require, suggest, or provide the opportunity of public benefit by providing a charging station specifically? He thought that was something soon on the horizon. Planner Arroyo replied if they thought that was important to them as a community, they could specifically call that out as a type of thing they are looking for a community benefit.

Vice-Chairman Gross said it wasn't too long ago that they started requiring handicap parking for required purposes.

Secretary St. Henry asked if there were any regulations or requirements coming from other government entities beyond the Township to install EV charging units? He added that virtually every development now, they are seeing them, and he was sure other communities were seeing them. He asked if there was something else motivating developers besides that it just seems to

make sense? Planner Arroyo replied that he believed there were some new guidelines coming from the Federal Government for federal facilities, that those be installed he just couldn't give him exact sight as to what it is. He thought they will see more of that, at the State level, he thought some municipalities will do it on their own. If they are really trying to promote this at the national level, they have to make sure that the infrastructure is there so that when people have these vehicles, they can charge them and can travel. If you go up north, what are you going to do? He was just in Rogers City over the weekend and the public parking lot has a charging station at it. There are places that are preparing for that.

Commissioner Brackon asked if the technology exists for these lanes anywhere in the United States already where it has been implemented? Planner Arroyo said he couldn't sight a specific location, but it is planned in the Corktown area which was one of the pilot projects. He didn't think that was in place yet, but it is certainly planned with the Ford Motor Company taking over the Michigan Central Station, which is one of the locations. It is being studied for connection between Detroit and Ann Arbor. The state is in the process of studying or at least there would be a lane that would provide for this induction charging. It is going to happen very soon. There are some limited places where it is in place but on a larger scale, it is going to happen very soon.

Secretary St. Henry said that the County is partnering with a number of manufacturers and actually going to be developing these mobility technologies in regard to charging. It is something that is underway right now.

Commissioner Brackon thought that it would be a mess to begin to study it in Michigan with winters. Planner Arroyo said it was part of the technology though.

Chairman Reynolds said some of the components would be, as an architect of a site like this, that has charging stations in it, it was not necessarily planned that they would be there on day one but that they would come soon, or they would be coming. Luckily there were some grant programs available that implemented those instantaneously when the facility opened but the conduit runs considering a charger, is not just a charger there are levels. Some of these newer cars say they can charge it in 45 minutes that is a level 3 charger that is a lot. There are more conduit runs there, and there is a more robust infrastructure that needs to be present. Maybe that isn't a day one install but as a conduit runs just like it would for a sprinkler system underneath your driveway, so you don't have to rip up the driveway. When you bring service and utility into a building maybe the network can't support all of the charging stations that you would intend to one day be installing. At least they have the ability to say here is how we are going to implement it maybe day two, five, or year 10.

Planner Arroyo said he read what they are doing in China now is they are designing the vehicles so they can actually switch out the battery. While you are at work you can go on your phone and say you need a new battery, somebody comes to your parking lot takes the battery out of your car, and puts another one in, it is recharged then you go. That is another potential technology change. They don't do that with our cars where they are interchangeable like that where someone can come to your parking and do that. That could be something that could happen. Multiple solutions to a complex problem, not just one.

Chairman Reynolds thought it was a topic that they keep talking about especially with GM here in Orion.

#### B. MTA Regional Summits Brochure

Chairman Reynolds asked Planning & Zoning Director Girling if she would like to go over training budget opportunities. Planning & Zoning Director Girling stated that they always strongly encourage education. They have at least this year, and she always goes after a hefty budget for

education. Not all of them involve travel, not all of the opportunities do, and some of them are from the comfort of your home virtual. At the Regional Summit, you don't have to do both days, you can do one day. She asked them to look over the topics and if there is anything they feel that is beneficial to their position as a Planning Commission member let her know and they will get them enrolled.

#### C. Michigan Association of Planning's 2022 Annual Conference

Planning & Zoning Director Girling said at the planning conference, from the comfort of your home, after the conference, there is a virtual that where they can see the key topics. The planner's conference is a complex one to coordinate. If they are interested, it is Mackinaw Island, there is the ferry, the storage of your car, there are a number of things. If you have any interest, she asked that they let her know as soon as possible. If there are multiple people she usually asks if there is the ability to try to go to different topics since they all are put on by the Michigan Association of Planning, then they got multiple planning topics that are covered. She will send out an email with a deadline, so if anyone is interested, they have a point that they know how many, if any, will be attending.

Secretary St. Henry asked when the Regional Summit what are those dates? She said that there are multiple, there are Marquette, Kalamazoo, Bellaire, Mt. Pleasant, and Port Huron. She thought that Port Huron would be the closest. Chairman Reynolds said it is pretty much every weekend in October. October 4<sup>th</sup> and 5<sup>th</sup> in Marquette, October 10<sup>th</sup> and 11<sup>th</sup> Kalamazoo, October 12<sup>th</sup> and 13<sup>th</sup> Bellaire, October 18<sup>th</sup> and 19<sup>th</sup> Mt. Pleasant, and October 25<sup>th</sup> and 26<sup>th</sup> Port Huron. Planning & Zoning Director Girling wanted to point out that when they go over day one and day two, day one doesn't start until three, that is check in. Then there is a welcoming, it really is socializing on day one, and day two are all mostly where the classes are.

Commissioner Brackon said he saw where Giffels Webster is hosting a social hour at the Pink Pony in Mackinaw. Planner Arroyo said the Pink Pony up in Mackinaw, they should come. He is going to be there, and they did it there last time the conference was there, and it was like the highlight of the conference, it was a good party.

Chairman Reynolds said these are two different organizations that they belong to, Michigan Township Association. The Summits he would highly recommend, it is a little bit different format, but they usually bring in a really good diverse background where it is not just appealing to planning topics but also larger government topics. He thought that was a great one to attend to understand the bigger picture. He has always appreciated it because they kind of hit it from a couple of different angles, and it develops some thinking process nicely. The Michigan Association of Planning conference is always a great one, there are planning topics galore. It doesn't hurt that they are on Mackinaw Island and Mission Pointe. That one is from October 12<sup>th</sup> through the 14<sup>th</sup>. He has attended both in the past and thought it was a great opportunity sitting on this Board to be able to take some time out and go enjoy a new location and some discussion, and then go out and talk with fellow Planning Commissioners. He would hope that people wouldn't be disappointed after they go, he always got a lot out of them.

#### **12. COMMITTEE REPORTS**

None.

#### **13. PUBLIC HEARINGS**

None.

#### **14. CHAIRMAN'S COMMENTS**

None.

**15. COMMISSIONERS' COMMENTS**

Commissioner Gingell said that since their last meeting she wanted to make very clear that her family does not own property in Gingellville. She has gotten a lot of messages, they don't benefit from anything happening in Gingellville, their last name is just Gingell. They love the history, that is it. They don't benefit from anything going on there or any decisions that they make here at this Board. Chairman Reynolds said when there are potential conflicts, they disclose that because they don't want to have those issues present.

**16. ADJOURNMENT**

Moved by Trustee Urbanowski, seconded by Commissioner Gingell, to adjourn the meeting at 8:20 p.m. **Motion carried.**

Respectfully submitted,

Debra Walton  
PC/ZBA Clerk  
Charter Township of Orion

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Planning Commission Approval Date

**CHARTER TOWNSHIP OF ORION PLANNING COMMISSION MINUTES  
PC-22-31, 1112-1128 LAPEER ROAD REZONE  
REQUEST FROM RESTRICTED BUSINESS (RB) TO GENERAL BUSINESS (GB)  
PUBLIC HEARING – WEDNESDAY, AUGUST 17, 2022**

The Charter Township of Orion Planning Commission held a Public Hearing on Wednesday, August 17, 2022, at 7:05 p.m. at the Orion Township Municipal Complex Board Room 2323 Joslyn Road, Lake Orion, MI 48360.

**PLANNING COMMISSION MEMBERS PRESENT:**

Don Walker, PC Rep to ZBA  
Don Gross, Vice Chairman  
Kim Urbanowski, BOT Rep to PC  
Scott Reynolds, Chairman

Derek Brackon, Commissioner  
Joe St. Henry, Secretary  
Jessica Gingell, Commissioner

**PLANNING COMMISSION MEMBERS ABSENT:**

None.

**CONSULTANTS PRESENT:**

Rod Arroyo, (Township Planner) of Giffels Webster  
Eric Pietsch, (Township Planner) of Giffels Webster  
Mark Landis (Township Engineer) of Orchard, Hiltz, and McCliment, Inc.  
Tammy Girling, Township Planning & Zoning Director

**OTHERS PRESENT:**

Steve Perlman	Pete Alshab
Jason Emerine	Darren Naimi
Gary August	Jim Whittenberg
Tom Martelle	

PC-22-31, 1112-1128 Lapeer Road Rezone, request to rezone 1112, 1116, 1120, 1124, 1128 & 1132 S. Lapeer Road (parcel #09-14-201-005) from Restricted Business (RB) to General Business (GB).

Chairman Reynolds asked if the petitioner was present and if they could please state their name and address for the record.

Mr. Gary August an attorney for the applicant in this matter which is KN West LLC. He added that Darren Naimi the principal of that LLC is sitting in the audience and can answer any questions.

Mr. August stated that this is a rezoning request for a small strip of property that is on Lapeer Rd. south of Clarkston. It is adjacent to another small strip of property that his client has a contract to purchase as well. The one just south of the subject property which is 1140 Lapeer is zoned General Business (GB). The subject property is zoned Restricted Business (RB) and they are seeking a rezoning of the Restricted Business (RB) property to a General Business (GB) classification. The long-term goal is to combine in future development those two properties into a larger more useful and better applicable use than what is currently there. Under the Future Land Use Plan, the property that is the subject property is under a general commercial classification as is the property just south of that. They are seeking to make a switch from Restricted Business (RB) to General Business (GB) so that those properties can be better utilized together.

Mr. August said that the Planner expressed some issues as to a General Business (GB) classification for a property of that small size. That is why they wanted to call to them that they have the contract in place to purchase the property to the south and anticipate that those would be combined. Obviously, the jurisdiction would have site plan approval of how that would be done, and they could address any of the issues that the Planner has at that time.

Mr. August believed that the Future Land Use plan <sup>17</sup>no longer has a Restricted Business (RB) classification so this would be consistent with that Future Land Use plan.

Chairman Reynolds said he would open it up to the public. They will further deliberate on this topic under new business 7B where they will read their professional reviewer's letters into the record, at this point it is just the public hearing process.

Chairman Reynolds asked if there was anyone from the public that would like to make any questions or comments. There was not.

Chairman Reynolds noted that there were no citizen letters.

Chairman Reynolds asked if any of the Planning Commissioners would like to make any general comments or questions? There was not.

Chairman Reynolds closed the public hearing at 7:09 p.m.

Respectfully submitted,

Debra Walton  
PC/ZBA Clerk  
Charter Township of Orion

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Planning Commission Approval Date



## Charter Township of Orion

Planning & Zoning Department

2323 Joslyn Rd., Lake Orion MI 48360

P: (248) 391-0304 ext. 5000; Fax (248) 391-1454

TO: The Charter Township of Orion Planning Commission  
FROM: Tammy Girling, Planning & Zoning Director  
DATE: September 1, 2022  
RE: PC-22-33, Peninsula Agriculture LLC, Ordinance 154 Class "C" Grow Application

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As requested, I am providing suggested motions for the abovementioned project. Please feel free to modify the language. The verbiage below could substantially change based upon the Planning Commissions findings of facts for the project. Any additional findings of facts should be added to the motion below.

### Ordinance #154

I move to **grant/not grant** approval of the application, as required per Ord. #154, for PC-22-33, Peninsula Agriculture LLC, for a Class "C" growing facility, located at 210 W. Silverbell Rd. (parcel 09-26-300-012) based on the finds of fact that the operation **does/does not** meeting the following location requirements:

- Is located in and IP zoning district
- Is located in a building that meets all the distance requirements shown in Ord. 154
- The location received a waiver from the Board of Trustees to be located in a building that has an ingress/egress road with greater than 6,000 vehicles/day.
- Is located in a building that has an ingress/egress road that does not service as a road that also serves for residential zoning.

### If motion is grant approval - conditioned upon:

1. The applicant meets all applicable Township Ordinances and promulgated standards of the Township and, prior to opening, shall demonstrate to the Township that it meets the rules and regulations promulgated by the State Marihuana Licensing Board.



**Charter Township of Orion**

Planning Division

2323 Joslyn Rd., Lake Orion MI 48360

P: (248) 391-0304 ext. 5000

CHARTER TOWNSHIP OF ORION  
ORDINANCE No. 154 APPLICATION REVIEW

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Planning Commission Case: PC-2022-33

Parcel Number: 09-26-300-012

Property Address: 210 W. Silverbell

Applicant: Brian Milosch (Peninsula Agriculture, LLC)

Request: Class "C" Grow

Date: August 31, 2022

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The aforementioned application was reviewed for compliance with the location requirements of Article VI of Ordinance No. 154 and the findings are detailed below:

Article V, 1. – The Facility must be located in the Township's IP (Industrial Park) district: The parcel listed in the application is zoned IP (Industrial Park) as required.

Article V, 2 – The Facility cannot be within one thousand five hundred (1,500) feet of a "church" in the Township: Article VI, 7 states that the distances specified in the Ordinance shall be measured from building edge to building edge. The applicant stated within their application that the facility is more than the required 1,500 feet. A GIS measurement was taken from the corner of the building to the corner of the building to the closest church and it was approximately 3,600 feet.

Article VI, 3 – The Facility cannot be within one thousand (1,000) feet of a residence located in a R-1, R-2, R-3, SF, SE, SR, RM or MHP zoning district: Article VI, 7 states that the distances specified in the Ordinance shall be measured from building edge to building edge. The applicant stated within their application that the facility is not more than the required 1,000 feet. Using GIS, a measurement was taken from the edge of the building to the edge of the closest residential home and it was approximately 1,500 feet. Although the applicant requested a waiver, it is not necessary, the applicant meets the required distance.

Article VI, 4 – The Facility cannot be within two thousand five hundred (2,500) feet of a registered "school" within the Township: Article VI, 7 states that the distances specified in the Ordinance shall be measured from building edge to building edge. The applicant stated within their application that the facility is more than the required 2,500 feet. The closest school is over 5,000 feet away.

Article VI, 5 – The Facility shall not have an ingress or egress on a street or road that has an average traffic volume in excess of six thousand (6,000) vehicles per day, as calculated by averaging the three (3) most recent Average Annual Daily Traffic (AADT) counts (as available), as reported by Southeast Michigan Council of Governments (SEMCOG): Per the provided site plan, the requested site has ingress and egress off of W. Silverbell Rd. I was able to locate one traffic count on the SEMCOG website; the count was in excess of the 6,000 vehicles per day showing 7,540. On October 21, 2019, this site was granted a waiver from this requirement by the Board of Trustees, as the ordinance provides for.

Article VI, 6- The Facility shall not have an ingress or egress on a street or road that directly also serves as an ingress or egress to a residential road or property located in a R-1, R-2, R-3, SF, SE, SR, RM or MHP zoning district. The application lists the parcel as having ingress and egress off of W. Silverbell Rd. No residential properties have direct access off of W. Silverbell Rd. A few homes have direct access off of E. Silverbell Rd. on the east side of Lapeer Rd.

Article VI, 7 - Distances specified in this Ordinance shall be measured from building edge to building edge. The measurements, unless noted differently, were measured from building edge to proposed building edge.

Article VI, 8 – If the Facility shall need a variance from what is set forth in Article VI Sections one (1) through six (6) above, the Applicant may submit a formal request for a variance to the Zoning Board of Appeals (“ZBA”). The ZBA shall only consider a variance request that is no more than fifteen percent (15%) out of compliance with the above location regulations: The applicant is not requested any variances the ZBA.

Article VI, 9 – It is the Township’s intention that Growers, Processors, Safety Compliance Facilities and Secured Transporters may operate within the same building under the following conditions: each licensed entity remains distinct and separate within different working area and separate record keeping systems: The applicant is requesting a Class “C” growing facility only.

Article VI, 10 –The location shall meet all applicable Ordinances and promulgated standards of the Township and, prior to opening, shall demonstrate to the Township that it meets the rules and regulations promulgated by the State Medical Marihuana Licensing Board:

ITEMS TO BE ADDRESSED: These items are unknown at this time. It is recommended that any approval be conditioned upon this requirement.

Article VI, 11 – The Facility location shall conform to all standards of the zoning district in which it is located:

ITEMS TO BE ADDRESSED: This condition has been met. The building itself has received site plan approval.

Article VI, 12 – If the Facility location is currently vacant land, the applicant must submit a site plan and building plans with the Application: The application is for an improved parcel that has received site plan approval.

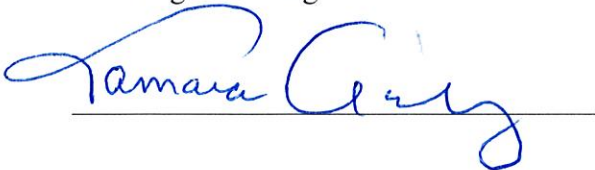
Article VI, 14 – Based upon an application for or amendment of a Conditional Rezoning, PUD, or other use Development Agreement of sufficient specificity, it is within the sole discretion and judgment of the Township Board of Trustees to consider and waive any or all of the Location Requirements of this Article VI based upon any or all of 3 factors listed in Article VI 14 a,b, and c. The site was rezoned using a Conditional Rezone and the applicant is requested, and received, a waiver on October 21, 2019 from the Board of Trustees as noted above.

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Summary: I have reviewed the application as it relates to Ordinance No. 154 Article VI – Location Requirements. I am agreeable with the recommendation to approve this application with the conditions that:

1. The applicant meets all other applicable Township Ordinances and promulgated standards of the Township and, prior to opening, shall demonstrate to the Township that it meets the rules and regulations promulgated by the State Medical Marihuana Licensing Board.

Tamara Girling  
Planning & Zoning Director



## Courtney Keisman

---

**From:** Jeff Williams  
**Sent:** Tuesday, August 23, 2022 10:19 AM  
**To:** Courtney Keisman  
**Subject:** RE: Transmittals Regarding PC-22-33, Peninsula Agriculture LLC., Ord. 154 and PC-22-34, Peninsula Agriculture LLC. Ord. 154

The Fire Department has reviewed both projects on BSA and have approved of them in the system. If you need anything additional please let me know



**Jeffrey Williams, CFPS – Fire Marshal**  
**Orion Township Fire Department - Fire Prevention**  
3365 Gregory Road Lake Orion, MI 48359  
Office: 248.391.0304 ext. 2004 Cell: 248.978.5143  
Fax: 248.309.6993

**From:** Courtney Keisman <ckeisman@oriontownship.org>  
**Sent:** Thursday, August 18, 2022 10:45 AM  
**To:** David Goodloe <dgoodloe@oriontownship.org>; Jeff Williams <jwilliams@oriontownship.org>  
**Subject:** Transmittals Regarding PC-22-33, Peninsula Agriculture LLC., Ord. 154 and PC-22-34, Peninsula Agriculture LLC. Ord. 154

Hello.

Attached are transmittals regarding PC-22-33 Peninsula Agriculture LLC., Ord. 154 and PC-22-34 Peninsula Agriculture LLC., Ord. 154.

Thank you,



**Courtney Keisman**  
Clerk III  
Planning & Zoning  
2323 Joslyn Road, Lake Orion, MI 48360  
O: 248.391.0304, ext. 5003  
W: [www.oriontownship.org](http://www.oriontownship.org)



## Charter Township of Orion

2525 Joslyn Rd., Lake Orion, MI 48360 [www.oriontownship.org](http://www.oriontownship.org) (248) 391-0304

To: Planning Commission  
From: David Goodloe, Building Official  
Re: Medical Marijuana Applications PPC-22-33  
Date: 09/01/2022

---

The application for PPC-22-33 has been reviewed by the Building Department for compliance with The Charter Township of Orion Ordinance number 154 Article VI application procedure for the purposes of compliance with Ordinance 154 only, the Building Department has the following recommendation:

- ☒ Approved
- ☐ Approved with conditions (See below)
- ☐ Not approved

If you have any questions feel free to contact me at 248-391-0304. X6001

Sincerely,

*David Goodloe*

David Goodloe  
Building Official  
Orion Township Building Dept.



## Charter Township of Orion

Planning & Zoning Department

2323 Joslyn Rd., Lake Orion MI 48360

P: (248) 391-0304 ext. 5000; Fax (248) 391-1454

TO: The Charter Township of Orion Planning Commission  
FROM: Tammy Girling, Planning & Zoning Director  
DATE: September 1, 2022  
RE: PC-22-34, Peninsula Agriculture LLC, Ordinance 154 Class "C" Grow Application

---

As requested, I am providing suggested motions for the abovementioned project. Please feel free to modify the language. The verbiage below could substantially change based upon the Planning Commissions findings of facts for the project. Any additional findings of facts should be added to the motion below.

### Ordinance #154

I move to **grant/not grant** approval of the application, as required per Ord. #154, for PC-22-34, Peninsula Agriculture LLC, for a Class "C" growing facility, located at 210 W. Silverbell Rd. (parcel 09-26-300-012) based on the finds of fact that the operation **does/does not** meeting the following location requirements:

- Is located in and IP zoning district
- Is located in a building that meets all the distance requirements shown in Ord. 154
- The location received a waiver from the Board of Trustees to be located in a building that has an ingress/egress road with greater than 6,000 vehicles/day.
- Is located in a building that has an ingress/egress road that does not service as a road that also serves for residential zoning.

### If motion is grant approval - conditioned upon:

1. The applicant meets all applicable Township Ordinances and promulgated standards of the Township and, prior to opening, shall demonstrate to the Township that it meets the rules and regulations promulgated by the State Marihuana Licensing Board.



**Charter Township of Orion**

Planning Division

2323 Joslyn Rd., Lake Orion MI 48360

P: (248) 391-0304 ext. 5000

CHARTER TOWNSHIP OF ORION  
ORDINANCE No. 154 APPLICATION REVIEW

---

Planning Commission Case: PC-2022-34

Parcel Number: 09-26-300-012

Property Address: 210 W. Silverbell

Applicant: Brian Milosch (Peninsula Agriculture, LLC)

Request: Class "C" Grow

Date: August 31, 2022

---

The aforementioned application was reviewed for compliance with the location requirements of Article VI of Ordinance No. 154 and the findings are detailed below:

Article V, 1. – The Facility must be located in the Township's IP (Industrial Park) district: The parcel listed in the application is zoned IP (Industrial Park) as required.

Article V, 2 – The Facility cannot be within one thousand five hundred (1,500) feet of a "church" in the Township: Article VI, 7 states that the distances specified in the Ordinance shall be measured from building edge to building edge. The applicant stated within their application that the facility is more than the required 1,500 feet. A GIS measurement was taken from the corner of the building to the corner of the building to the closest church and it was approximately 3,600 feet.

Article VI, 3 – The Facility cannot be within one thousand (1,000) feet of a residence located in a R-1, R-2, R-3, SF, SE, SR, RM or MHP zoning district: Article VI, 7 states that the distances specified in the Ordinance shall be measured from building edge to building edge. The applicant stated within their application that the facility is not more than the required 1,000 feet. Using GIS, a measurement was taken from the edge of the building to the edge of the closest residential home and it was approximately 1,500 feet. Although the applicant requested a waiver, it is not necessary, the applicant meets the required distance.

Article VI, 4 – The Facility cannot be within two thousand five hundred (2,500) feet of a registered "school" within the Township: Article VI, 7 states that the distances specified in the Ordinance shall be measured from building edge to building edge. The applicant stated within their application that the facility is more than the required 2,500 feet. The closest school is over 5,000 feet away.

Article VI, 5 – The Facility shall not have an ingress or egress on a street or road that has an average traffic volume in excess of six thousand (6,000) vehicles per day, as calculated by averaging the three (3) most recent Average Annual Daily Traffic (AADT) counts (as available), as reported by Southeast Michigan Council of Governments (SEMCOG): Per the provided site plan, the requested site has ingress and egress off of W. Silverbell Rd. I was able to locate one traffic count on the SEMCOG website; the count was in excess of the 6,000 vehicles per day showing 7,540. On October 21, 2019, this site was granted a waiver from this requirement by the Board of Trustees, as the ordinance provides for.

Article VI, 6- The Facility shall not have an ingress or egress on a street or road that directly also serves as an ingress or egress to a residential road or property located in a R-1, R-2, R-3, SF, SE, SR, RM or MHP zoning district. The application lists the parcel as having ingress and egress off of W. Silverbell Rd. No residential properties have direct access off of W. Silverbell Rd. A few homes have direct access off of E. Silverbell Rd. on the east side of Lapeer Rd.

Article VI, 7 - Distances specified in this Ordinance shall be measured from building edge to building edge. The measurements, unless noted differently, were measured from building edge to proposed building edge.

Article VI, 8 – If the Facility shall need a variance from what is set forth in Article VI Sections one (1) through six (6) above, the Applicant may submit a formal request for a variance to the Zoning Board of Appeals (“ZBA”). The ZBA shall only consider a variance request that is no more than fifteen percent (15%) out of compliance with the above location regulations: The applicant is not requested any variances the ZBA.

Article VI, 9 – It is the Township’s intention that Growers, Processors, Safety Compliance Facilities and Secured Transporters may operate within the same building under the following conditions: each licensed entity remains distinct and separate within different working area and separate record keeping systems: The applicant is requesting a Class “C” growing facility only.

Article VI, 10 –The location shall meet all applicable Ordinances and promulgated standards of the Township and, prior to opening, shall demonstrate to the Township that it meets the rules and regulations promulgated by the State Medical Marihuana Licensing Board:

ITEMS TO BE ADDRESSED: These items are unknown at this time. It is recommended that any approval be conditioned upon this requirement.

Article VI, 11 – The Facility location shall conform to all standards of the zoning district in which it is located:

ITEMS TO BE ADDRESSED: This condition has been met. The building itself has received site plan approval.

Article VI, 12 – If the Facility location is currently vacant land, the applicant must submit a site plan and building plans with the Application: The application is for an improved parcel that has received site plan approval.

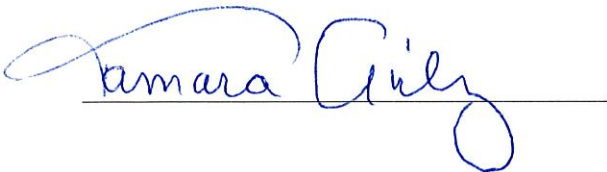
Article VI, 14 – Based upon an application for or amendment of a Conditional Rezoning, PUD, or other use Development Agreement of sufficient specificity, it is within the sole discretion and judgment of the Township Board of Trustees to consider and waive any or all of the Location Requirements of this Article VI based upon any or all of 3 factors listed in Article VI 14 a,b, and c. The site was rezoned using a Conditional Rezone and the applicant is requested, and received, a waiver on October 21, 2019 from the Board of Trustees as noted above.

---

Summary: I have reviewed the application as it relates to Ordinance No. 154 Article VI – Location Requirements. I am agreeable with the recommendation to approve this application with the conditions that:

1. The applicant meets all other applicable Township Ordinances and promulgated standards of the Township and, prior to opening, shall demonstrate to the Township that it meets the rules and regulations promulgated by the State Medical Marihuana Licensing Board.

Tamara Girling  
Planning & Zoning Director

A handwritten signature in blue ink, reading "Tamara Girling", is written over a horizontal line.

## Courtney Keisman

---

**From:** Jeff Williams  
**Sent:** Tuesday, August 23, 2022 10:19 AM  
**To:** Courtney Keisman  
**Subject:** RE: Transmittals Regarding PC-22-33, Peninsula Agriculture LLC., Ord. 154 and PC-22-34, Peninsula Agriculture LLC. Ord. 154

The Fire Department has reviewed both projects on BSA and have approved of them in the system. If you need anything additional please let me know



**Jeffrey Williams, CFPS – Fire Marshal**  
**Orion Township Fire Department - Fire Prevention**  
3365 Gregory Road Lake Orion, MI 48359  
Office: 248.391.0304 ext. 2004 Cell: 248.978.5143  
Fax: 248.309.6993

---

**From:** Courtney Keisman <ckeisman@oriontownship.org>  
**Sent:** Thursday, August 18, 2022 10:45 AM  
**To:** David Goodloe <dgoodloe@oriontownship.org>; Jeff Williams <jwilliams@oriontownship.org>  
**Subject:** Transmittals Regarding PC-22-33, Peninsula Agriculture LLC., Ord. 154 and PC-22-34, Peninsula Agriculture LLC. Ord. 154

Hello.

Attached are transmittals regarding PC-22-33 Peninsula Agriculture LLC., Ord. 154 and PC-22-34 Peninsula Agriculture LLC., Ord. 154.

Thank you,



**Courtney Keisman**  
Clerk III  
Planning & Zoning  
2323 Joslyn Road, Lake Orion, MI 48360  
O: 248.391.0304, ext. 5003  
W: [www.oriontownship.org](http://www.oriontownship.org)



## Charter Township of Orion

2525 Joslyn Rd., Lake Orion, MI 48360 [www.oriontownship.org](http://www.oriontownship.org) (248) 391-0304

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To: Planning Commission  
From: David Goodloe, Building Official  
Re: Marijuana Applications PC-22-34  
Date: 08/19/2022

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The application for 210 W SILVERBELL RD has been reviewed by the Building Department for compliance with The Charter Township of Orion Ordinance number 154 Article VI application procedure for the purposes of compliance with Ordinance 154 only, the Building Department has the following recommendation:

- ☒ Approved
- ☐ Approved with conditions (See below)
- ☐ Not approved

If you have any questions feel free to contact me at 248-391-0304. X6001

Sincerely,

*David Goodloe*

David Goodloe  
Building Official  
Orion Township Building Dept.



# Charter Township of Orion

2323 Joslyn Rd., Lake Orion MI 48360  
www.oriontownship.org

## Planning & Zoning Department

Phone: (248) 391-0304, ext. 5000

TO: The Charter Township of Orion Planning Commission

FROM: Tammy Girling, Zoning/Planning Director

DATE: September 2, 2022

RE: PC-22-35 Text Amendment Performance Guarantee

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If you may recall, at the last joint meeting with the Board of Trustees, PC, and ZBA on 7/29/21, a committee was created to work on a text amendment related to performance guarantees within Zoning Ordinance #78. The committee has worked over the last year and has come up with the attached proposed text for your consideration. You are being provided both a clean copy and a red-line of all changes proposed.

If you have any questions, please feel free to reach out to me.

**Section 30.09 – Performance Guarantee**

- SEP 01 2022  
Orion Township  
Planning & Zoning
- A. Intent. To ensure compliance with the provisions of this Ordinance and any conditions imposed thereunder, the Township shall require that a performance guarantee be deposited with the Township Clerk, to ensure faithful completion of improvements.
- B. Improvements Covered by the Performance Guarantee. As used in this section, improvements include those features and actions associated with a project which are considered necessary to protect natural resources, or the health, safety, and welfare of the residents of the Township and future users or inhabitants of the proposed project or project area. Improvements shall include roadways, lighting, utilities, sidewalks, screening, parking areas, drainage, and similar features. Township requirements related to improvements such as record (as-built) plans, easements, maintenance and financial guarantees, and similar items, along with consultants' review time, shall also be included in the performance guarantee improvements. *(amended 09.04.01, 08.15.16)*
- C. Completion Agreement (PUD Agreement). For a Planned Unit Development under Section 30.03, or any development intended to be developed in more than one phase, the following shall be set forth in a completion agreement: the improvements to be covered by the performance guarantee, the amount required to guarantee completion of the improvements plus an administrative fee in an amount approved by the Township Board, and the time for completion of the improvement. The completion agreement shall be in a form and manner approved by the Township Attorney. *(added 08.06.07, amended 08.15.16)*
- D. Requirements. All performance guarantee, completion agreements, and development agreements (including PUD Agreements) shall meet the following requirements:  
*(amended 08.06.07, 08.15.16):*
1. The performance guarantee shall be in the form of a cash deposit, irrevocable bank letter of credit, certified check, or performance bond acceptable to the Township, which shall be deposited with the Township. The performance guarantee shall be submitted along with a fully executed completion agreement at the time of issuance of the permit authorizing the activity or project. The Township shall deposit the funds in an account in a financial institution with which the Township regularly conducts business.
  2. The amount of the performance guarantee shall be sufficient to cover fifty percent (50%) of the total estimated cost of improvements associated with a project for which site plan approval is sought, which amount shall be reviewed and approved by the Township Engineers, with the inclusion of an administrative fee, in an amount set by the Township's fee schedule (Ordinance No. 41). The only exception to this requirement shall be for projects located in the Industrial Complex (IC) District as set forth in Subsection D(3)(below).
  3. Projects located within the Township's Industrial Complex (IC) District, as defined in Section 19.00, shall be governed by all provisions set forth in Section 30.09, with the exception of Subsection (D)(2), above. Instead, due to the increased cost and scope of projects located in the Industrial Complex (IC) District, the amount of the performance guarantee for such projects shall cover a percentage of the total estimated cost of improvements associated with a project for which site plan approval is sought, which may be less than fifty percent (50%) of the total estimated cost of improvements. The total estimated cost of improvements associated with a project for which site plan approval is sought under this Section shall be approved by the Township Engineers, with the inclusion of an administrative fee. The percentage of the performance guarantee shall be recommended by Township Engineer and approved by the Township Board of Trustees.
  4. The entire performance guarantee, without interest and less the ten percent (10%) detailed in Section 30.09 (D) (5) below, shall be returned to the applicant upon satisfactory completion of the required improvements within the time limits specified in this Ordinance. For a performance guarantee in the form of a cash deposit or irrevocable bank letter of credit, an Applicant may request that the performance guarantee be partially returned prior to completion of the required improvements if Township Administration determines the improvements are at least 50% complete. If Township Administration determines the Applicant meets the foregoing requirement, it shall return a portion of the performance in an amount determined by the Township Engineer which shall be in reasonable proportion to the work completed on the required improvements. For a performance guarantee in the form of a bond, no reduction shall occur until the project or work for which the bond was required is one hundred percent (100%) complete and all fees and other obligations for the project to the Township are satisfied. The applicant is responsible to pay all costs and fees, including all consultant or third-party fees, related to the Township's determination of the reasonable proportion of the work completed.

5. An amount not less than ten percent (10%) of the total performance guarantee shall be retained for a period of at least one (1) year after installation of landscape materials to ensure their proper maintenance and replacement, if necessary. This amount, without interest, shall be released to the Applicant upon certification by the Planning and Zoning Department that all landscape materials are being maintained in good condition.
- E. Unsatisfactory Completion of Improvements. Whenever required improvements are not installed or maintained in accordance with the standards or time limits of this Ordinance or as set forth in a completion agreement, the Township may complete the necessary improvements itself or by contract with an independent contractor and assess all costs of completing said improvements against the performance guarantee or other surety. Prior to the completing of said improvements, the Township shall provide 30 (thirty) days' notice to the persons that provided the performance guarantee and the licensee or holder of the permit, certificate, or approval that required the performance guarantee. *(amended 08.06.07, 08.15.16)*
- F. Default and Use and Disposition of Bonds.
1. Bond Forfeiture. A bond shall be forfeited to the Township if: (i) a condition of the bond, or the Code, permit, certificate, or approval that required the bond, is not satisfied, and complied with at the deadline for that compliance, or (ii) if a licensee or holder of a permit, certificate, or approval fails to timely request a required Township compliance inspection or review. The application for the permit, certificate, or approval for which the bond was provided shall be deemed to have authorized the right of the Township by its employees, agents, consultants, and/or contractors to enter upon the property to determine whether the terms of any condition of the bond, or the Code, permit, certificate, or approval has been met.
  2. Before forfeiting a bond, the Township will provide at least thirty (30) calendar days' written notice of its intention to do so to the persons that provided the bond, the principal, and any sureties on the bond, and the licensee or holder of the permit, certificate, or approval that required the bond. Such notice shall include the opportunity to cure the default in a time and manner specified in the notice to the persons that provided the bond and that obtained the Township permit, certificate, or approval. The proceeds of a forfeited bond shall be applied or held by the Township toward the cost of accomplishing or securing compliance with the conditions of the bond, Code, permit, certificate, or approval, and to cover the Township convenience fee in accordance with Sec. F(4) with any portions not needed for that purpose to be refunded to the source of the forfeited, drawn upon, or collected bond proceeds held by the Township. A notice given under this section may be provided by first class mail or other delivery to addresses provided to the Township.
  3. If the bond proceeds are insufficient in amount to pay for the costs that are, or will be, incurred by the Township, the persons that provided the bond and/or that obtained the Township permit, certificate, or approval, shall be required to pay, and are liable to the Township, jointly and severally, for such additional amounts, which shall be paid within thirty (30) days of the Township's written notice of deficiency.
  4. The Township may incur actual costs in exercising its rights to cure or satisfy a default and achieve compliance, as set forth herein. Any portion of the proceeds of a forfeited, drawn upon, or collected bond that remain after payment of: (i) all actual costs, (ii) the Township's administrative costs, (iii) an additional convenience fee of up to five percent (5%) of the total bond amount to cover costs for consultant reviews and/or staff time to undertake review and enactment of the forfeiture in accordance with this Ordinance; and (iv) any actual attorney and consultant fees incurred by the Township; shall be refunded to the person who provided the bond funds that were used by the Township.
  5. If a default on a requirement or condition of a bond, Code, permit, or certificate of approval is cured or satisfied, and compliance is achieved by persons other than the Township after a bond that has been forfeited or subject to draw or collection, then any bond proceeds that remain after payment of any actual attorney and consultant fees incurred by the Township, as well as administrative costs and convenience fees, shall be refunded to the source of the forfeited, drawn upon, or collected bond proceeds held by the Township.

**30.09 Performance Guarantee***Revised 09/\_\_\_/22*

## Section 30.09 – Performance Guarantee

- A. Intent. To ensure compliance with the provisions of this Ordinance and any conditions imposed thereunder, the Township shall require that a performance guarantee be deposited with the Township Clerk, to ensure faithful completion of improvements.
- B. Improvements Covered by the Performance Guarantee. As used in this section, improvements include those features and actions associated with a project which are considered necessary to protect natural resources, or the health, safety, and welfare of the residents of the Township and future users or inhabitants of the proposed project or project area. Improvements shall include roadways, lighting, utilities, sidewalks, screening, parking areas, drainage, and similar features. Township requirements related to improvements such as record (as-built) plans, easements, maintenance and financial guarantees, and similar items, along with consultants' review time, shall also be included in the performance guarantee improvements. *(amended 09.04.01, 08.15.16)*
- C. Completion Agreement (PUD Agreement). For a Planned Unit Development under Section 30.03, or any development intended to be developed in more than one phase, the following shall be set forth in a completion agreement: the improvements to be covered by the performance guarantee, the amount required to guarantee completion of the improvements plus an administrative fee in an amount approved by the Township Board, and the time for completion of the improvement. The completion agreement shall be in a form and manner approved by the Township Attorney. *(added 08.06.07, amended 08.15.16)*

D. Requirements. All performance guarantee, completion agreements, and development agreements (including PUD Agreements) shall meet the following requirements:

D. Requirements of PUD Agreements. All performance guarantee and completion agreements (PUD Agreements) shall meet the following requirements

*(amended 08.06.07, 08.15.16):*

— The performance guarantee shall be in the form of a cash deposit, irrevocable bank letter of credit ~~or~~ certified check, or surety performance bond acceptable to the Township, which shall be deposited with the Township.

2.1. The performance guarantee shall be submitted along with a fully executed completion agreement at the time of issuance of the permit authorizing the activity or project. The Township shall deposit the funds in an account in a financial institution with which the Township regularly conducts business.

2. The amount of the performance guarantee shall be sufficient to cover fifty percent (50%) of the total estimated cost of improvements associated with a project for which site plan approval is sought, which amount shall be reviewed and approved by the Township Engineers, with the inclusion of an administrative fee plus an administrative fee, in an amount approved by the Township Board, in an amount set by the Township's fee schedule (Ordinance No. 41). The only exception to this requirement shall be for projects located in the Industrial Complex (IC) District as set forth in Subsection D(3)(below). five percent (-)

3. Projects located within the Township's Industrial Complex (IC) District, as defined in Section 19.00, shall not be subject governed by to all the provisions set forth in Section 30.09, with the exception of in Subsection D(2), above, and shall be governed by this section. Instead, Due to the increased cost and scope of projects located in the Industrial Complex (IC) District, the amount of the performance guarantee for such projects shall cover a percentage of the total estimated cost of improvements associated with a project for which site plan approval is sought, which may be less than fifty percent (50%) of the total estimated cost of improvements. The total estimated cost of improvements associated with a project for which site plan approval is sought under this Section shall be approved by the Township Engineers, with the inclusion of an administrative fee. Such The percentage of the performance guarantee shall be recommended by Township Engineer and approved by the Township Board of Trustees. The total estimated cost of improvements associated with a project for which site plan approval is sought under this Section shall be approved by the Township Engineers, with the inclusion of an administrative fee.

~~5.4.~~ The entire performance guarantee, without interest and less the ten percent (10%) detailed in Section 30.09 (D) (5) below, shall be returned to the applicant upon satisfactory completion of the required improvements within the time limits specified in this Ordinance. ~~The For a performance guarantee in the form of a cash deposit, or irrevocable bank letter of credit, an a~~Applicant may request that the performance guarantee-be partially returned prior to completion of the required improvements if Township Administration determines the improvements are at least 50% complete. If Township Administration determines the Applicant meets the foregoing requirement, it shall return a portion of the performance in an amount as one (1) work progresses determined by the Township Engineer which shall be in reasonable proportion to the ratio of work-work completed on the required improvements. ~~For a performance guarantee in the form of a bond, no reduction shall occur until the project or work for which the bond was required is 100-pone hundred percent (100%) complete and all fees and other obligations for the project to the Township are satisfied.~~ The applicant is responsible to pay all costs and fees, including all consultant or ~~third-party~~third-party fees, related to the Township's determination of the reasonable proportion of the work completed.

~~5.~~ An amount not less than ten percent (10%) of the total performance guarantee shall be retained for a period of at least one (1) year after installation of landscape materials to ensure their proper maintenance and replacement, if necessary. This amount, without interest, shall be released to the aApplicant upon certification by the ~~Building Department~~Planning and Zoning Department that all landscape materials are being maintained in good condition.

~~6.~~

~~E.~~ ~~E.~~ Unsatisfactory Completion of Improvements. Whenever required improvements are not installed or maintained in accordance with the standards or time limits of this Ordinance or as set forth in a completion agreement, the Township may complete the necessary improvements itself or by contract with an independent contractor, and assess all costs of completing said improvements against the performance guarantee or other surety. Prior to the completing of said improvements, the Township shall ~~notify-provide 30 (thirty) days-noticedays' notice to the-the persons that provided the performance guarantee and the licensee or holder of the permit, certificate, or approval that required the performance guarantee. owner, site-plan-review applicant, or other individual or firm responsible for installation and maintenance of the required improvements.~~ (amended 08.06.07, 08.15.16)

#### FE. Default and Use and Disposition of Bonds.

~~1.~~ ~~1.~~ Bond Forfeiture. A bond shall be forfeited to the Township if: (i) a condition of the bond, or the Code, permit, certificate, or approval that required the bond, is not ~~satisfies~~satisfied, and complied with at the deadline for that compliance, or (ii) if a licensee or holder of a permit, certificate, or approval fails to timely request a required Township compliance inspection or review. The application for the permit, certificate, or approval for which the bond was provided shall be deemed to have authorized the right of the Township by its employees, agents, consultants, and/or contractors to enter upon the property to determine whether the terms of any condition of the bond, or the Code, permit, certificate, or approval has been met.-

~~2.~~

~~2.~~ Before forfeiting a bond, the Township will provide at least ~~seventy~~thirty (30) calendar days' written notice of its intention to do so to the persons that provided the bond, the principal, and any sureties on the bond, and the licensee or holder of the permit, certificate, or approval that required the bond. Such notice shall include the opportunity to cure the default in a time and manner specified in the notice, to the persons that provided the bond and that obtained the Township permit, certificate, or approval. The proceeds of a forfeited bond shall be applied or held by the Township toward the cost of accomplishing or securing compliance with the conditions of the bond, Code, permit, certificate, or approval, and to cover the Township convenience fee in accordance with Ssec. ~~DF(43)~~ ~~above~~ with any portions not needed for that purpose to be refunded to the source of the forfeited, drawn upon, or collected bond proceeds held by the Township. A notice given under this section may be provided by first class mail or other delivery to addresses provided to the Township.

~~In the event of a default in complying with one or more requirements or conditions of a bond or the Code, permit, certificate, or approval that required it, the Township shall have the right, but not the obligation, to use the proceeds of a bond that has been forfeited, or subject to draw or collection under Section 14-154, to complete improvements or take the appropriate actions necessary to cure or satisfy the default and achieve compliance with the Code, permit, certificate, or approval requirements or conditions. Prior to doing that, the Township shall provide a final, written notice and opportunity to cure the default in a time and manner specified in the notice, to the persons that provided the bond and that obtained the Township permit, certificate, or approval. For such purposes, the application for the permit, certificate or approval for which the bond was provided shall be deemed to have authorized the right of the Township by its employees, agents, consultants, and contractors to enter upon the property for those purposes. A notice given under this section may be provided by first class mail or other delivery to addresses provided to the Township, or personal delivery at any location.~~

3. ~~\_\_\_\_\_~~

~~3. \_\_\_\_\_ If the bond proceeds are insufficient in amount to pay for the costs that are, or will be, incurred by the Township, under subsection (a), the persons that provided the bond and/or that obtained the Township permit, certificate, or approval, shall be required to pay, and are liable to the Township, jointly and severally, for such additional amounts, which shall be paid within thirty (30) days of the Township's written notice of deficiency.~~

4. ~~4. The Township may incur actual costs in exercising its rights to cure or satisfy a default and achieve compliance, under subsection (a), as set forth herein. Any portion of the proceeds of a forfeited, drawn upon, or collected bond that remain after payment of: (i) all actual costs, (ii) the Township's administrative costs, equal to 10% of the actual costs and (iii) an additional convenience fee of up to five percent (5%) of the total bond amount to cover costs for consultant reviews and/or staff time to undertake review and enactment of the forfeiture in accordance with this Ordinance; and (iv) .2, and (iii) any actual attorney and consultant fees incurred by the Township; shall be refunded to the person who provided the bond funds that were used by the Township.~~

5. ~~If a default on a requirement or condition of a bond, Code, permit, or certificate of approval is cured or satisfied, and compliance is achieved by persons other than the Township after a bond that has been forfeited or subject to draw or collection, then any bond proceeds that remain after payment of any actual attorney and consultant fees incurred by the Township, as well as administrative costs and convenience fees, shall be refunded to the source of the forfeited, drawn upon, or collected bond proceeds held by the Township.~~

~~5. \_\_\_\_\_ under Section 14-154 and convenience fees equal to 5% of the bond amount,~~

1. ~~\_\_\_\_\_~~

Revised ~~0509/21~~ \_\_\_\_/202